

# Water and Indigenous rights: Mechanisms and pathways of recognition, representation and redistribution

## Science summary

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### A growing number of institutional options are available to recognise Indigenous water rights.

Summary of Jackson S. 2018. Water and Indigenous rights: Mechanisms and pathways of recognition, representation, and redistribution. WIREs Water 2018. Available at doi: [10.1002/wat2.1314](https://doi.org/10.1002/wat2.1314)

### Key points

- Struggles over Indigenous water rights arise from inequities and discrimination around Indigenous participation in water governance institutions.
  - Struggles take many forms eg conflict over water resource development, exclusion from decision-making, marginalisation in regional political economies and opposition to environmental degradation.
  - Indigenous peoples engaged in water struggles tend to focus on political action directed towards change in state-based institutions.
  - A growing number of institutional options are available to recognise Indigenous water rights. Diverse approaches are being taken by governments, courts of law, Indigenous peoples and others to recognise local norms and rules of water use and custodianship, and Indigenous forms of political organisation, including:
    - a. Legislative mechanisms to improve access to water
    - b. Constitutional protections for collective rights
    - c. Negotiated settlements
    - d. Self-organised and new Indigenous water using and governing bodies
    - e. Market mechanisms
    - f. Conferring legal personhood as a means of recognising reciprocal relationships and legitimising custodianship of rivers.
  - Approaches are not mutually exclusive and none is universally preferred.
  - Establishing legal rights to nature is of particular interest because so far 'river rights' have been more prevalent than those of other ecosystems and because such a norm and the mechanisms it generates may counter modern water governance inequities.
- Research on recognition of water rights needs to:
    - a. identify outcomes and benchmarks under a range of regimes across diverse contexts
    - b. consider factors that enable or constrain Indigenous peoples and strengthen their normative systems
    - c. reflect critically on what 'recognition' means and examine how Indigenous peoples can evaluate recognition mechanisms for local contexts
    - d. examine alternative ways of articulating, strengthening and sustaining Indigenous water rights.
  - Indigenous peoples' claims are multifaceted demanding attention that is attuned to water's role in sustaining life and livelihoods, cultural identities and communities.

### Paper contents

1. Introduction
2. The water struggles of Indigenous Peoples
3. Recognition as a concept for advancing Indigenous struggles
4. Approaches to recognition, representation and redistribution in water governance

### Abstract

Indigenous water rights contests take many forms, manifesting in conflict over water resource development, exclusion from decision-making, marginalisation in regional political economies and opposition to environmental degradation.

A growing number of institutional options are available to recognise Indigenous water rights and a diversity of approaches is being taken by governments, courts of law, Indigenous peoples and others in response to historical and contemporary inequities and discrimination in patterns of distribution and participation in the institutions of water governance. Although not the only arena, political action directed towards change in state-based institutions is a principal focus for Indigenous peoples engaged in water struggles.

This article reviews the literature on Indigenous water rights in national frameworks of water governance from a range of disciplines. It does not address international law or standards relating to water and Indigenous peoples. It describes the leading approaches to recognition, representation

and redistribution that exist under the domestic arrangements of nation-states to recognise localised norms and rules of water use and custodianship, as well as Indigenous forms of political organisation. These include:

- a. statutory mechanisms to increase water access
- b. constitutional protections for collective rights
- c. negotiated settlements
- d. self-organised or internal governance models
- e. market-mechanisms
- f. moves in law to recognise rights to nature and legitimise custodianship of rivers.

Rather than take recognition for granted as an essential condition of or ideal end-point to Indigenous water rights struggles, the paper critically reflects on the multi-faceted dimensions of this ambivalent concept, revealing the opportunities as well as tensions and dilemmas in the leading approaches to addressing Indigenous water rights claims.

## Concluding points

- Water governance has emerged as a priority area of concern to Indigenous communities across the world.
- Political action directed towards change in state-based institutions is a principal focus for Indigenous peoples engaged in struggles to access and defend water resources, as well as fulfil management responsibilities.
- The approaches profiled above and the broader literature from which these models were drawn show clearly the hallmarks of the ambivalent institutional expressions of liberal and multicultural recognition.
- It is apparent that the opportunities for “cultural” recognition and political representation in water governance come more easily to the “recogniser” than do the proprietary or commercial forms.
- Further research into trends in the recognition of water rights needs to identify outcomes and benchmarks under a range of regimes,

across a diversity of contexts, historical and geographical, considering the factors that enable or constrain Indigenous peoples and strengthen their normative systems.

- Accounts that examine how Indigenous peoples evaluate the twin threats and opportunities of recognition mechanisms given local sociopolitical contexts are particularly needed, as are studies of alternative avenues through which Indigenous water rights might be articulated, strengthened and, sustained.
- International discussions about recent precedents establishing rights to nature are of interest.
- Comparative studies that examine developments around the globe will greatly improve understanding of this topic. Critically, future efforts to analyse global developments in this area will need to account for contingency and context in the diversity of locally specific cultures and water management repertoires.
- With respect to local specificities, the pathways and approaches outlined above are not mutually exclusive and none is identified as a preferred model for any set of circumstances.
- A one-dimensional political, legal or economic model cannot capture the complexity of multi-layered property rights struggles.
- Indigenous peoples’ claims are multifaceted demanding comprehensive attention that is attuned to water’s multivalence: its role in sustaining life and livelihoods, cultural identities and place-based collectivities.

## Related information

Professor Sue Jackson leads a project about Indigenous water needs for the Fitzroy River.

The project page can be found [on the Hub website](#), along with the [project start-up factsheet](#).

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This project is supported through funding from the Australian Government’s National Environmental Science Program.



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October 2018