

Property rights and the environment

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Watson A 2006, 'Property rights and the environment', paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage, Canberra
<<http://www.deh.gov.au/soe/2006/emerging/property-rights/index.html>>.

The notion that property rights should have more emphasis in Australian environmental policy is frequently invoked in contemporary environmental discussions. Progress has already been made in applying concepts of property rights to environmental issues, especially irrigation, where Australia is an innovator in water trading. Indeed, the logic of ending the past rigid attachment of rights to use irrigation water to particular parcels of land is now scarcely questioned. Nevertheless, while thinking about property rights is an essential first step in clarifying responsibilities for environmental management and evaluating any claims for compensation, changes to property rights should not be oversold as a solution to environmental problems. Property rights might assist rationing of resources between different individuals and uses, but will not remove disputes over the outcome of the rationing process.

Understanding property rights involves economics, politics, philosophy, law and sociology. Subtle distinctions need to be drawn. Conclusions are often ambiguous. Reasonable people can disagree. Engineering, agronomic and biological aspects have to be considered in determining the boundaries of resource ownership, effects on third parties and the division of responsibilities for the environment. Custom, history and the facts and circumstances of particular cases are important in the debate over property rights and the environment.

Property is not a relationship between people and things but a relationship between people with regard to things. The legal and social significance of property is not property the tangible thing; rather the rights that attach to it. An important distinction has to be drawn between property ownership and property rights. Thus, tenants have rights to use property owned by others in return for payment of rent. A pertinent example is the difference between trade in irrigation entitlements (permanent trade) and trade in annual allocations (temporary trade), where ownership of the long-term right to use water is unaltered.

Ultimately, rights to use land and water are granted and controlled by the Crown (in Australia, State governments). Property rights in land and water are not absolute with limits placed on the exercise of property rights by other laws and regulations. Planning legislation is an example, whereby governments limit the use of land for particular purposes, reflecting an overall community interests determined by the political process. In earlier times, government used powers over land to resume leasehold and freehold land for closer settlement, in pursuit of regional development and egalitarian objectives.

Arguments over property rights are at the forefront of controversies over irrigation and the environment. Conflicting interpretations of the current legal and political situation highlight the need for pragmatism if good results are to be obtained in environmental management. The argument over property rights in water hinges on the precise legal nature of rights held by irrigators. Are those rights like permanent leases from the State, or are they more like licences granted by state and territory governments to use water that could be readily altered in changing circumstances?

This is a subtle legal distinction affecting the prospects for compensation. A lease is a form of real property that can usually be transferred; a licence may or may not be transferable, according to the conditions of the licence.

Irrigators naturally favour more secure property rights. In doing so, they draw support from ideas that go back to the seventeenth century English philosopher John Locke who argued that security of tenure and the unfettered right to use personal property (including labour) is the key to economic prosperity, subject to the proviso that actions by owners do not harm others. This qualification assumes greater significance with increasing technical evidence that actions by landholders affect others, including other landholders.

Modern variants of the arguments put by Locke assert the primacy of economic signals in determining economic behaviour and recognise links between the security attached to property rights, investment and productivity. Without property rights, effective markets would be difficult to establish and maintain.

On this reasoning, a strictly legalistic approach to irrigators' property rights would have negative economic consequences, let alone an adverse political reaction. Current attitudes of irrigators are coloured by decades of support for irrigation by governments, including implicit acceptance of associated environmental damage. More recently, government commitments to water trading imply support for the status quo in property rights for water.

This is not to say that the distribution of rights between irrigators and other groups should be immutable, as often appears to be the official stance of the irrigation community. Once property rights are established and water is tradeable, it is unreasonable to prescribe to whom water is sold and for what purpose water is used, including no use if water were purchased by environmental agencies. Buy back of licences is a long-established policy mechanism for overstressed fisheries. It was only a matter of time before buy back was proposed for irrigated agriculture to ameliorate flow-related environmental damage.

Failure to define the details, institutional arrangements and procedures followed if there are to be property rights in water for environmental purposes is the most contentious outstanding issue in Australian irrigation policy.

The underlying logic of trading based on individual property rights is also inconsistent with rigid separation of rural and urban water markets. In the last few years, the South Australian Government has acquired water for Adelaide and for environmental purposes from irrigated dairy farms on the Murray Swamps. There is now bipartisan support for transfer of water from the Goulburn-Murray system to water scarce country towns in central Victoria.

Notably, if rural-urban transfers and transfers to the environment are based on purchase of water from willing sellers on an open market, the case for compensation to irrigators is diminished.

Another key distinction concerning property rights is between common property and open-access resources. Contrary to some impressions, common property regimes are both more frequent in society (body corporate residential arrangements and joint stock companies, for example) and workable provided rules determining the use of resources and access are established, enforceable and enforced. The oft-cited ‘tragedy of the commons’ is really about resource degradation because of open access, not common property.

Further reading

ACIL Tasman in association with Freehills 2004, *An Effective System for Defining Water Property Titles: Research Report*, Land and Water Australia, Canberra.

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Reeve I 2002, *Property Rights and Natural Resource Management*, Institute of Rural Futures Occasional Paper 2002/1, University of New England, Armidale, NSW.