

Water Rights and Water Markets: Potentials and Challenges

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Water Rights

- *“the claims, entitlements and related obligations among people regarding the use and disposition of a scarce resource”*
- Rights accompanied by duties:
 - Duties of rights-holders
 - Duties of others to respect those rights

Why Do Water Rights Matter?

- Water is essential for life and livelihoods
 - Water rights are key assets
 - Determine distribution of benefits
- Rights clarify
 - Who can use, manage water
 - What responsibilities they have
- Increasing interaction between uses within basins
 - Need better “rules of the game” to coordinate water use
 - Secure rights can provide incentives for investment, conservation
 - Recognized rights provide “seat at the table” for negotiations over changes in water use

Need to Go Beyond Simplistic Assumptions

“There are no water rights here”

or

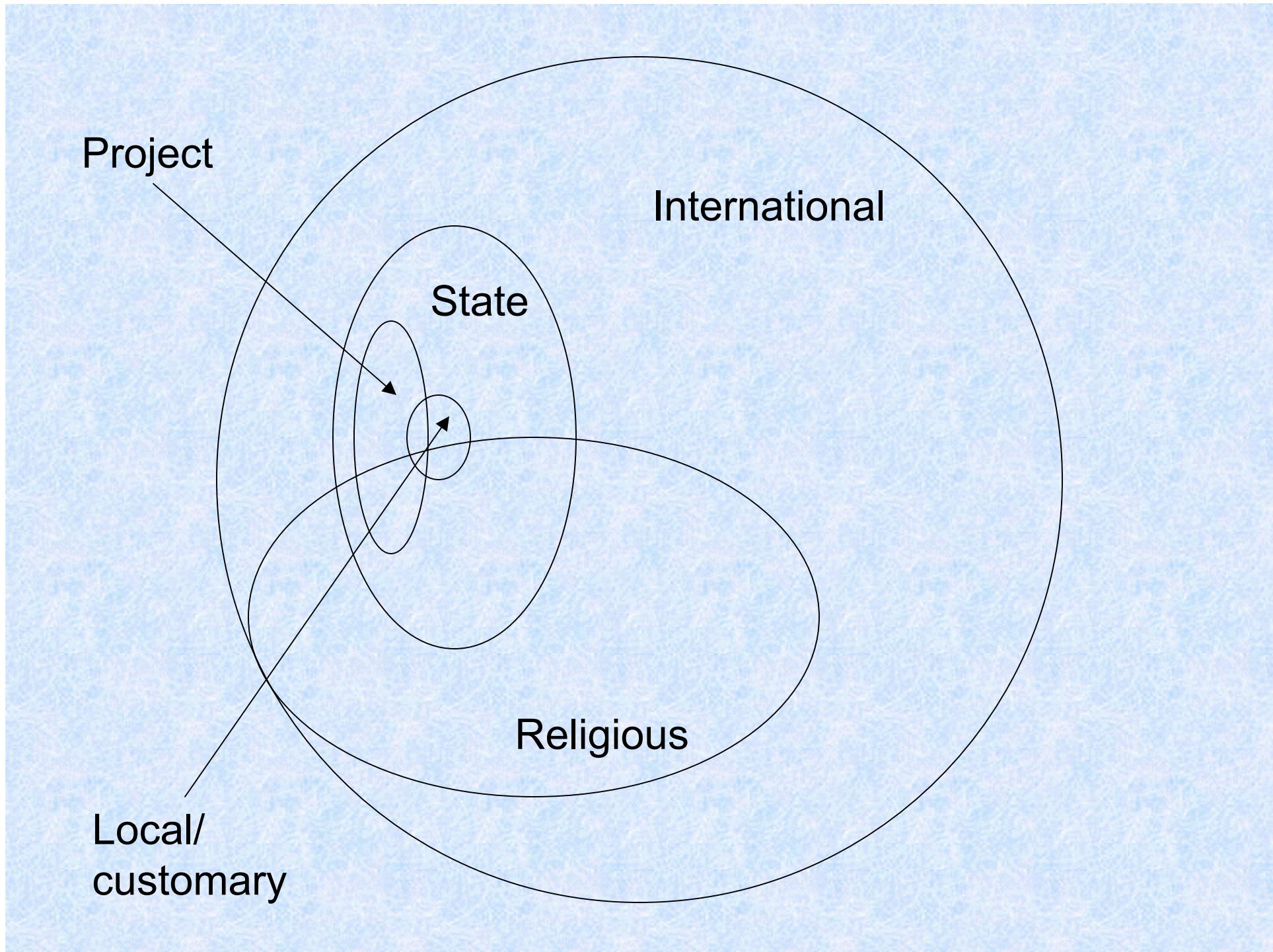
“The State owns all water”

Careful analysis reveals multiple types and holders of water rights

Important implications for water management—
equity, efficiency, environment

Property Rights

- All rights don't derive from the state (government)—also from project regulations, local custom, religious law, etc.
- Rights are only as strong as the institution that stands behind them
- Customary rights may be stronger than those determined by the state



Some Critical Questions

- How are rights recognized?
 - Who holds rights?
 - For how long?
 - To do what?
 - From what source?
 - What about return flows and groundwater?
 - Transferable?
 - Environmental allocations?
- ... *“sticks in the bundle of rights”*

Bundles of Rights

Access

Withdrawal

Management

Exclusion

Alienation

Multiple Uses

- Field crop irrigation
- Household gardens
- Livestock
- Fishing
- Harvesting lotus, reeds
- Industry/enterprises
- Domestic use
- Recreation
- Religion

Multiple Users

- By occupational
- By gender
- By generation within the household
- By location
- Look for marginalized groups



Rights for Multiple Water Uses in Kirindi Oya, Sri Lanka

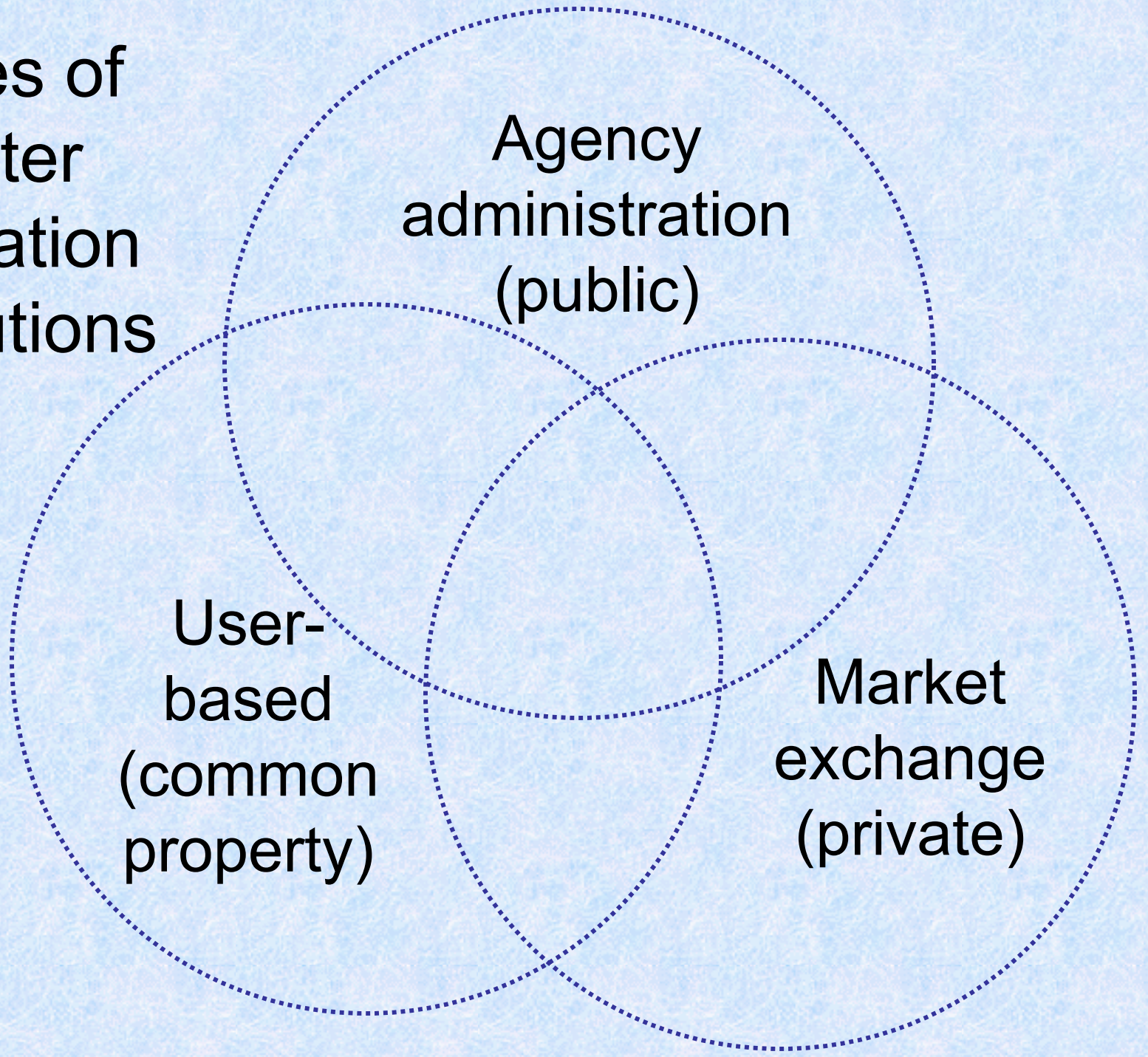
Use	Users	Proximate Source	Basis of claim	Rights	Mediating institutions
Field irrigation	Old area farmers	Canals	-Customary use -Recognized by government	-Strong use -Some management, exclusion	-Land ownership -PMC FOs
	New area farmers	Canals	Government allocation	Weaker use	Gov't land allocation PMC FOs
Garden irrigation	Mostly women	-Wells -Canals, standpipes	-Well ownership -Proximity	-Use, management of available g.w. -Tolerated use	-Well ownership -Local norms
Livestock	Pastoralist	Tanks, canals	Historic use not recognized by project	Tolerated use	COFO (not active in water issues) Divisional Secretary
	Farm household	Tanks, canals	Needed for livelihood	Tolerated use	Local norms
Fishing	Mostly male farmers, part-time	Reservoir, tanks	Use over time Membership in FCS	Use and exclusion, but right to manage water not clear	FCS (not in PMC)

Types of Water Allocation Institutions

Agency
administration
(public)

User-
based
(common
property)

Market
exchange
(private)



Advantages & Disadvantages

User-based (community)

Collective decisions by water users

- + Legitimacy
- + Local knowledge and experience
- + Adaptable

-Difficult if users lack existing relationships

Agency administration

Bureaucracy controls directly

- + Authority
 - + Standard procedures
 - + Technical expertise
- Hard to customize to local conditions

Water markets

Trading, temporary or permanent

- + Voluntary transactions
 - + Promotes efficiency
- Need infrastructure & frequent transactions
- Risk of neglecting third party impacts

Water Rights in Practice

Combinations:

Administrative, user groups AND markets

Overlapping bundles of rights

Dynamic:

Changing demands, growing scarcity
(e.g. industry, cities, environment)

Interaction between users

Interaction between legal frameworks

Water Markets in Practice

- Formal (state-sanctioned) and informal
- Short or long term
- Among neighbors or between sectors
- From surface or groundwater
- Provide compensation/incentive to those who give up water

Water price consumers pay is made up of

- Cost of delivering water (to supplier)
- “Rent” on the water (to holder of water right)

Conditions for Effective Water Markets

- Infrastructure to transport water
- Rights defined in terms of consumptive use, recognizing rights of others to return flows
- Protection against negative effects on third parties
 - Information for all stakeholders allowing appeal
 - Affordable dispute resolution mechanisms
- Forums for transfer and appeal that are accessible, low transaction costs

These should also apply to administrative reallocation

Water Rights Reform

- Acknowledge existing rights, esp. of marginalized groups
 - Participatory inventories
- Avoid “cadastre disasters”
 - Gradual and selective licensing
- Two-way education and communications
 - Interactive planning and modeling
 - Legal literacy
 - Strategically strengthen agencies and users

Conclusions-1

- Attention to water rights is critical to meeting the water challenge(s)
- Need refined understanding, including attention to
 - Multiple uses
 - Multiple users
 - Multiple bases for claims
 - Interaction between these
 - Change over time

Conclusions-2

- Laws and policies are important, but not the sole determinant of water rights
 - Reforms should be based on solid understanding of existing rights
 - Rapid reforms can be counter-productive, unlikely to be fully implemented as planned
 - Negotiation with stakeholders, looking for ways to compensate, leads to more legitimacy