

Martuwarra Fitzroy River Council Newsletter

Vol. 1: Issue 5, October, 2020



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WELCOME!

The Martuwarra Fitzroy River Council wishes to acknowledge your contribution as a Newsletter subscriber which supports the protection of the Martuwarra, Fitzroy River.

 Please encourage others to visit our main website https://www.martuwarrafitzroyriver.org

Editors

Dr Anne Poelina, Dr Magali McDuffie & Dr Alexander Hayes

Featured Photography

'Martuwarra, Fitzroy River', 2019 by Lachie Carracher -Front Cover & Flyer

'Geikie Gorge', 2018 by Dr Magali McDuffie - Rear Cover

Content Contributors

'Chair Nganka (Talk)' by Dr Anne Poelina
'I Am Martuwarra' Poem by Steve Hawke

Community Research Content Contributors

'Frack Free Kimberley: Nuria Jadai Stands For Country' and 'Martuwarra First Law, Law of the Land not Law of Man' by Marlikka Perdrisat

'Love and Respect for Country' by Edwin Lee Mulligan

Researcher Content Contributors

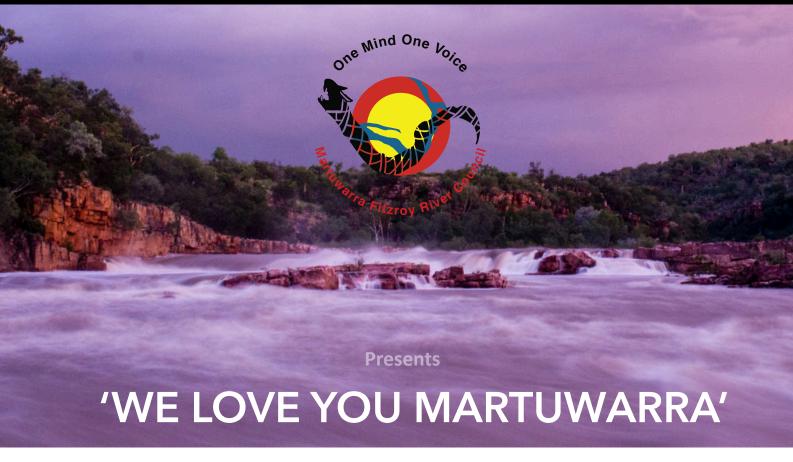
'New Western Australian Aboriginal Cultural Heritage Law' by Dr Kat Taylor and Dr Anne Poelina

Design, Web & Print Production

Oethica Group Productions

FREE COMMUNITY EVENT

FITZROY CROSSING, WESTERN AUSTRALIA



Gifts from the Martuwarra Fitzroy River Council

"A spectacular cultural event showcasing the 'Serpents Tale' film by Mark Jones, short films by the Martuwarra Fitzroy River Council Youth Film Project directed by Stephanie King, stories by Martuwarra Fitzroy River Council Traditional Owners & Elders co-produced with Ngikalikarra Media. A night of cultural celebrations, dance, presentations and more. The Fitzroy River (Martuwarra) belongs to ALL of us. Come and show you love and care about the Fitzroy River!"

Dr Anne Poelina, Chair, Martuwarra Fitzroy River Council.

Recreational Centre, Forrest Road, Fitzroy Crossing, Western Australia

Saturday, 31st October, 2020 6pm - 10pm

Bring your own torch, chairs and refreshments.













Supported by Martuwarra Fitzroy River Council Partners







Chair Nganka (Talk) - Dr Anne Poelina

As Chair, I acknowledge the call for legal pluralism, healthy public policy and a commitment to reform the social justice agenda of land, living waters to sustain our laws and cultural heritage in order to sustain Indigenous people's wellbeing.

Recently, social and multi-media stories have showcased the 'Destruction of the Juukan Gorge Caves' to the world. The politics of economics from the global shareholders demanding accountability from their most senior officials who failed in their fiduciary duty to protect the world oldest cultural heritage as evidence of first human thought and creativity is to be applauded.



The resignation of Rio Tinto CEO and other senior officials is a clear demonstration of how public opinion can move the moral compass of society towards, just development on just terms. One of those calling for this type of justice terms, is former Premier of Western Australia. Colin Barnett who is calling for a Royal Commission, he says the *inquiry is 'inadequate'* - https://nit.com.au/former-wa-premier-calls-for-juukan-gorge-royal-commission-says-inquiry-is-inadequate

Barnett said the matter should be investigated independent from government and "in a judicial format". Western Australia Minister for Aboriginal Affairs, Ben Wyatt, has hit back, saying calls for a Royal Commission are "premature". Barnett's call is timely, and it may be time for some within government to stand and be accountable in a public process of truth telling.

Given the constant erosion of Indigenous and environmental rights and responsibilities showcased in the Commonwealth EPBC Act and the proposed amendments to the Native Title Act in 2020, we are witness as a nation of our failure to protect our spiritual, cultural and environmental heritage without an independent arbitrator with the power and authority to maintain standards and regulate better practice.

Chair Nganka (Talk) - Dr. Anne Poelina

(Cont.)

The changes being proposed at the Commonwealth level and the transfer of responsibility and regulation to the state governments needs to engender a level of trust, transparency, and accountability in the legislative reforms of the Western Australian Aboriginal Heritage Act.

Minsters as well as Industry officials need to uphold their fiduciary duties and be legally liable if they fail to protect Indigenous heritage, as global heritage for humanity. We as citizens of the state and nation need to ensure these amendments are not another 'illusion of probity'.

Our Voices

Listen in to the discussion on the 25th September with Jodi Ryder from 100.9FM Noongar Radio in 'Our Voices' with Robin Stevens, Joe Dortch, Jo Thomson and Dr Anne Poelina about the Draft WA Aboriginal Heritage Act and their concerns.

Access Soundcloud - https://soundcloud.com/jodi-ryder/our-voices-25th-sept-draft-wa-aboriginal-heritage-act

"The Martuwarra Fitzroy River Council continues to make every effort to speak about the 'Government of Old People', the wisdom of our Elders of High Degree. This justice is about First Law, Law of the Land and these senior people are the cultural authority to stand and hold the Law. They are the one who should lead the management, promotion and protection of our sacred sites" Dr Anne Poelina.

Chair Nganka (Talk) - Dr. Anne Poelina

Publications

Published papers

- [1] Sandra Wooltorton, Len Collard, Pierre Horwitz, Anne Poelina & David Palmer (2020) *Sharing place-based indigenous methodology and learnings,* Environmental Education Research, 26:7, 917-934, DOI: 10.1080/13504622.2020.1773407.
- [2] RiverOfLife, M., Poelina, A., Bagnall, D., & Lim, M. (2020). *Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being*. Transnational Environmental Law, 1-28. doi:10.1017/S2047102520000163.
- [3] O'Donnell, E., Poelina, A., Pelizzon, A., & Clark, C. (2020). Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature. Transnational Environmental Law, O(0), 1–25. doi:10.1017/ S2047102520000242

Pending Publication

[4] Anne Poelina, Martin Brueckner and Magali McDuffie (2020) (In press) For the Greater Good? Questioning the Social Licence of Extractive-Led Development in Western Australia's Martuwarra Fitzroy River Catchment Estate (2020) (In Press).

The Sharing place-based indigenous methodology and learning article shares and integrates the outcomes of five interconnected place-based learning projects from Australia. The methodology shows how to facilitate the everyday living and sharing of an Earth-based consciousness: one that enriches Transformative Sustainability Education (TSE) through recognising meanings and stories in landscape, and celebrating Indigenous ways of knowing, being and doing.

Chair Nganka (Talk) - Dr. Anne Poelina

(Cont.)

Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being is part of a collection of symposium articles growing out of a Research Workshop on Indigenous Water Rights in Comparative Law, held at the University of Canterbury School of Law, Christchurch (New Zealand), on 7 Dec. 2018 funded by the New Zealand Law Foundation.

In the Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature paper, we explore the ontologies of rights of nature and earth jurisprudence, and the intersections of these movements with the leadership of Indigenous peoples in leading earth justice. This continues to be at the forefront as Indigenous and First Nations people continue to defend their land, living waters and their continuing deep relationship with nature. We acknowledge the claiming and giving effect to Indigenous peoples own rights, law of nature, laws of the land or First Law.

For the Greater Good? Questioning the Social Licence of Extractive-Led Development in Western Australia's Martuwarra Fitzroy River Catchment Estate is my final paper for my doctoral studies. In this paper we examine how economic development in Australia, especially resource development, has purportedly long been pursued for the greater good of the nation and its people and is thus often equated to moral progress.

It is argued the proposed water extraction plans hold little promise of serving either local or national interests when judged holistically and risk perpetuating adverse socio-cultural and ecological legacies from extractive activities for local Indigenous peoples. Within the *Martuwarra* Fitzroy River context, the paper seeks to redefine the 'greater good' and to articulate 'socially licensed' development alternatives without the ecological and cultural trade-offs typical of orthodox development. Yet, despite the celebrated spoils of the resources sector, Indigenous Australians have persistently been denied the benefits of economic progress owing to a history of colonialism, dispossession, segregation and assimilation policies, which have contributed to the marginalisation of Indigenous people to the present day.

Thus, this article asks whether orthodox resource-led development has a social licence, and importantly for whose greater good? This paper applies a social licence lens to current water extraction proposals for Western Australia's remote *Martuwarra* Fitzroy River region where ecological values have largely remained intact and Indigenous people make up over 60 per cent of the population.



Photo: 'Dont Frack Our Kimberley - Dr. Anne Poelina' by Ian Perdrisat, 2020.

Keynote Address - Global Commons - October 6, 2020

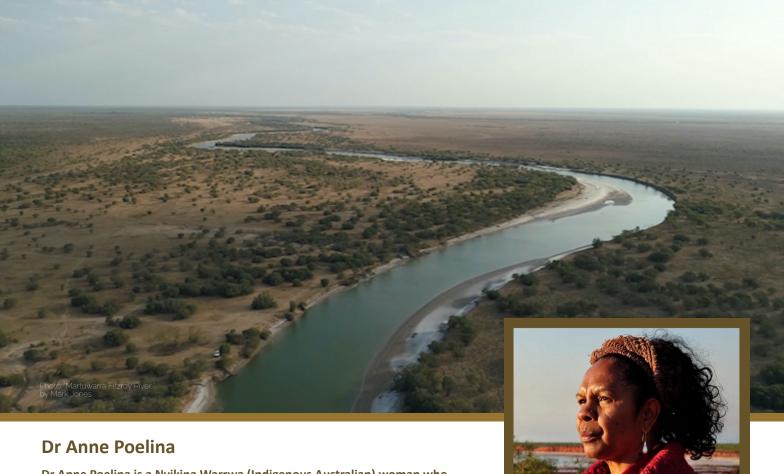
My keynote address will focus on a multidisciplinary approach to wisdom and wellbeing. My work fuses First Law, culture, earth sciences, political science, economic and earth centred governance in the sharing and guardianship of 'Our Commons' for the greater good of humanity and the planet.

The presentation of film and storytelling will incorporate ancient and contemporary Indigenous Australian, First Law and the rights of nature regarding the solutions required for planetary health and wellbeing. The presentation will focuses on our sacred river, the Martuwarra, also known as the Fitzroy River in the Kimberley region of Western Australia.

Download the Keynote Address flyer - https://martuwarrafitzroyriver.org/ news/global-commons

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Sharing the Commons of the Martuwarra Fitzroy River Estate for our Greater Good



Dr Anne Poelina is a Nyikina Warrwa (Indigenous Australian) woman who belongs to the Mardoowarra, the lower Fitzroy River in the Kimberley region of Western Australia. Poelina is an active Indigenous community leader, human and earth rights advocate, filmmaker and a respected academic researcher, with a Master of Public Health and Tropical Medicine, Master of Education, Master of Arts (Indigenous Social Policy) and currently Doctor of Philosophy (Health Science) with thesis title, 'Martuwarra First Law Justice: Land, Living Waters and Indigenous Peoples Wellbeing'.

Dr Poelina is currently an Adjunct Senior Research Fellow with Notre Dame University, a Research Fellow with Northern Australia Institute, Charles Darwin University, Australia and a Visiting Fellow with the Crawford School of Public Policy at the Australian National University, Canberra, Australia in the development and implementation of the Water Justice Hub to focus on Indigenous Water Valuation and Resilient Decision-making.

Dr Poelina's keynote will focus on a multidisciplinary approach to wisdom and wellbeing. Her work fuses First Law, culture, earth sciences, political science, economic and earth centred governance in the sharing and guardianship of 'Our Commons' for the greater good of humanity and the planet. The presentation incorporates ancient and contemporary Indigenous Australian, First Law and the rights of nature regarding the solutions required for planetary health and well being. Her work focuses on her sacred River, the Martuwarra, also known as the Fitzroy River in the Kimberley region of Western Australia. See the Martuwarra Council website at https://www.martuwarrafitzroyriver.org

The presentation will involve a 35 minute film 'Our Shared and Commons Future'. Please ensure you have good internet connection nationally or globally to view this film.



Frack Free Kimberley: Nuria Jadai Stands For Country



Photo: 'Nuria Jadai speaking with Premier Mark McGowan' by Harry Jakamarra, 2020.

On Sunday the 20th of September, 2020 at Broome Civic Centre in Western Australia a hundred-people gathered to support the youth in the student climate strike.

The group of community members chanted "Fracking get off it, this land is not for profit", but it was the leadership of Mangala and Martu woman Nuria Jadai that stood out. She spoke to Premier Mark McGowan about his decision to lift the fracking ban in 2018, explaining to him that there is a lot of dreaming that runs through the Country, and that many of the Traditional Custodians understand the science and risks associated with fracking and they do not want it.

Thank you Nuria Jadai, Micklo Corpus and Nat Reeves for allowing us to interview you, and more importantly thank you for standing up for Country. View the 'Frack Free Kimberley' short film produced by Harry Jakamarra and Marlikka Perdrisat at https://youtu.be/2ZBn608zmLY

Article by Marlikka Perdrisat - September 23, 2020 Martuwarra Fitzroy River Council, Community Storyteller.

Love and Respect for Country



Photo: 'Marion Pilkington, Yamaitji Nyungar descendant, Ronnie Roe, Walman Yawuru, Goolarabooloo Elder, Micklo Corpus, Yawuru and Edwin Mulligan, Nyikina Mungula outside Broome Courthouse, Western Australia' in <u>Wikimedia Commons</u> by Magali McDuffie, 2018.

This Country ... people got to stop fracking on Country. Aboriginal people and their communities have have been saying this for a long time. It is a scary story that people don't really want to hear but I am questioning, what is really motivating them to frack? The mining companies need to stop themselves and those who are motivating them too.

They are trying to make us feel like we have no rights to Country yet, we do have our rights on Country ... yes, I wonder what is motivating them?

They are making us feel like we don't have any home, that we are not human beings but have our home and we are human beings. (Cont.)

(Cont.)

We need more people in general to stand for Country. Everyone! It doesn't matter what race or people they are. If they love Country then, you know ... they should get involved. We need more people to get involved and it doesn't matter what race of people they are ... they have to get involved at the ground level and at the political level, state level and international level.

They need to bring these big superpowers down. Bring them right down. We all have to make these superpowers driving this mining accountable for their actions, not just a slap on the hand. No apologies from silly intentioned evil mining companies. Never. If they are apologising to us their apology is just thrown out through the window by us. We can't eat their apologies off a plate. We can't digest that apology. We have just had enough of it ... enough of them. We are the people standing for Country.

The teachers need to teach kids at school the importance of Country in the curriculum, about the environment and teach them at schools about what's happening with mining companies coming in and snatching kids from schools. The kids' attitude towards mining companies must be replaced with alternative ways of getting energy. There are other ways of creating new energy that are not destructive; that are friendly for the environment. The mining companies must be stopped from taking these children from the schools. Kids go to schools and yet they attack the kids through the school's ... brainwashing ... child trafficking ... snatching kids to destroy Country... promising them job opportunities you know, but the reality is mining is two weeks on, sun up to sun down, then one week off to return to back to Country which has already been destroyed.

People need to know the difference. This whole thing about work ethics....work, work, work. Well, that work is just putting them into a state of mind which makes them miserable. This means then that they are putting a lot of time and effort into working but not a lot of time and effort into Family ... it doesn't create good you know. They need to invest more time into their Family and Country, not just getting lots of money from lots of hard labour. The meaning for living is about being out with Family on Country not in a cave-like house.

These politicians have got to start seeing people, not looking through them ... they need to see the person in front of them. Listen to them. They need to be transparent in their actions ... accountable in their words. The impression I get is they hardly see people ... They are actually blind and deaf to Culture. They are hungry like a dog where they just want to dig up the Country and put their bone in there.... bury and hide their scraps. That tell us a lot about them.

(Cont.)

People's mining lifestyles are causing them to come home with a different energy source. Even the trees can feel people's presence, the flowers and grass ... even when we go to another environment you can feel the difference and so can Country... The trees have a conscience and they can feel the pain of Country. The trees tell us well, we can feel that energy source as vibration ... that vibration... Trees can feel the connection we have with Country. We have a different vibration.

Mining companies have got to stop playing their silly games ... silly is evil. They are just being an overgrown child who won't listen. Do they know how to listen? That's the main thing. Listening. Mining companies have evil intentions if they don't listen. Silly games. Silly is evil.

When you go on Country you have to be with Family and admire the beauty of nature. Nature has got so much to give and in return people need to give something back too. We have an Aboriginal saying 'Walah munah digkitj yoogulah ... Gangah.' It is a saying for Country meaning 'give something back in return'.

It's a concept based on principles ... it's an everyday thing. Love and respect for Country.

Article by Edwin Lee Mulligan, September 27, 2020.

Martuwarra Fitzroy River Council, Community Storyteller.

Martuwarra First Law, Law of the Land not Law of Man

Natural laws, First Law, Law of the Land in contrast to colonial imposed Law of Man. First Law is the guiding principles First Peoples generated over aeons to govern the diverse range of bioregions within the land mass currently known as Australia. It is the body of laws responsible for maintaining respectful and reciprocal relations between and within First Nations and between the human and non-human family.

Traditional custodians of the *Martuwarra* (Fitzroy River) derive our identity and existence from this globally significant River. Martuwarra would be best described as a 'ancestral being' legal subject possessing legal rights. This is different to the legal subject of 'personhood', similarly to the experience of other jurisdictions such as New Zealand, Colombia, and Ecuador.

First Law in Australia differs markedly from its colonial counterpart. First Law principles are not expressed in terms of external rules, policies, and procedures by government to influence individual and societal behaviour through fear. First Law is applied through multilayered stories that impart values, and ethics thus they represent a comprehensive ethical framework that defines the codes of conduct necessary for maintaining a peaceful, thriving, and co-operative society grounded in love and reciprocity.

The Warloongarriy Songline is First Law governing the Martuwarra. First Nations along the River share this common songline which sets out community and individual rights, relationships and responsibilities. Ceremonial songline law is passed to each emerging generation by raising their spirit through singing and dancing. Martuwarra First Law includes Warloongarriy Law (River law) and Wunan Law (regional governance law).

Please access a short film 'Warloongarriy' I have created as a Martuwarra Fitzroy River Community Storyteller to capture the meaning of First Law - https://vimeo.com/459588320

Article by Marlikka Perdrisat - September 21, 2020 Martuwarra Fitzroy River Council, Community Storyteller.

New Western Australian Aboriginal Cultural Heritage Law

The law protecting Aboriginal cultural heritage in Western Australia is changing. Will heritage protection be stronger? The Martuwarra Fitzroy River Council investigates.

The WA government has asked for comments on the Draft of the Aboriginal Cultural Heritage Bill 2020. The bill will replace the Aboriginal Heritage Act 1972. The government wants to put the bill to parliament soon, probably by the end of the year.

There are a lot of differences between the current Act and the new draft bill. Under the new process, a Local Aboriginal Cultural Heritage Services (LACHS) consults with local Aboriginal people. The proponent makes an agreement with the relevant Aboriginal people, forming a heritage management plan. The plan is approved by the Aboriginal Cultural Heritage Council or the Minister, depending on the situation. If TOs and the proponent don't agree, the Minister has the final say, taking into account the 'interests of the state'. This is a worry as the 'interests of the state' could conflict with protecting sacred sites and or cultural heritage.

The new bill is an improvement in many ways. It broadens the definition of heritage. More will be protected, including cultural landscapes and intangible elements. Under the new bill, Aboriginal people must be consulted. It gets rid of Aboriginal Cultural Material Committee (ACMC) and section 18 process going forward (but not existing approvals). There are bigger fines for breaking the law. The maximum goes up from up \$100,000 to \$10 million for a corporation. Finally, Aboriginal people will have more rights to appeal decisions.

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There are bigger fines for breaking the law. The maximum goes up from up \$100,000 to \$10 million for a corporation. Finally, Aboriginal people will have more rights to appeal decisions. (Cont.)

New Western Australian Aboriginal Cultural Heritage Law



Photo: 'Martuwarra Fitzroy River near Willare, Western Australia' by Kat Taylor, 2020.

(Cont.) However, there are concerns:

- Existing Section 18 approvals will continue to have effect. Section 18s need to be identified as important examples of priority stories. We can learn from these stories and use these examples to adapt the reform process;
- Funding to make sure information in the new Aboriginal Cultural Heritage
 Directory is comprehensive and up-to-date. One option is to identify significant
 sites on the existing Register of Aboriginal Places and Objects that require
 additional investment. Then prioritise and ensure the significance of these sites
 are mapped to show the multiple values of the site and or sites within the next 1-3
 years'
- Comment period is too short;
- We being asked to support the bill when Traditional Owners don't know details about the regulations yet; (cont.)

New Western Australian Aboriginal Cultural Heritage Law

(Cont.)

- The Aboriginal Cultural Heritage Council has only one position that must be an Aboriginal person. That is not enough Aboriginal representation.
- Questions about the funding for LACHS;
- Management plans are reactive not proactive;
- When the Minster has final say, decisions are made in 'the interests of the state';
- Not enough transparency for 'minimal' impact activities;
- Unclear how the bill interacts with water law or other legislative reforms.

The bill would be stronger if these concerns were addressed. Many sites, including Juukan Gorge Cave, were destroyed under the 1972 Act. We need the new bill, however, the details need to be right.

Article written by Dr Kat Taylor and Dr Anne Poelina, September 26, 2020.

The Martuwarra Council is sending the government a submission with suggestions for making heritage protection stronger. If you wish to be considered for input with the Martuwarra Council's submission, please email Dr. Anne Poelina - chair@martuwarrafitzroyriver.org

You may wish to comment individually on the Aboriginal Cultural Heritage Bill 2020 by Friday 9 October 2020. For more information regarding the Bill visit: https://www.dplh.wa.gov.au/aha-review

'I Am Martuwarra' - Poem by Steve Hawke

Paul Stanhope a Sydney based composer and conductor has composed for many combinations of vocal and instrumental forces including a number of major works such as *Jandamarra: Sing for the Country* a dramatic cantata with a libretto by Steve Hawke based on the life of the Western Australian Indigenous resistance hero.

The 'I Am Martuwarra' creation was commissioned by Gondwana Choirs for the Gondwana World Choral Festival in 2019, with Commissioning Patron Prue Ashurst.

Paul Stanhope relates:

"Martuwarra is the Bunuba language word for the Fitzroy River, the magnificent body of water which carves its way through the plains and gorges of the spectacular Kimberley landscape. It is also the lifeblood of the Aboriginal nations who surround it including the Kija, Bunuba and Nyikina peoples."

In correspondence with Martuwarra Fitzroy River Council Chair, Dr Anne Poelina, September 20, 2020 Steve Hawke reinforced that:

"I've loved the river all my adult life. In 1978 when I arrived in the Kimberley the very first story I was told, by an old man at Noonkanbah, was the story of Woonyoomboo and the making of Martuwarra, the Fitzroy River. That was my beginning. In the years since I have spent hundreds, perhaps even thousands of hours on its banks, from Willare up to Diamond Tail and unnamed gorges on the upper reaches, and there is more I hope yet to see. That image of Woonyoomboo and the mighty snakes, making the land, carving the river's path has never left me. When Paul Stanhope and I were asked to create a song for Australian youth choirs to sing at the World Youth Choirs Festival last year Martuwarra seemed a natural choice."

'I Am Martuwarra' - Poem by Steve Hawke

(The Fitzroy River)

Copyright - Steve Hawke

THE RIVER

I rise in the lands of the Gija people Under the gaze of the joomooloony trees Winding thinly through spinifexed hills In the high lands of the Kimberley

I am Martuwarra Running from range to sea I am Martuwarra Running for eternity

GIJA CHILD

It is cold weather time at Crocodile Gorge But in the midday sun I am warm We brothers run, bursting with laughter Into the river To splash and play in the cool green water Here in the land of our fathers

Bee-eater twirls in dizzy flight Gliding on high wheel the whistling kites See them fly through to great heights

THE RIVER

I am Martuwarra
Mighty river
Running free from range to sea
From my banks
Bunuba voices ring and echo through the trees
I am Martuwarra
Mighty river
Running free from range to sea
As I carve my path through Miluwindi

(Cont.)

BUNUBA YOUNG WOMEN AND MEN

Barrangga

It is hot weather time at Jijigi

The cliffs glow red in the evening light

A river of stars will shine tonight

As my sisters and I pluck the feathers

From the galamuda

While we brothers watch on with greedy eye

Here in the land of our mothers.

Dumbu calls to the night

As dancers whirl by the fire's light

THE RIVER

I am Martuwarra

Mighty river

Bursting from the limestone range

My waters spread wide as the rains

Fall without cease on the Nyikina plains

NYIKINA MEN

Warrampa

The flood has come to Mijirrikan

We sing for Woonyoomboo, Bookarrakarra man

Who speared the snakes in times of old, and

Carved this river

This river that nourishes a thirsty land

THE RIVER

I am Martuwarra

I maketh this land

Rocks to pebbles, pebbles to sand

I flow, water moves mountains

(Cont.)

THE MARTUWARRA PEOPLES

River eternal, bringer of bounty Midst still green pools and brown torrents foaming A million birds sing loud and joyous In every watery mood singing a river chorus

THE RIVER

I am Martuwarra Mighty river Running from range to sea I am Martuwarra Pulsing heart of the Kimberley

I am Martuwarra Mighty river Running from range to sea I am Martuwarra Running for eternity Running free, running free I am Martuwarra.



Photo: 'Geikie Gorge' by Magali McDuffie, 2018

Thank you for reading our newsletter.

Please encourage others to visit the Martuwarra Fitzroy River Council website at https://www.martuwarrafitzroyriver.org

This newsletter has been brought to you by the Martuwarra Fitzroy River Council located in Fitzroy Crossing in the Kimberley Region of Western Australia.

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