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Opinion

Don't just go with the flow on water rights

The sale of the Snowy highlights the risk in water trading, write Mary Crooks and Wayne Chamley.

The Snowy River Hydro Scheme is to be sold. Investors will own and operate this massive power-generating infrastructure. Although they will not own the water in the scheme's rivers and dams - well, not at the start, - we are told they will have to supply water for irrigation and the environment. But down the track, what's to stop these new owners or other investors buying up volumes of this water by purchasing water rights and making windfall profits, especially in times of drought?

The Snowy sale is one aspect of a much bigger process unfolding around the changing ownership of our water.

New institutional arrangements to expand permanent water trading in many parts of the country are under way, being made at the same time as annual rainfall across southern Australia is predicted to decline, and governments have full knowledge that our present rate of fresh-water use is unsustainable.

There are huge policy, planning and social equity issues that require careful thinking and sophisticated responses. To optimise national benefits, catch-up democratic inclusion is essential, way beyond water industry and government officials attending conferences and summits.

Throughout our pre and post-European history, water has been a common property resource with states having constitutional power to manage water for us. These defining features of our water heritage - common property and state responsibility - are now changing.

This change began in the late 1970s. Under the umbrella of "economic rationalism", national competition policy required state governments to review, break up and corporatise their water industries. Water for the environment became legally recognised and a nationally co-ordinated, scientific program to map, describe and quantify our water resources was set in train.

To achieve substantial water efficiencies, competition policy dictates a move to permanent water trading. Until now, water entitlements have enabled farmers and rural industries to access water under defined terms and conditions. In the proposed new order, water entitlements become a thing of the past. Legally separated from an agricultural land title, each becomes a tradeable water right. Water is no longer a common property resource. Privately owned and tradeable, rural water becomes a highly valued financial asset.

Make no mistake, the ink is already dry on these arrangements. The timetable is set. Each state must have legislation in place to establish this commercial water market by

2014. Up to 70 per cent of the water available for use across rural Australia is affected. Since water use affects all of us, the challenge is to ensure a balance between commercial and community interests, effective government regulation, and good environmental outcomes.

This commodification of water substantially diminishes the role of government. No longer the steward, government becomes a facilitator with (fingers crossed) a responsible regulatory role. Importantly, the bulwarks of democracy - accountability, transparency, social equity and citizen inclusion - become problematic.

During the next eight years, several key issues must be satisfactorily resolved. For example, if large volumes of traded water move across large distances (e.g. from Albury to Mildura), the consequences for all of us could be profound. Separation of water from a property title will enable some farmers to make dignified exits. However, not all may want to do this. Who picks up the tab for the maintenance of local irrigation infrastructure for those who stay? If whole areas move from mixed farming (irrigation/cropping/livestock) to dry land farming, a decline in the money flowing into local/regional communities will follow. Who addresses the social impacts here, and how? What roles will government need to have in regulating water trading? How free is the water market to be - free enough to see water barons emerge and flourish?

Critically, a water right must be properly defined. Speculators argue that a water right must be an absolute, i.e. 5 megalitres of water will always mean 5 megalitres. This implies that if the water supplier is unable to provide this volume through circumstances such as drought or rainfall change, the owner can seek compensation. Others argue that a water right needs to be defined as shares of the total volume of water available and the rules about trading should take into account the social conditions and impacts, particularly for those communities that relinquish significant water volumes.

To minimise future impacts of poor management and water fraud, accurate and real-time information about what water is actually available and where it is going, will be crucial. Independent regulatory regimes must be guaranteed and resourced so that random water audits, inspections to detect illegal groundwater pumping and monitoring of compliance with the rules governing water transfer are carried out.

We are at a crucial stage with water in Australia. At the same time as we are experiencing prolonged drought, climate change and as yet unsustainable fresh-water use, we are changing the fundamentals about water ownership. Do we wring our hands in eight years' time and remember the way Snowy Hydro went or, as citizens and water users, do we press for our inclusion in any final determination of these key arrangements about water?

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