

European Union
Programme for Water Governance
Pacific Region

Water Governance at the national
level: Pilot country Fiji
Report of pilot initial mission

September 2005

Water Policy Services Pty Ltd, Sydney

TABLE OF CONTENTS

Programme for Water Governance - Pacific Region	1
Water Governance at the national level: Pilot country Fiji	1
1 Purpose of report	5
2 Details of initial visit	5
3 Nature and objectives of pilot	6
3.1 Programme for Water Governance	6
3.2 Elements of water governance at national level	7
3.3 Pilot sub-objectives	7
4 Need for intervention	9
5 Related water management initiatives affecting Fiji	10
5.1 ACP-EU Water Facility Actions in ACP Countries	10
5.2 UNDP Global Environment Facility Project	10
6 Water governance in Fiji	11
6.1 Previous action	11
6.2 Water management issues	12
6.2.1 Current situation	12
6.2.2 The status of water resources	12
6.2.3 Water resources – the ‘ownership’ question	13
6.2.4 Coordination of water development	14
6.2.5 Water sharing and managing variability in water resources	15
6.2.6 The aquatic environment	15
6.2.7 Water utility reform	15
6.2.8 Excavation in waterways	15
6.3 Further change required	16
6.3.1 General	16
6.3.2 Water policy	16
6.3.3 Water legislation	16
6.3.4 Focus for water management responsibility	16
7 Approach and methodology	17
7.1 Development of water reform strategy	17
7.2 Phasing of the strategy	17
7.2.1 First and interim phase	18
7.2.2 Second and establishment phase	18
7.2.3 Third and longer-term phase	18
7.3 Elements of the strategy	19
7.4 Action already taken	20
7.5 Water policy	20

7.6	<i>Water legislation</i>	20
7.7	<i>National coordination</i>	21
7.8	<i>Responsibility for water resources management</i>	22
7.9	<i>Capacity requirements</i>	22
7.10	<i>Water resources information</i>	23
7.11	<i>Education and awareness</i>	23
8	Proposed pilot interventions and work plan	24
8.1	<i>Scope of pilot</i>	24
8.2	<i>Proposed inputs</i>	24
9	Reporting and regional review	25
9.1.1	Native land ownership and water management:	25
9.1.2	Introduction of water law	25
9.1.3	Water policy	25
9.1.4	Water resources information	25
9.1.5	National coordination on water	25
10	Drafting of national water policy document	26
10.1	<i>Background</i>	26
10.2	<i>Issues leading to the policy</i>	26
10.3	<i>Action during the mission</i>	26
10.4	<i>Meeting of water resources sub-committee</i>	27
10.5	<i>Current policy draft</i>	28
11	Recommendations	28
	Appendix 1: Proposed Work Plan	
	Appendix 2: Water policy draft	

Abbreviations

ADB	Asian Development Bank
DSC	Development Sub-Committee of CEOs, Fiji
ESCAP	Economic and Social Commission for Asia and the Pacific
GEF	Global Environment Facility
MRD	Mineral Resources Department
NLTB	National Land Trust Board
PfWG	Programme for Water Governance
PWD	Public Works Department
SOPAC	South Pacific Applied Geoscience Commission
UNDP	United Nations Development Program

1 Purpose of report

This report describes the activities of the initial mission to Fiji by the international consultant engaged to conduct the Fiji pilot for the Programme for Water Governance (PFWG) in August-September 2005. It also proposes specific objectives and a work plan for the remainder of the pilot.

The report describes progress made on elements of water governance, including the development of a draft document for the national water policy and identifies the elements that will be worked on for the remainder of the project.

The report also makes some recommendations about aspects of the management of the pilot.

2 Details of initial visit

The international consultant, Mr Paul Taylor, arrived in Fiji on Monday 29th August, and departed on Friday 9th September, 2005. The client agency for the project is the South Pacific Applied Geoscience Commission (SOPAC). The host agency in government administration of Fiji is the Mineral Resources Department (MRD) and while in Fiji, Mr Taylor was located at the offices of MRD.

During the visit, the consultant had two tasks:

1. to initiate and plan the activities of the pilot, including a report and work plan;
2. to assist the Fiji Government with the drafting of a national water policy statement.

Activities were as follows:

29 August	Arrive Fiji, Suva 17.30 hours
30 August	Initial briefing with A/Director MRD and Senior Hydrogeologist Meeting with Agriculture Department (Director Land and Water Resources)
31 August	Work on national water policy
01 September	Meeting National Land Trust Board Meeting CEO Ministry of Land and Mineral Resources
02 September	Meeting Director Environment Department Meeting A/Director Town and Country Planning Department
05 September	Meeting Public Works Department Meeting Ministry of Public Enterprise Finalisation of documents for sub-committee meeting
06 September	Report and water policy draft

07 September	Meeting Prime Minister's office policy unit
08 September	Meeting of water resources sub-committee Further work on national water policy
09 September	Depart Fiji

MRD is the agency charged with developing the national water policy document for the Government's consideration and has also been given a water management role by Cabinet, but without additional resources. MRD has been drafting a short amendment to the Minerals Act which covers groundwater controls (described below).

At the request of the Fiji representative to SOPAC, who is also the A/Director of MRD, Mr Ifereimi Dau, the consultant provided assistance with the drafting of the national water policy for Fiji. This is consistent with the objectives for the pilot, as national water policy is one of the key 'building blocks' for water governance at the national level.

3 Nature and objectives of pilot

3.1 Programme for Water Governance

The European Union has established a Programme for Water Governance (PFWG), for the three regions of Africa, the Caribbean and the Pacific. A Pacific region submission was made in 2002 by SOPAC. The submission proposed three pilot exercises for water governance at different 'levels' or scales, namely: national, major utility and local catchment. Fiji was chosen as the country for the national water governance pilot, partly because of initiatives and commitments already made by the Government of Fiji.

The Fiji pilot is to run for eleven months, during which time an international consultant will make visits with an input totally five months to help progress the development of strengthened arrangements for water governance at the national level in Fiji.

Activities during the first visit for the PFWG pilot were:

1. to scope the water governance requirements and develop an outline program for the pilot (to run from September 2005 to August 2006);
2. to assist in the development of the national water policy draft which will be circulated for consultation and consideration by the Government by the end of 2005.

3.2 Elements of water national governance

In the SOPAC PfWG submission and, as proposed in 2002 in Fiji, water governance is seen to comprise a number of 'building blocks'. During the period of the pilot it is the intention to make some progress on most of the following components of water governance at national level:

1. assistance in the development of the **national water policy**;
2. the development of **coordination** arrangements between the key ministries, departments and other stakeholders in Fiji with important water-related roles and interests;
3. assistance in the development of the framework for and possible drafting of comprehensive **water legislation**
4. assessment of **institutional requirements** for water management and water allocation in particular;
5. identification of national **water resources information** requirements and the
6. identification of the key **capacity building** needs
7. assistance in developing a program of **public awareness and education** on water management
8. investigation of the need for and possible form of **consultation** procedures for water resources development, water protection measures and other areas of water management;

These are considered to be the building blocks for achieving a water management framework which is capable of handling the steadily progressing pressures and trends affecting water resources in Fiji.

Water governance is a complex and extensive matter for any government to consider. For this reason, earlier discussions in Fiji came up with the building block, concept as a way of focusing on each element, while recognising that they all require attention. A pilot of this scale can make some progress on a number of the elements, but must be an initiating programme for the building blocks as a whole. That is, work can be done to initiate action and commitment to action by the Government of Fiji on those elements that are considered most important and require immediate attention. Others may wait for later attention. All will require some follow up after the pilot is concluded.

3.3 Pilot sub-objectives

Eight sub-objectives have been developed for the pilot. These were discussed at the meeting of the Sub-Committee on Water Resources of government officials held during the missions, and agreed to by the members. The sub-objectives are intended to guide evaluation of the pilot during its progress and when completed. They indicate which of the building blocks will be the main focus of attention.

1. National water policy	To ensure that the national water policy addresses present and future water management needs in Fiji, consistent with international best practice
--------------------------	---

2. Legislation	To obtain agreement on the major features of future comprehensive water legislation and if possible to initiate drafting proposals
3. National coordination	To establish a permanent representative policy level coordination body to (i) oversee a water management reform process and (ii) advise the government on important water issues
4. Institutional development (i)	To obtain the support of the Government for a small secretariat to (i) support the national water coordinating body and (ii) drive the reform of water resources management
5. Institutional development (ii)	To obtain the agreement of the Government (consistent with the water policy document) to establish an administrative responsibility for comprehensive water resources management
6. Institutional development (iii)	To identify the institutional requirements for implementing active water resources management functions
7. Water resources information	To complete an initial analysis of water resources management information requirements and develop advice on the future of national information functions
8. Capacity building	To identify the key capacity requirements for water resources management in respect of technical, information and management people and skills
9. Public education and awareness	To develop initial proposals for a national water resources education and awareness programme.

Note that this pilot is focusing on the regulatory and management aspects of freshwater resources and to a limited degree only on water services. This is for two reasons. Firstly, another PfWG pilot (Solomon Islands) will focus on the utility aspect and therefore this pilot is concentrating on different issues. Secondly, the water supply and sanitation services of the Public Works Department (PWD) of Fiji are already the subject of an institutional reform project funded by the Asian Development Bank (ADB). Some linkages are noted in this report, particularly those that involve regulation.

4 Need for intervention

This pilot appears very timely for Fiji. Reasons are:

- The Government has been pressing for action on the water policy, but progress has been slow, due mainly to the lack of resources to devote to the task;
- There is an awareness in the government administration that certain water management problems require new solutions;
- The recent desire of the Government to improve water management has been driven chiefly by specific conflicts arising around the extraction of water for mineral water bottling, which raised questions about the allocation of groundwater as well as the protection of its quality.

As a result, there is awareness in the administration that changes are required and there is also support, in general terms, for the introduction of mechanisms to enhance water management capability.

External intervention is important because:

- Expertise and experience in water resources management and knowledge of more advanced systems is really not present within the administration; Very few, if any, officials have seen or had experience with overseas examples of water allocation, river or groundwater protection mechanisms and powers or coordination bodies for water management at national (or river basin) level;
- Resources are not assigned to water governance: although the Fiji Cabinet has directed MRD to develop the national water policy and give that department a *de facto* water management role, no additional resources or expertise have been assigned or are available.

A further reason is that there is an important political debate about the rights and roles of native land owners in water resources. Given that the Government is intending to make policy decisions in this area, it is important to ensure that the long-term implications of giving native land owners enhanced powers are clearly identified.

In general, there is willingness to advance, but inadequate impetus without external help. Interventions need not be extensive, but should be regular, in order to ensure progress on a number of fronts. As stated earlier, progress needs to be made on several fronts, for water governance to become meaningful. This pilot should be followed by further work to consolidate the initial interventions.

5 Related water management initiatives affecting Fiji

There are a number of water resources management related proposals for the Pacific region. SOPAC is the coordinating body for the following donor projects.

5.1 ACP-EU Water Facility Actions in ACP Countries

A grant submission has been prepared for ACP-EU funding of a Pacific SIDS Integrated Water Resources management Programme, to include the Fiji Islands among a number of countries. Its purpose is to '*enable participating countries to have national IWRM policies and water efficiency strategies in place . . .*', which is consistent with the objectives of the PFWG pilot for Fiji. Elements of the EU project which are particularly relevant to the current PFWG pilot are:

- Establishment of regional resource centre for IWRM: this is relevant to Fiji's need for enhanced technical capacity in areas such as modelling and water resources assessment;
- Database for inventory of IWRM in the region: this is relevant to Fiji's need to identify responsibility for the key water resources data bases at national level;
- Political and public awareness raising of IWRM: public awareness of IWRM is included in the sub-objectives of the pilot;
- Promoting good governance policies and strategies: no comment needed.

5.2 UNDP Global Environment Facility Project

A UNDR project proposal is being prepared on Sustainable Integrated Water Resource and Wastewater Management in the Pacific Island Countries. This project identifies both the deterioration in the quantity and quality of freshwater resources, as well as '*a general failure in coastal and watershed ecosystem function along with the loss of associated natural habitats and biodiversity*', as well as deterioration in the availability and reliability of freshwater resources in regional countries.

This project will involve implementation of IWRM and Water Use Efficiency (WUE) policy, legal and institutional reforms, as well as indicator data collection, as part of monitoring and evaluation. This will occur mainly through demonstration projects.

There is considerable commonality between this project proposal and elements of Fiji the pilot.

6 Water governance in Fiji

6.1 Previous action

Attempts at legislative reform have been occurring for some time. These included the drafting of water legislation in 1976, and subsequent reviews of the legislation in 1987, by S D Clark, who provided further legal drafts. The recommendations were not followed up, however. This is believed to be partly because of the issue of land rights and related water resources.

Clark identified considerable gaps in legislation at that time. The Rivers and Streams Act did not provide the powers necessary to allocate water in any defined manner or with any legal security to private enterprise, while public agencies obtained water by gaining approval to construct works, again without definition of the source or quantum of the water.

Water management was brought to the attention of the Government in part by a conflict over the withdrawal of groundwater from the Yaqara valley. In recent years the value of mineral water exports from Fiji have reached around \$Fiji 6 million annually, and provide a significant economic benefit to the country. When a potentially rival mineral water enterprise to the existing Natural Waters company was proposed some years ago, questions were raised with the Government as to whether both groundwater uses could co-exist. The Director of Mineral Resources was asked to develop a solution.

This case highlighted the inadequacy of existing procedures and legislation for:

- (a). properly assessing the impact of groundwater extraction by a proposed development; and
- (b). monitoring and managing the ongoing groundwater extraction and its impact on groundwater reserves or on other groundwater beneficiaries.

A similar situation exists for surface water.

In June 2001, the Cabinet of Fiji approved three actions, namely:

- the development of a National Water Policy,
- the Policy to be part of a medium-term strategy for water resources management, and
- the establishment of a sub-committee to further the above.

A decision was later made to allocated responsibility for the policy and legislation to MRD.

The ESCAP report of 2002 confirmed most of Clarke's conclusions about legislation. The report, which was drafted after discussion with senior officials, also identified a number of 'building blocks; which need to be put in place in order to strengthen water governance to the point where the Government will have the capacity It needs to ensure the sustainable and orderly development of water resources. These are the building blocks referred to in the Pfwg submission by SOPAC (in sub-section 3.2). These building blocks continue to shape the thinking of the officials involved in water resources management in Fiji.

At the time of the ESCAP mission, an ad hoc committee met to discuss the issues. Subsequently it was agreed that MRD would head that committee. When the

Director of MRD moved to another post, the responsibility for the committee passed to the Director of Land and Resources, Department of Agriculture. However, the committee has not met frequently.

A draft for the national water policy was developed and considered by the committee in September 2004, but since that time little further development has taken place.

6.2 Water management issues

6.2.1 Current situation

Water governance is a matter of concern at the government level in Fiji. This seems to be driven by the following:

- The extraction of groundwater by Fiji Water in the Yaqara valley has been the subject of various claims, from other water users and from native land owners, and the government is looking for ways to resolve them;
- There is a strong claim by native land owners for water royalties from enterprises that take water, and government policy favours the granting of enhanced rights over natural resources to land owners;
- Utility reform is also proceeding, though slowly, in the water supply and sanitation area.

However, there are some very important issues and conflicts to resolve, in particular the conflict between native land ownership claims and the right of the government to control water resources for management purposes. Key issues for water governance in Fiji are:

6.2.2 The status of water resources

The interest in water governance in Fiji has been driven by issues that arose around the extraction of groundwater for mineral water production. The company, Fiji Water, is one of Fiji's major exporters and revenue from exports in 2002 was said to be in the order of \$6 million Fiji. Groundwater extraction and protection in the Yagara valley has come to the Government's attention for several reasons:

- In 2002, a second company proposed extracting groundwater from a nearby location, giving rise to challenge by Fiji Water;
- There is a general perception that land owners and the State in Fiji are not reaping enough from the company which exports large volumes of water;
- Fiji Waters has asked for and had obtained the first of three proposed buffer zones for the purpose of water quality protection, while the outer two zones are still being discussed; these zones are to be applied as planning zones under the Town and Country Planning Act, but the powers in that Act have limitations for the protection of groundwater sources;
- The Government is proposing to locate and build a Studio City, not far from the location of Fiji Water and the question of access to groundwater and its protection therefore becomes more urgent.

These issues have brought an awareness within the Government that the policy and legislative base for water management in Fiji needs to be improved.

An initiative for such strengthening, stated to be an interim measure, is the proposed amendment of the Minerals Act to:

- Amend the Minerals Act to include controls relating to groundwater – the Minerals Act already contains far-reaching powers in relation to land and minerals;
- The draft provisions will empower to Minister to:
 - create groundwater protection zones and prohibit declared activities and industries within the zones,
 - issue groundwater permits for groundwater extraction within the zones and impose conditions on the extraction.

The amendments will require regulations before coming fully into force, as they are brief providing the minimal powers, but without procedures or, at the present stage, indication of the objectives of the controls. However, during the mission new drafts were being prepared and comments received, so that a definitive description of the proposed amendments is not possible.

These amendments must be an interim measure only, because:

1. they do not provide a comprehensive set of legal measures, eg such matters as appeals and procedure are not included;
2. surface water needs similar attention, and
3. other aspects of water management should be considered.

6.2.3 Water resources – the ‘ownership’ question

Whether the State does and should in the future have effective control over the water resources of the Fiji Islands is a very important issue for water governance. Without the ability to exert management control over its water resources, the Government would be in a weak position to (i) encourage commercial, tourist and industrial development, (ii) ensure water for domestic purposes in all parts of the country, (iii) protect the rights of all existing and future water users, and (iv) protect the environment.

The question has a political and a legal dimension. The legality of the State’s ownership of all water resources has been challenged by such organisations at the Native Land Trust Board (NLTB) which promotes the interests of native land owners.

Native land owner advocates have potential claims to two sources of water:

- those small streams which are not navigable in the terms of the Rivers and Streams Act and which were excluded by that Act from direct control by the colonial administration, and
- groundwater lying under native land.

The interest of native land owners is mainly in the right to obtain water royalties from commercial users of any water that the land owners consider to be in their possession. Native land owners, of course, already have the right to charge land rents and leasing fees, but the idea of a water royalty is being discussed. The Government of Fiji has tended to accede to those claims by native land owners for compensation for such traditional benefits as the right to fish, and it may be inclined to support the idea of further claims to the water itself.

Thus, there is an argument about the legal basis for the State’s full control of water resources, although the Deed of Cession clearly states that the possession and sovereignty of the Fiji Islands was transferred to Queen Victoria – that is the islands themselves as well as sovereignty over them. Also referred to are the waters of the Fiji Islands.

Statue law deals with water only to a partial degree and nowhere is the essential right of the State (formerly the Crown) to the control of the water resources expressly stated. The actions of the colonial administration (in passing related laws) indicate that the Crown's rights were assumed.

The land tenure system in Fiji and other Pacific countries is one where clans own land which cannot be alienated. This form of ownership brings expectations that the owners are entitled to royalties and rents for various benefits associated with the land, in addition to the occupation or use of the land itself. Water associated with native land is therefore in an unclear position.

The current policy of the Government (as stated in the Blueprint) is that native land owners should be granted the right to royalties for the use of water that *belongs* to them by virtue of their land ownership. However, there is a direct conflict between the requirements of water management – which require management on the basis of the catchment or aquifer – and the ability of landowners to intervene and determine the allocation and conditions of use of water in rivers and under the ground.

A way has to be found through this conflict, which will otherwise derail attempts to introduce legislation and policy that promotes the role of government in orderly management of the resource. Two things are therefore very important:

1. to obtain a commitment of the Government, through the water policy, to the position that the State has the right to the control of the water resources of Fiji in their entirety, and
2. to include the same position in appropriate legislation.

The term 'ownership' is not being used in drafts of the policy for two reasons:

1. to avoid the impression that any form of 'ownership' is being taken away,
2. to distinguish water from land and physical property which can be possessed *in situ*, whereas water which is mobile, cannot be possessed in the same manner.

The terms currently proposed for the national water policy draft are the right to "*the flow, the use and the management control*" of water resources. In sum, these rights amount to the rights that an owner would have, to the extent that ownership can be exerted over water resources in nature.

6.2.4 Coordination of water development

Coordination is lacking in two respects:

- each sectoral ministry or department constructs its own schemes without fully assessing the impact on other sectors or on water bodies;
- private sector developers are granted access to water via planning approvals, but there is no comprehensive system for preventing such approvals from infringing on existing water abstractions or other values that depend on water sources.

Missing is the responsibility for assessing the impacts of water using developments water taking on water bodies and on existing water users and society. MRD provides advice on the availability of groundwater in significant cases. There is no equivalent technical facility for surface water, except for the hydrology section of PWD, which does not have a national responsibility to collect data or provide analysis.

6.2.5 Water sharing and managing variability in water resources

The government has no power to act to control the activities of enterprises taking water from surface water sources or from groundwater reserves. Although planning law is used to approve such developments, it has not been used to define the water resources to which they are entitled, nor is it a suitable tool for that purpose in its present form.

6.2.6 The aquatic environment

The government of Fiji, if it decided to assign water for an environmental purpose, does not have the power to do so, except by the construction of works which would divert water, for instance to a wetland. Instream values (such as maintaining flow levels) cannot be protected, except possibly by trying to restrict access by using the development planning system, which is not a suitable tool to achieve such ends.

6.2.7 Water utility reform

The Government is proceeding to commercialise the water supply and sewerage division of the PWD. It is intended to become a separate and independent statutory authority (not a corporation with shareholding ministers). Thus, it will be a stand-alone utility organisation.

This process is focusing attention on the regulatory framework that such a utility requires. An important part of the regulatory regime is the right to water abstraction or extraction and the conditions that accompany such a right. To ensure that the water supplier will retain access to the water, there must be a mechanism for defining that water and for protecting it against intervention by other parties.

The security of water access for the water supply and sewerage utility is focusing attention on the need for such a mechanism, which does not exist in Fiji.

The Water Governance project needs to be understood as a means to develop such a mechanism and that utility reform (called water reform) is part of or parallel to broader water management reform. This has already been promoted in a preliminary way with the Ministry of Public Enterprise and Public Sector Reform.

6.2.8 Excavation in waterways

In common with very many countries, Fiji has no mechanism for managing sand and gravel extraction from river banks and beds, to take into account the impacts of such extraction on waterways and their water. An added complication is the agreement entered into by the Government, whereby native land owners become the agent who deals with the commercial sector and obtain what is termed a 'royalty', but which should be seen as a series of payments intended to compensate them for loss of traditional rights associated with the water, such as fishing.

One approach put forward during the mission was to raise the level of fees for such excavations to the point where excavations were no longer viable. This would eliminate the practice altogether. This approach may be unnecessarily blunt.

Nevertheless, sand and gravel extraction from freshwater bodies should be controlled to prevent damage to waterways, to the aquatic environment and instream life, and to downstream water users.

There is no competent agency in the administration to perform this function, apart from the lack of legislation to enable it. This, however, should be considered in the Water Governance project, along with other water issues.

6.3 Further change required

6.3.1 General

Fiji does not have a water governance framework that enables the Government to exercise management or control of water resources and related human activity to the degree needed to achieve the goals of society. These goals are related to ensuring social wellbeing by providing basic water services (safe, reliable water supply and sanitation), encouraging economic growth, with water as a key input, and protecting the natural environment. The following comments outline important elements of change required in Fiji.

6.3.2 Water policy

Work has started on water policy and, as explained below, an interim document is being prepared. The intention is to have a document adopted without undue delay, with the expectation that some issues will be resolved later – in particular the land ownership question.

6.3.3 Water legislation

The government needs to ensure it has the required powers to allocate water and establish a system of water entitlements for private and public enterprises, including urban water supply and public irrigation schemes. This has been discussed elsewhere.

6.3.4 Focus for water management responsibility

Although the Fiji Cabinet has assigned responsibility for developing the water policy to MRD, its decision does not constitute support for a water management function as such. In the view of the consultant, the Government needs to assign responsibility for:

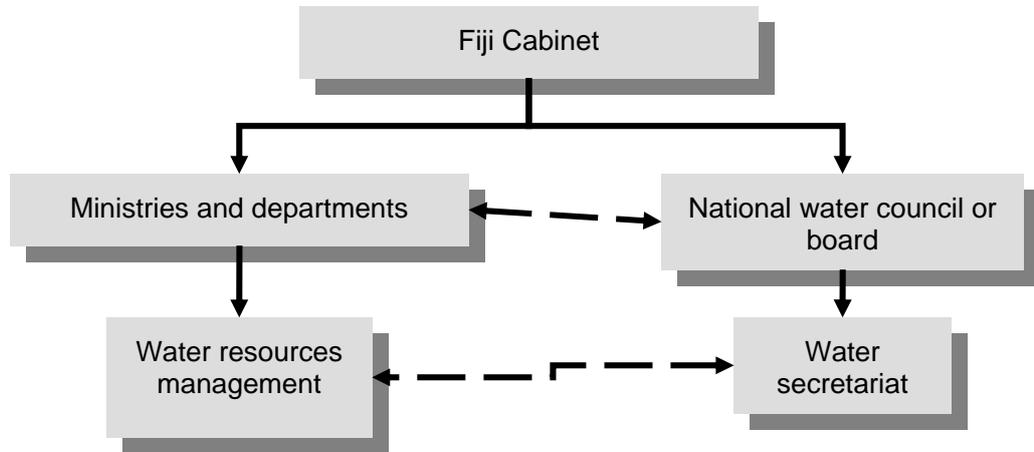
- administering a future water allocation system for both surface water and groundwater;
- supporting national policy level coordination on water resources and any body established for that purpose;
- further developing aspects of water management and governance;
- coordinating or ensuring consistent implementation of important water governance aspects, such as information, education, consultation, planning and the procedures applicable to water resources development.

The initial step is to persuade decision-makers that a *water management focus* in government is required and should be developed. There is considerable support among senior administrators for such a focus, which implies that an existing or new agency could be given specific responsibility for water management.

The participation in water management of a number of ministries and departments – with service or regulatory rules – is needed to continue, but in addition there should be an overarching function for water. The central aspect of that function

would be the allocation of water and the regulation of its abstraction and use. Figure 1 illustrates a possible set up, in general terms.

Figure 1: Possible coordination and administrative arrangements in Fiji



All the elements in Figure 1 were discussed with officials during the mission. As described below, the idea of the water secretariat, as an interim step before comprehensive water legislation is introduced, was generally supported.

7 Approach and methodology

7.1 Development of water reform strategy

The approach being proposed for the pilot is to develop a water reform or water governance strategy which the Government may consider for implementation. The Strategy would include the key building blocks outlined earlier, and would provide a guide to the order in which elements are tackled and completed as well as an indication of timing.

A workshop is planned for December 2005 at which the strategy is to be discussed and developed. Officials and important stakeholder representatives are to be invited to make presentations.

The Strategy will be presented to the Government. It will build on steps already undertaken but will explain in more detail what needs to be done. It will also raise issues for in-principle or specific decision-making about legislation, coordination, administration and further technical development.

7.2 Phasing of the strategy

The concept of the phased introduction of water governance reforms is considered important for the situation in Fiji. The consultant recommends that the Strategy identify three phases. This proposal will be discussed at the December workshop and adopted or modified as an outcome of that workshop. The phases of the strategy would be as described below.

7.2.1 First and interim phase

This phase is already in progress and has the following elements:

- the (interim) national water policy;
- the sub-committee on water resources, and
- the interim groundwater legislation draft
- identification of MRD as the lead agency for water reform.

It is important to see these actions as interim, for reasons discussed below.

7.2.2 Second and establishment phase

This phase involves strengthening or modifying elements of the first phase and identifying, agreeing to and commencing work on the other elements of the governance framework. They would include:

- Developing the strategy for water governance/management with the range of activities and outcomes;
- Initial development of comprehensive water legislation – its outline and the legislative issues;
- Allocating responsibility for water resources management within the government;
- Creating appropriate national level coordination and providing initial resources to support coordination and work towards water management capacity
- Identifying long-term water management capacity requirements;
- Identifying water data needs for water resources management in the long term and initiating a strategy to reach a satisfactory situation.

This phase is where the foundational building blocks for water governance at the national level would be laid, which need to be further developed in a third longer term phase. The timing of this phase for Fiji could extend to the end of 2006 (although the pilot will end earlier). The pilot will be designed to assist in this second phase to the extent possible. The second phase is where the major debates on policy and governance should occur. The second phase would conclude when the following is achieved:

- water legislation is in place;
- a more detailed water policy has been adopted;
- coordination and institutional responsibilities are decided and the appropriate institutions are commencing activity.

Reform of water services, particularly water supply and sewerage, should be considered relevant to the second phase, but are likely to be driven by other programmes. Some important elements of the regulatory and governance framework for water utilities (such as water rights or licences) are a product of this water governance programme.

7.2.3 Third and longer-term phase

The third phase would start to involve consolidation of the building blocks laid in the second phase. This phase would ideally revisit the strategy and add, in more detail, elements of capacity building and implementation, training and education. This phase is likely to involve development in the following areas:

- Establishment of water management systems, such as allocation of surface water and groundwater;
- Water resources data and technical capacity for assessment of water development, protection requirements and other measures;
- Capacity building in the water management agency and other agencies with related responsibilities;
- Further development of public awareness and education programmes;
- Initiation of other areas of water management such as control of excavation in river channels and water bodies;
- Further development of water services in line with principles on efficiency, cost recovery and role and function.

It is intended that this pilot identify in some detail what needs to be accomplished in the longer term.

7.3 Elements of the strategy

A major objective of the pilot is to develop a proposal for a water governance strategy (which may be termed a water resources strategy or water reform programme) and to obtain the commitment or agreement of the Government to follow such a strategy. The idea of water reforms was discussed with the Prime Minister's Office in an attempt to bring about thinking along these lines.

The elements of the strategy, proposed at this time follow the building block categories as follows:

1. Water policy
2. Comprehensive water legislation
3. National water coordination body and secretariat
4. An agency responsible for water resources management within the government administration;
5. Capacity building in technical and management fields;
6. Water resources information;
7. Public water related education and awareness.

Note that consultation procedures are not included in this list. Some consultation procedures would be suggested as part of coordination (both inter-sectoral coordination and coordination of inputs to the planning process), but these are within limited areas. There is a need to review consultation procedures for water issues relating to water users and potential water users, land owners or their representatives, as well as people and industries that may be affected by water quantity and quality problems.

Some aspects of consultation may be addressed in the design of legislation covering the issue of water licences, and the administrative procedures for investigating such applications (related to the scope of the legal right to be heard, appeal mechanisms and the like).

Other aspects of consultation would relate to (i) local water management for catchment protection, (ii) installation and management of local water supply and sanitation schemes and (iii) local protection of water sources under high levels of pollution risk, such as shallow groundwater lenses. These issues are valid concerns for water management in Fiji, but need considerable resources to be

addressed. Additionally, the local management pilot of the PFWG will address this level of activity and should therefore provide information for the benefit of Fiji.

For these reasons, consultation requirements for water management are to be identified in general terms, but it is considered beyond the scope of this pilot to make serious progress, except where consultation form part of procedures for either (i) water-related planning or (ii) water allocation.

7.4 Action already taken

Of these, the Government has already taken some steps for three of the elements, namely the water policy, the sub-committee on water resources, and the proposed amendments to the Minerals Act. In all three cases, the steps so far are interim in nature:

1. the water policy, as now proposed will be general, with a view to developing a more detailed policy when key issues have been adequately consulted and resolved (in tandem with legislation proposals);
2. the current sub-committee is relatively informal, is at too low a level, does not involve non-government stakeholders, could be broadened in its representation within the government and has not supporting resources;
3. the amendments to the Minerals Act will create a system of groundwater permits and areas for protection of groundwater, but comprehensive legislation is needed.

7.5 Water policy

A draft of the *interim* national water policy is attached as Appendix 2 of this report. The policy is discussed in more detail in Section 10. To summarise, an interim policy document is proposed for submission to Cabinet by the end of 2005. This is a first phase policy draft, which should be followed by a more detailed policy in a later phase of the water governance strategy.

At this stage detail on issues which require further resolution is being avoided, to allow for a more definitive policy when it is clear how the government will approach such matters as the legal right to water, the rights of non-landowning water users, public and private water users and the management role of the government. Other issues are expected to be less contentious.

7.6 Water legislation

Fiji lacks the specific legislative powers to exert management control over water resource exploitation. Although there have been differences of opinion as to whether native land owners also own water resources in Fiji, the consultant is confident that the laws of Fiji in fact vest the power to control and manage water in the State (via the Deed of Cession to Britain and the subsequent return of sovereignty to Fiji at independence, combined with the application of the common law and statutes already in existence).

Some the more important water governance objectives to be met through water law are:

- To clarify the power of the State to control and manage all water resources, thereby giving a clear mandate to manage;
- To introduce statutory objectives which place an obligation on the Government to manage water resources sustainably, for the benefit of society and so on;
- To establish the procedures and powers to create a water licensing or permit system which enables the allocation of water to all public and private users without interfering in small-scale and traditional uses and benefits;
- To provide for the investigation and assessment of water resources, appropriate planning measures and protection measures, including the ability to protect areas of land for the purpose of water quality protection.

The key intervention will be a workshop scheduled for February 2008, at which the form and content of legislation will be discussed, and the critical issues will be debated. By that time, it is hoped that the interim water policy will be approved or at least will have been submitted for Cabinet consideration. There will also be consultation with the main water stakeholders – land owner representatives in particular.

By the end of the pilot, a framework document is to be produced which outlines the matters to be included in water legislation.

7.7 National coordination

During the mission, there was preliminary discussion of a national and representative water coordinating body. The need for such a body seems to be well accepted already. The sub-committee on water resources is recognised to be an interim measure only and not adequate for any long-term role.

The idea of a national water council or board has been discussed. During the second input (November-December 2005) it is intended to discuss this idea further and to develop specific terms of reference for such a body if it is supported. At this stage, the consultant's view is that it would undertake broadly the following:

1. In general advise the government on water issues of national significance (which would be referred to it by central agencies such as Treasury, Public Enterprise, Commerce, Prime Minister's Office);
2. Oversee and if possible help to drive the water reform programme and advise the government on its progress.

In order to perform these tasks, a coordinating body would need a supporting secretariat. This has also been discussed. Initially, it could involve a small number of staff (two or three) but could form the basis for developing the administrative function of water resources management.

7.8 Responsibility for water resources management

As an interim measure, Cabinet has identified MRD as the department responsible for water resources management, although its focus is groundwater. This is not a measure that will satisfy water governance requirements in the longer term, as MRD has not been given any additional resources to undertake the task. Specific activities that MRD has undertaken are:

- Chairing the sub-committee on water resources;
- Preparing the national water policy document;
- Preparing legislation to control groundwater extraction and protect groundwater areas.

Cabinet's decision was driven by the desire to resolve problems associated with Fiji Water's groundwater use and other activities in the Yaqara valley.

The longer term development of a water resources management capability within the administration is important. This involves firstly identifying a responsible agency and secondly building up its capacity. It is hoped that by early 2006 a decision will be made to proceed with a water resources management function and that the key elements of that function will have been identified by the government. Following that decision, work can proceed on establishing the capacity. A water secretariat, if agreed to, may perform the role of assisting the development of the water resources management function and may become part of that function in time.

7.9 Capacity requirements

Certain in-principle decisions are needed to identify the scope and detailed functions of a the agency responsible for water management. There are potentially a number of new activities to be undertaken, which include, among others:

- Administering a water licensing scheme or equivalent water allocation procedure;
- Coordinating national water resources data bases and information systems;
- Providing water resources assessments, both surface water and groundwater, with required modelling and
- Undertaking planning for water resource development and/or protection including protection of water quality;
- Assessing the water requirements of the environment and taking steps to meet them.

By the end of the pilot the capacity requirements will be scoped, and recommendations produced for developing the skills, qualifications and other resource requirements.

7.10 Water resources information

A report on the major data and information needs for water resources management is planned for a late stage of the pilot. The report will address water resources information from the perspective of the needs for water resources management and associated planning and assessment. To the knowledge of the consultant, no investigation of water management data needs as a whole has been undertaken for Fiji.

The report will provide an overview only and, in general terms and will:

1. identify areas where important water data is available or not available and where the gaps (and overlaps) are;
2. describe the data collection and custodian agencies in Fiji and scope their current roles and the extent of the information they collect, store and analyse;
3. identify water data issues for Fiji, including issues of public/private data provision, responsibility for bearing the cost of data and the requirements of national water data systems.

Parallel investigations in Fiji include the ADB project on organisation of institutional reform of the PWD water supply and sewerage services. Currently the most comprehensive data sets for surface water flow are created and maintained by the Hydrology Unit of the Water and Sewerage Department of PWD. The future of this unit is being considered by that project.

An objective of this report will be to assist departments and authorities in Fiji to develop further proposals for donor funding of a technical study of water data needs.

It is proposed that a local consultant assist by obtaining information for the report on the current data situation and responsibilities.

7.11 Education and awareness

Some water education and awareness projects are already in place. An ADB funded element of the institutional strengthening of the PDW includes education and awareness (although details were not obtained during the mission). It is intended that some work to identify key issues for water education be identified during the pilot – making sure not to overlap with existing programmes.

Water-related education may be targeted through a number of sectors, which include water supply services, environment, agriculture, urban waste, industrial development and tourism.

Community level education is expected to be important, for instance, for the protection of small island and limited area water sources for drinking and domestic use, but this aspect may be dealt with in more detail through the pilot on community water management (Kiribati).

8 Proposed pilot interventions and work plan

8.1 Scope of pilot

The scope and resources of the pilot are not sufficient to bring all the desirable elements of water governance in Fiji to a conclusion, but the pilot should be capable of initiating action in all the important areas. The resources available to the pilot within its budget are:

- five months of input by an international specialist;
- one to two months of input by local consultants
- up to three in-country workshops.

Note that the input time has been divided between an international and local consultants, although the original submission does not mention local consultants. Local consultants on this pilot are considered advisable in two areas:

- review of current legislation,
- identification of current water resources data collection and agency responsibilities.

This proposal reduces the international input by one month, but would enable more work to be done locally, provided suitable people are available. The use of a local person with legal qualifications was suggested by staff in the Prime Minister's Office.

In total, three inputs are proposed for the international consultant, in addition to the initial scoping mission which has already taken place.

8.2 Proposed inputs

Inputs are proposed as follows (the work plan is at Appendix 1):

November-December 2005	Workshop on water governance strategy and recommendations to government
February-March 2006	Legislation review Workshop on water legislation Develop coordination body and secretariat Water resources information review
June-July 2006	Capacity building report and recommendations Framework legislation document Further governance development strategy Final report

9 Reporting and regional review

At the conclusion of the PFWG programme, evaluation and discussion of the benefits of the various pilots will occur, so see whether lessons can be transferred to other countries. Some initial indications of possible transferable issues from the Fiji pilot are:

9.1.1 Native land ownership and water management:

Provided that progress is made on the legal and policy issues involving the rights of native land owners, the rights of non-landowning water users and defining the role of government in control and management of water resources in Fiji, there should be valuable lessons for the region. Systems of clan ownership of land which is not allowed to be alienated, are widespread throughout the region, and therefore similar issues of legal clarity and respective rights exist. In fact, this is make or break issue for water management in all countries with similar native land systems.

9.1.2 Introduction of water law

To the extent that legislation is developed, other countries would have an interest in progress made in Fiji. Most of the Pacific regional countries to which the PFWG could apply are without specific water management legislation. The extent to which they need it could provide an interesting discussion.

9.1.3 Water policy

The water policy statement adopted by the government of Fiji, along with the issues surrounding it, will be of interest to neighbouring countries. There are no such policy statements in the Pacific at this time. The benefits of such a policy could be reviewed at the time of the regional discussion.

9.1.4 Water resources information

Sufficient identification of data and information requirements for future water management is expected by the end of the pilot to allow discussion of data and information management on a regional scale, and whether there are possible economies of scale which could be addressed by cooperation.

9.1.5 National coordination on water

Providing the Government of Fiji agrees to establish a more permanent and comprehensive national body to advise on water issues, Fiji's experience in this respect could be of interest to regional countries.

10 Drafting of national water policy document

10.1 Background

In 2003, The Economic and Social Commission for Asia and the Pacific of the United Nations (ESCAP), at the request of the Government of Fiji, commissioned Mr Taylor to undertake a short mission to overview the situation with regard to water resources management at the national level in Fiji and to make recommendations on the way forward. Already, at that time, the Fiji Cabinet had asked for the development of a national policy. The consultant made proposals at that time about the policy and its possible content.

Subsequently, it was agreed that MRD should be given the lead in water management, and the then Director drafted a policy document, which was considered by the sub-committee established by Cabinet on water resources management, in September 2004. Since that time, some minor changes were made to the document, which was not submitted to the Government.

The completion of the policy was included as an output in the national strategic plan blueprint, resulting in pressure on MRD to complete it. A summary document was produced by the A/Director of MRD. These two documents were provided to the consultant for further development.

10.2 Issues leading to the policy

The Government has been concerned about the water policy, mainly because of the groundwater development issue in the Yaqara valley. The need for control of groundwater extraction as well as measures for groundwater quality protection has attracted the attention of the Government to the deficiencies in the existing legal regime. The national water policy along with interim legislation is seen as a way forward.

Groundwater is now being extracted in the Yaqara valley in commercial quantities by Fiji Water, for bottled water production. Large volumes of the water are exported, mainly to the United States of America. Local land owners and others in Fiji have been arguing that Fiji Water does not return enough in financial terms to Fiji and are proposing a royalty on groundwater. This idea is being promoted by native land owners but also by others who want to see the Government receive more financial benefit from that business, which has one of the largest annual turnovers in Fiji. These pressures are also driving the Government's desire to see a national water policy.

10.3 Action during the mission

During the mission, the consultant reviewed the both policy documents and developed a new draft, which was considered and discussed at the meeting of the

water resources sub-committee on Thursday 9th September. The main contributions of the consultant to the policy were:

- The inclusion of a set of policy principles which reflect international thinking on water governance and water resources management;
- Additional discussion of the legal right to water and the role of government;
- A proposed set of actions to which the Government would be committed, to introduce water management reforms – including water law, institutional development and coordination.

Nevertheless, because of the short input time available, the resulting document was considered by the consultant to require further amendment.

The document was circulated to the Policy and Research Unit of the Prime Minister's Office, and a discussion was held with several members of that Office. Their comments included:

- the need for a clear rationale for the policy;
- more emphasis on water quality protection,
- more emphasis on water treatment, recycling and incentives for water conservation.

There was discussion about the role of the government in water management, and the legal right to water, in the context of land owners' rights. The Office, in general, supported the view that a clear right of government to manage water resources is important. It was also conceded that water cannot be owned in the same way as other real property and physical assets, or even other natural resources which have a fixed location. However, current government policy and some new legislation proposals point in the direction of greater property rights to natural resources for land owners, and such rights could include rights to water.

At the meeting, members of the Office also suggested that a review of law in Fiji affecting water resources would be advisable and that a local consultant could undertake such a review. This is in line with the views of the consultant and is reflected in the proposed work plan.

10.4 Meeting of water resources sub-committee

The water resources sub-committee discussed the draft national water policy document which had been reviewed and amended by the consultant. Some members of the sub-committee were not very familiar with the idea of a water allocation scheme, while others, in particular Public Works Department and Agriculture (Land and Water) have active concerns about formal access to water for their projects.

The key issue for discussion was the right of native land owners in relation to water resources, and the need for the government to clarify those rights and its own role in water management.

Points made at the meeting were:

- various legislation currently has a role in water resources;
- on the issue of land and water ownership, there needs to be discussion with the NLTB, the Ministry of Fijian Affairs and the Prime Minister's Office.
- various policies for related sectors are being developed (eg forestry) or have been released (catchment management).

In discussion of the next steps, there was a general view that the timetable currently set for the policy was too ambitious. The nature and extent of the proposals in the draft policy demanded consultation with government agencies and major stakeholders before a draft in such detail should be presented to the Cabinet. A shorter and more general policy would be more appropriate, which does not go into detail on all the issues.

The consultant suggested a shorter document to include:

- the goals and principles for water management;
- an indication of the main governance intentions of the government – such as to establish a national coordination forum, allocate responsibility for water management within the administration and to develop water legislation.

The consultant proposed referring to the native land ownership issue, but not trying to resolve it in the first policy document. This was agreed, and the consultant developed a new and shorter draft as part of the mission. In the draft, native land ownership is referred to while at the same time the need for the Government to ensure it can manage water resources adequately is emphasised,

The sub-committee wished the policy document to be considered later by the Development Sub-Committee of CEOs (DSC).

The sub-committee also supported the proposal for a workshop on a national water management strategy for Fiji, which the consultant proposed for December 2005.

10.5 Current policy draft

The current draft national water policy document is attached at Appendix 2. It consists of a short rationale, the goals and principles for water management and the proposed actions commitments of the government. This draft was developed, from earlier material and consistent with the discussions held in Fiji, by the consultant and submitted to the A/Director of MRD for his further action. It is intended as an interim document, but also attempts to identify actions which the Government would consider supporting or amending.

This draft, after consultation and amendment within the administration and with key stakeholder groups, is expected to go for Cabinet consideration by December 2005.

11 Recommendations

The following is recommended:

- That the sub-objectives at sub-section 3.3 be used to guide the pilot and to evaluate its progress
- That the work plan in Appendix 1 be adopted
- That local consultants be employed to undertake
 1. analysis of current law related to water resources, and
 2. a brief review of current water data and information responsibilities and data bases.