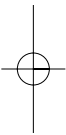
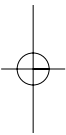


**FROM UNIVERSAL PRESCRIPTIONS TO
LIVING RIGHTS: LOCAL AND INDIGENOUS
WATER RIGHTS CONFRONT PUBLIC-PRIVATE
PARTNERSHIPS IN THE ANDES**

Rutgerd Boelens



With growing water scarcity and conflicts in many regions of the world, water rights and property relations have become a pivotal issue in water legislation efforts, policy debates and rural development programs. Still, there appears to be an enormous lack of understanding of what these water rights and property relations *are* in actual practice. For the most part, policymakers, intervening agencies and rural development institutions typically approach water rights as globally applicable, entitlement recipes. Water rights are portrayed as universally defined procedures that prescribe rational water-use claims and authorize corresponding user licenses. For peasant communities and indigenous water user organizations in the Andean region—as with many parts of the world—the right to water has many components that go beyond universal reasoning and policies. Water rights involve access to resources, context-defined privileges and agreements on system operations. Water rights also include decisionmaking powers over control, issues of belonging (i.e., hydraulic identities—water’s role in a particular culture) and agreements that closely intertwine the normative, infrastructural and organizational domains of water control. All these components are created, reconfirmed and then re-created in location-specific historical processes within particular cultural and political contexts.



This analysis focuses on the dynamics of water rights in irrigation water control—responsible for 80 percent of the freshwater consumption in the Andean region—within a wider socioeconomic, cultural and political panorama. It emphasizes that there is an enormous variety of definitions and uses of water rights in practice, and that its meaning and function cannot be assumed. Therefore, to understand the space- and time-specific meaning of a water right, it is necessary to close the policy-makers’ prescriptive manuals and examine rights in their relation to the legal complexities at the local level.

Despite claims to the contrary, water policies and intervention practices in the Andean highlands often neglect the cultural pluralism inherent to local and indigenous

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water rights practices, undermining and replacing them with externally controlled allocations, organizations and institutions. The practice of introducing “rational water rights” and “efficient water use” as the vocabulary in discussions of integrated and participatory water management has proven to be quite effective in achieving this objective.

In other analyses, I have examined and criticized the subtle (and not so subtle) efforts to subjugate Andean water rights and user collectives to bureaucratic policies and to the interests of international, neoliberal water privatization programs. This paper takes a closer look at the problematic practices of many of the public-private partnerships (PPP) that, with the strong support from international policy institutions, increasingly dominate the Andean waterscapes. This paper also demonstrates that Andean user collectives—erroneously dealt with as either public or private—do not always accept this modern approach of sidelining and consider this method to be a violation of their water rights and essential needs.

WATER RIGHTS AND LEGAL COMPLEXITIES

In general terms, the right to water authorizes the use of a flow of water from a particular source and requires one to abide by legally or locally established privileges associated with the water right—such as access and operational rights, decisionmaking and control rights, and representational rights, amongst others—provided that certain obligations associated with the water right are fulfilled. But behind such general notions, community water control harbors a tremendous diversity of “living water rights.” This diversity is an intrinsic consequence of the historical process of matching regulatory norms, organizational forms and hydraulic infrastructure to the particular social and agrophysical requirements of each locality. Additionally, living water rights result from the water users’ negotiations and user-manager encounters within each irrigation system and the confrontation with wider power structures. Here, the interaction among different socio-legal frameworks is crucial, as is the incorporation of a set of rules related to the subsequent irrigation traditions in the Andean region. Such traditions range from the historically rooted, indigenous traditions, as well as Spanish-colonial and hacienda traditions, to the more recent bureaucratic and neoliberal policy traditions that have developed in the region over the last two decades.¹ Rather than constituting a bounded framework clearly corresponding to these traditions, contemporary peasant and indigenous irrigation management combines elements from various official and unofficial traditions, sources and organizations that interact within each specific irrigation system. Often these local rights and rules are not written down; nevertheless, they usually consist of a clear, widely popularized pattern of norms that are part of the collective local memory and reference framework. For these reasons, each system and every water-user