NATIONAL PARKS & THE YORTA YORTA STRUGGLE FOR LAND JUSTICE:
THE BARMAH-MILLEWA CASE

Introduction

On 30 December 2008 John Brumby announced that the Barmah Forest would become one of the first National Parks in Victoria to be Jointly Managed, with the Traditional Owners; the Yorta Yorta Nation Aboriginal Cooperative YYNAC. This research paper will examine the concepts of Joint Management and Co-Management, JM, CM and the potential benefits that they can bring to the Yorta Yorta community. It will outline some of the issues surrounding Joint and Co-Management models, and will examine the benefits of these management structures to the environment, the government and the wider community. It will conclude by arguing from a traditional holistic view that the adjoining Millewa Forest, on the New South Wales side of the Murray River, and other National Parks that are located within Yorta Yorta land and cultural heritage jurisdiction should also be given equal status as National Parks and managed accordingly.

The paper is set against the framework of the long and continued Yorta Yorta struggle for land justice, and equality and the pathway to achieving this historic goal through the concept of National Parks and Joint Management structures http://yynac.madwebskills.com/

Joint Management and Co-Management

One of the primary objects of JM is that it aims to recognise the meeting point between two cultures and the goal of environmental sustainability and the return of land to Traditional Owners under JM agreements (Craig, 1992). Sustainability is used here in its practical sense to mean the ability of current generations to meet its needs without compromising the ability of future generations to do the same, or living in such a way that does not detract from the quality of life entitlements of future generations (Flannery, 2009:3).

Traditionally National Parks were originally seen as an area to be set aside solely for the protection of nature as wilderness (Bauman and Smyth, 2007). Since the late 1970s however it has been increasingly accepted that National Parks are not areas of wilderness but are rather ‘cultural landscapes’ brought about by thousands of years of Aboriginal management which manifest themselves in the evidence of prior Indigenous occupation (Birckhead and Smith, 1992: 4). This acceptance has led to the inclusion of Indigenous people in the ownership and the management of protected areas under different management regimes. Joint Management is a legal partnership and management structure that merges the rights and interests of Traditional Owners with the rights and interests of the government land management agencies and the wider community. These interests are not always compatible and consequently the JM
arrangement is often seen as a `trade-off or a compromise position to that of Sole Management which is the way that the natural and cultural features of the landscape have been cared for since time immemorial (Bauman and Smyth, 2007). Joint Management in this context is a recently imported construct that is used to ensure that when land is returned to Traditional Owners under the pretext of JM, it is conditional upon the land being leased back to the Government to manage jointly with the Traditional Owners. Cooperative or Co-Management is a similar concept but the major difference between the two, as defined by VEAC in its River Red Gum Forest Investigation Report, 2008, is that the ownership of land under Co-Management stays with the Crown whereas Joint Management returns the land to the Traditional Owners under a Hand back/Lease back arrangement (VEAC, 2008: 106).

While both are similar in terms of the Boards of Management, BOM which include a majority of Indigenous interests, it is assumed that Co-Management can also be a stepping stone to Joint Management in the longer term. This is the essence of what is being discussed now between the YYNAC and the Victorian Government as they attempt to negotiate agreements on the management of those National Parks that have been declared within their land and cultural heritage jurisdiction. These are Barmah, Gunbower, Lower Goulburn, Ovens Warby Range-Ovens River, National Parks and other crown lands within YYNAC boundaries.

Joint Management Models in Australia

There are currently JM models operating in Australia, examples of which are those that have been established in the Northern Territory, NSW, and the ACT. There are differences however in the way they have been established. They are dependant on the local political context and on the willingness of Governments to recognise Indigenous rights and to take a more inclusive approach to land management issues (Corbett et al, 1998). Translating this analysis to the Victorian context, which paints a rather dismal picture of land justice for Traditional Owners, and by comparison with those models mentioned, there appears to be a major shift happening in the way that the State Government has dealt with Indigenous ownership of crown lands and in the inclusive management of National Parks in the past. Whether this will translate itself into the long and continued Yorta Yorta struggle for land justice is being watched very closely.

The Barmah Forest is a good case study in point. It is proposed that it will be initially Co-Managed, with the Yorta Yorta people having a majority on the National Park, BOM (VNPA, 2009). Although the details are not clear and as indicated the concept of CM is essentially Joint Management without the hand back of land. This means that the YYNAC will have a majority on the BOM, including rights to occupy and use the land, and to make decisions on the resources provided by the State for the management plan and for the management of the land and resources. Employment and training initiatives and capacity building programs are also inclusive of this management model. Under this model however the YYNAC will not have title to land or rental payments and the National Parks Act (Vic) will need to be amended to allow for both CM and JM options. A timeline of 5 years has been proposed by VEAC for the transition to JM and for hand back lease back to happen in the future (FOE Australia, 2009).
Joint Management and Native Title

While the National Parks being proposed do not deliver the exclusive land justice that the Yorta Yorta attempted to achieve in the YYNTC (1994-2002), the irony is that they may deliver more than what native title could have achieved through the courts, if the native title process had not been perverted in their case to accommodate the vested interests of the colonial industry. Whether National Parks can deliver the ‘real land justice’ that is being advocated by the Steering Committee that negotiated the Victorian Governments ‘Native Title Settlement Agreement’ by returning crown land as inalienable freehold title to Traditional Owners, along the Murray is a crucial issue. It must be remembered however that both these options are a far cry from the absolute title enjoyed by the Yorta Yorta Nations ancestors for the most part of their history which has been undermined by the imposition of the more recent crowns title. Finding a satisfactory pathway through these complex issues that will meet the needs and aspirations of the YYNAC now and in the future are the big challenges being confronted. [http://www.ntsv.com.au/document/Graham_Atkinson_keynote_address_NNTC_04-06-09.pdf](http://www.ntsv.com.au/document/Graham_Atkinson_keynote_address_NNTC_04-06-09.pdf)

Benefits of Joint Management for Indigenous People

The announcement of a Jointly Managed National Parks was celebrated by both Indigenous and non Government organisations, NGOs who contributed generously to the outcome of this decision following the failure of the native title process in the YYNTC (1994-2002) (FOE Melbourne, 2008; VNPA, 2008; The Wilderness Society, 2008; ANTaR Victoria, 2009; Goulburn Valley Vegetation Group). CM is expected to give the YYNAC the opportunity to exercise control over the decisions affecting their lives and their land (Craig, 1999). Currently, there is a CM Agreement which provides for an advisory joint body with a majority of Yorta Yorta people. This is one of the many advisory bodies however that advises the Minister for Sustainability and the Environment, DSE who retains ultimate decision-making authority (DSE, 2004: 2). While the Yorta Yorta people are restricted in what they can do under the current management plan, it is assumed that the new agreement will give them more say and control over how their land is managed.

CM allows the Yorta Yorta to care for their country using their traditional ecological knowledge, and also allows them to challenge the existing ideology of non-Indigenous land managers (Baker et al, 1992). This `demonstrates the validity of traditional knowledge in the modern world (Baker et al., 1992: 71) and can help to educate non-Indigenous people about Indigenous history, culture and practices, thereby promoting greater reconciliation in the future (Craig, 1999). CM also recognises the rights of Traditional Owners to continue to use the land to hunt, gather, fish, and to continue their cultural connections with the land that was occupied and enjoyed by their ancestors since time immemorial. This is surely a positive step forward for the upkeep and the continuity of Yorta Yorta culture and identity.

CM will also allow the Yorta Yorta people to use the resources and capacity of the State without relinquishing control over the management of the land (Craig, 1999). Indeed, the Government has pledged $38 million over four years to create new protected areas and to help local communities adjust to the changes that are required to preserve and to
protect these forest-wetlands for the future (Premier of Victoria, 2008). This will include the creation of new park ranger jobs and hopefully will bridge the gap in employment opportunities for Indigenous communities with very high unemployment rates (Atkinson, 2008; VEAC, 2008). Indeed, one of the current problems is that Traditional Owners are consulted frequently without being remunerated for their time or knowledge, but hopefully this will change under the new models (Lawrence and Colloff, 2008). The benefits that will be generated from the increased number of people seeking to visit the new parks from Australia and overseas and from the tourist economy generally will help to produce a much needed economic base for Traditional Owners. Other issues include opportunities to pursue cultural and economic development within the NPs like cultural enterprise programs, and the provision of live in learning and education centre’s like the Dharnya Center in the Barmah Forest which fell into disrepair from Government neglect -see Research Paper on the concept of ‘Cultural Tourism’ as part of this Research Project, 2009.

Issues with Joint Management

There are a number of issues with JM that have been documented from existing models that are operating in Australia. As outlined above, under JM Aboriginal people are required to enter a lease agreement and a management scheme rather than being able to decide what structure they want and what they want to do with the land (Lipman and Don, 1993). Some critics have therefore seen JM as continuing the relationship of domination and subordination rather than allowing Traditional Owners to utilize this process to achieve greater autonomy and self determination (Lipman and Don, 1993). Learning from the JM models operating in Gurig and Nitmiluk (Katherine Gorge) National Parks, (Northern Territory), one can see that there is a majority of Indigenous people on the BOM but the day-to-day management is ultimately controlled by a Government Commission (Smyth, 2001). Likewise, the Uluru and Kakadu models are dependant on the park management plans being approved by both houses of Federal Parliament (Smyth, 2001). The Aboriginal communities who own these parks however have expressed ‘strong satisfaction’ with their operation (De Lacy and Lawson, 1997) and a majority on the BOM in Kakadu and Uluru has meant that major changes have occurred in their land management and site protection policies (De Lacy and Lawson, 1997). It is therefore important to ensure that the CM, or eventual JM agreements, does provide Traditional Owners with real rather than symbolic, decision-making power (Birckhead and Smith, 1992: 4).

Indigenous Employment in NPs

This leads to the issue of Indigenous employment in National Parks and JM agreements and the evidence indicates that in most Aboriginal owned National Parks, Aboriginal employees are generally employed at the lower employment levels and the senior positions, are mostly dominated by non-Indigenous personnel (Smyth, 2001). Attempts are being made to improve the situation and provide greater equity for Indigenous employment with training and capacity building programs, but generally most economic benefits are currently going to non-Indigenous staff and business enterprises. There are exceptions with the Gagadju Association, which consists of the Traditional Owners, owning and managing the largest resort in Kakadu National Park and one of the most successful tour companies (De Lacy and Lawson, 1997). The reality is
however, that Joint Management has not and will not alter the chronic levels of poverty and the socio-economic gap between Indigenous and non-Indigenous people in the foreseeable future (Smyth, 2001: 86). This reality obviously needs to be taken into account in negotiation agreeable and fair and just outcomes. Indeed it is important to ensure training and educational opportunities are adequate for Indigenous people so that they can be employed in positions ranging in seniority and that opportunities exist for career advancement.

Among other things it is very important to protect the intellectual property of Traditional Owners, to train non-Indigenous rangers and tourist operators about Indigenous protocols and cultural sensitivity, and to ensure that cultural material provided for tourists is first accepted and given informed consent by the local communities. Cultural materials need to be made inclusive of the substantive Indigenous knowledge that exists within Indigenous communities (De Lacy and Lawson, 1997). This will be returned to after examining the need to broaden the concept of NPs to the Millewa Forest in New South Wales.

The Adjoining Millewa Forest

The Barmah-Millewa Forest is the same forest and ecosystem but it is separated by a State border and like many other cross border issues is divided between two state jurisdictions with whom the Yorta Yorta have had to deal with since the Murray became a political boundary in 1851 (W. Atkinson, 2008: 285-287). On the Victorian side it is called Barmah whilst on the NSW side it is called Millewa but originally it was all called Moira in Yorta Yorta language-meaning a forest-wetlands of many reeds and plenty fish (check ref here from Yorta Yorta language book). Whilst the Victorian Government has announced JM arrangements on the Victorian side, there has been no such announcement by NSW. As indicated, JM and National Park status bring many benefits to Indigenous people, but they also bring significant benefits to the environment, the Government and the wider community, and there has always been a strong voice for the Barmah-Millewa forest to be treated as one holistic National Park system. It is interesting to note that as we speak the NSW Government is considering proposals for equivalent National Parks and JM structures on the NSW side which can only be beneficial for the preservation of these icon sites for the future. Currently the NSW Government has ordered and independent review be conducted into the management of red gum forest on the NSW side which includes the adjoining Millewa Forest (Pastoral Times, 28 July, 2009).

The Barmah-Millewa Forest is one of Australia’s ecological jewels, and is the world’s largest river red gum forest of its kind (Lawrence and Colloff, 2008: 22). It covers over 65,000 hectares of land and contains many endangered and vulnerable plant and animal species (FOE Melbourne, 2002). It is also an important breeding ground for thousands of birds and fish and has attained recognition as a wetland of international importance under the UNESCO Ramsar Convention, 1974. It is a resting and breeding place for the migratory birds that make their annual and magnificent journeys between China and Japan and are protected under the CHAMBA and JAAMBA migratory bird’s agreements (FOE Melbourne, 2002). The impact of logging and other hard use
activities however have impacted heavily on the natural and cultural values and have altered the forest structure. The drain on the river for intensive irrigation agriculture couple with the exceeding drought has changed the regularity of flooding which in turn has altered the natural cycle of regeneration (Lawrence and Colloff, 2008). The current and enduring factors of climate change and drought have severely impacted on the River Red Gums ability to survive, with estimates that up to 75 per cent of trees on some parts of the lower Murray are either dead or dying (Premier of Victoria, 2008). These are matters that are addressed in the VEAC study (2005-2008) for the Victorian side of the river and because of the holistic nature of these forest-wetlands the question of water security is the underpinning issue of the report. That is if the river reds don’t get the regular drink that they need to have they are indeed a threatened species and are struggling to survive (VEAC, 2008). One needs to be cautious in painting too much of a negative picture of the future for these majestic river reds but we also need to listen to the land and to take heed of the overwhelming evidence that supports this reality. The establishment of NPs with proper JM management structures, policies and a vision that is inclusive of the fine track record of Indigenous knowledge are the challenges ahead.

Inclusion of Indigenous Knowledge

The importance of Indigenous traditional ecological knowledge in land management is increasingly being recognised both in Australia and Internationally. With greater awareness of the need for sustainable development (WCED, 1987), the creation of partnerships with Traditional Owners is becoming more common in conservation practices. Places such as the U.K and parts of Africa have begun to view partnerships with local people as fundamental to successful management of protected areas so that their local knowledge and understanding of the land can be incorporated into management plans (Corbett et al, 1998). This has been recognized and is happening in Australia with Indigenous ecological knowledge, including traditional fire management practices and knowledge of species, being incorporated into JM parks, such as Uluru and Kakadu (De Lacy and Lawson, 1997). Indeed, Indigenous people have knowledge accumulated over thousands of years of occupation of this continent that invites nothing less than inclusion into the forward thinking of Australia’s public policy on land, water management.

The YYNAC and the elders understand the country and hold knowledge of what was there before the European invasion. For example, Lee Joachim, and Colin Walker of the YYNAC, describes the disappearance of two fish species that helped form the large grass plains during flooding (Lawrence and Colloff, 2008). These fish were never recorded in western science journals or books (Lawrence and Colloff, 2008). Therefore an Indigenous understanding of living with the environment needs to be heeded (Lawrence and Colloff, 2008: 24). Indigenous knowledge is already being used to a certain extent to carry out ecological burning to reduce the infestation of the Giant Rush which is threatening the Barmah-Millewa wetlands (Parks Victoria, 2008). This knowledge should be officially recognised by a JM agreement over the Barmah-Millewa Forest. It would enable the YYNAC to effectively utilise their extensive traditional knowledge to help save the river red gums. There are many other stories like those mentioned that are
retained by the Yorta Yorta in their living memory and in the oral testimony that was presented in the YYNTC (see Transcript of Evidence in which oral testimony made up the majority of the 12000 page transcript of evidence, Federal Court Archives, Victoria).

The JM process is therefore twofold in that it is not only beneficial to the Indigenous people and the environment but it is also beneficial to the NSW Government and park visitors. The NSW Government has the opportunity to protect the parks biodiversity by working with the YYNAC (Smyth, 2001; Atkinson, 2008) and park visitors have the unique opportunity to engage with the Traditional Owners, to appreciate the cultural and historical significance of the park and to participate in the reconciliation process (Smyth, 2001). JM will help to divert a double edged tragedy of the loss of unique ecosystems and cultural knowledge (Craig, 1992).

Conclusion

The announcement of Victoria’s first JM national park under a CM arrangement is not the same as the recognition of, Traditional Ownership of land or ‘real land justice’. Nonetheless, the Indigenous majority on the BOM allows significant Indigenous involvement in the management of the park, utilization and recognizing Indigenous knowledge and the right to continue cultural practices, and the empowerment of Traditional Owners through the benefits that will flow from employment, training and cultural tourism opportunities. There are some issues in current JM models which must be considered in negotiating the terms of the Co-Management agreement but overall the agreement appears to be beneficial providing it does not become an ends within itself, but is a means towards achieving greater empowerment and the reinstatement of the Yorta Yorta as the Traditional Owners of the lands that were occupied by their ancestors since time immemorial. In light of the failure of the native title system to deliver ‘one iota of land justice’ to the Yorta Yorta, it seems that the continued struggle has turned a full circle and they are again poised in their quest to find a satisfactory pathway to achieving fair and just outcomes for the future (Cooper, 1939).

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