Freshwater fair play

It's all about apportionment

Apportionment, not ownership, is at the core of the current vigorous debate over management of the freshwater resource. **Hugh de Lacy** and **Vicki Jayne** examine the issues.

There once seemed so much freshwater in this country that drowning in it was called 'the New Zealand disease'.

The disease is still with us, and so is the freshwater, but what was in over-abundance is now in short supply – or, rather, there are now so many demands on the finite freshwater resource that some system of apportionment is becoming necessary, even inevitable.

Such a system should not be practically difficult to implement: there are endless examples of systems to apportion a scarce resource – it's what business and government are all about.

The political implementation of such a system is the difficult part, of course, with every applicant for a portion of the commodity scrambling for priority over everyone else.

Systems of apportionment almost invariably involve setting a price for the scarce resource, with those needing the most paying the most.

Such a system implies some form of ownership of the natural resource – land, minerals, fish and oil, for examples – in the first place, and in democratic countries that ownership lies with the people, as represented by their elected government.

From that basis of implied public ownership, apportionment can be systematised, with parts of the resource turned over to private ownership in exchange for, usually, money.

Such apportionments become necessary not only when there is competition for the resource, but also when it is being degraded or diminished by existing forms of usage.

In the latter cases, apportionment takes the form of fines, or compulsion to rehabilitate, being imposed on the user/polluter.

The underlying principle is that the Crown, as the ultimate owner, should be reimbursed for use or abuse of the natural resource in question.

That might seem obvious enough for resources like the coal in the ground or the fish in the sea, and there is no conceivable reason why it cannot be applied equally well to water – even air.

In fact such apportionment is long established in the New Zealand jurisdiction as quotas for the taking of fish from the nation's seawater estate, while fines are routinely imposed for polluting the air.

Both are most certainly owned by the people, the Crown, which has – and routinely exercises – the power to control their usage in the public interest. It's only when competition arises for the use of natural resources that apportionment becomes necessary, inescapable.

This is the situation that now applies to freshwater, which in the early years of this country's development seemed as infinite as the air.

Nowadays the competing users of freshwater are legion – boaties, fishers, tourists, holiday-makers, farmers wanting to irrigate, power companies wanting to generate electricity – and the need for some form of apportionment is overdue, though that reality has yet to take hold.

There is, inevitably, resistance to changing the status quo which has allowed primary producers, for example, to dip into the freshwater resource for nothing, and effectively export it for their personal profit in such forms as meat, milk and wool.

That being the case, the first step in establishing an apportionment system to suit freshwater is to separate the requirements of the people at large, as represented by the Crown, from those wanting to use it for private gain.

The second step is to ensure that the requirements of the people take precedence over those of the private sector.

The uses put to the resource by the public at large range from water to service their households and businesses, to water to swim and fish in, and since the people own the resource they should logically not be charged for it.

And generally they're not: those water charges you get in your rates bill are not for the water itself, which is free, but for the cost of treating and distributing it.

With not-for-profit users thus defined, and their access to the resource both free and protected, it becomes possible to assess the cost to the wider system of the taking of water for private profit, and to apportion those costs accordingly.

Two profit-making enterprises affecting freshwater are hydro-electric generation and farm irrigation, the former borrowing the water to run through penstocks, the latter removing volumes of it entirely and applying it to the soil elsewhere.

It stands to reason then that because hydro-electric dams interrupt the natural flow of the rivers, and because farmers are taking the water in bulk for irrigation, they should both be paying a royalty for it.

Neither does.

Instead, all the freshwater borrowed by Contact Energy and the partly-privatised state-owned generators, and all the water taken by farmers from the rivers for irrigation, is effectively a cost to the state and to the people not being reimbursed.

The current debate about freshwater is shifting from the non-issue of ownership of the resource to its fair allocation – as well as to the long-term sustainability of what is a public resource. There is also the real issue of making those who profit from it, pay for it.

Freshwater's future – the iwi role

The management and use of this country's freshwater is of particular interest for iwi whose historic relationship with their 'wai' and their role as kaitiaki or guardians is increasingly being recognised at both regional and national levels.

Recent Waitangi Tribunal settlements, for example, have included the recognition of iwi rights in relation to the Waikato and Whanganui Rivers. And late last year, the Gisborne District Council entered into what's been described as a "trail-blazing" partnership with Ngati Porou which means they will share decision making over land and water use in the Waiapu catchment.

This Joint Management Agreement is the first time section 36B of the Resource Management Act has been used – giving regional councils the ability to jointly manage natural resources with an iwi authority. A Waiapu Catchment Plan for managing freshwater will be co-developed under this agreement.

It could be a sign of things to come in light of proposed changes to the Resource Management Act which include requirements for councils to invite iwi to discuss, agree and record ways in which the tangata whenua, through iwi authorities, can take part in the preparations of policy statements or plans.

It's a move welcomed by the Freshwater Iwi Leaders Group (comprising leaders of Ngai Tahu, Whanganui, Waikato-Tainui, Te Arawa and Tuwharetoa) which was formed in 2007

to advance the interests of all iwi in relation to fresh water through direct engagement with the Crown.

Its view is that "our wai is an inseparable part of our whakapapa and our identity and is a fundamental part of what drives our very existence".

Speaking at last year's Water New Zealand conference, keynote speaker and Freshwater ILG spokesman Rahui Papa said this engagement is about "knowing we have set rules and limits to ensure the quality and quantity of wai is sufficiently high to protect [its] spiritual wellbeing and allow us to undertake our cultural practice. It also means being able to fairly share in the economic benefits of the use of our wai."

That means taking a long-term perspective on water allocation and use.

"Water is a valuable economic resource and our relative abundance of freshwater in New Zealand is an important competitive advantage for our economy not just now but in 100-200 years' time. The challenge is ensuring we use and manage this valuable resource sustainably."

He notes that outcomes have to take into account both the environment and the economy.

"Setting limits is a critical step in freshwater management – it's not just about industry values and uses. Setting limits means identifying how much is available for use – the allocatable quantum – and ensuring it is used as efficiently as possible is important for everyone.

"Let's be honest, water quality is declining and we all need to act now. The continuous supply of freshwater is seen as fundamental to the sustainable social, environmental, cultural and economic development of iwi. But for change to be truly made, we need to look beyond our waterways as being thought of as just a commodity, beyond its market value alone or its contribution to GDP.

"Our waterways are integral to our existence…the quicker we recognise this, then the quicker we will find solutions to ensure future generations will enjoy the same or better benefits than we do today."

The Fourth Report of the Land and Water Forum released last November makes three recommendations in relation to recognising iwi rights and interests in freshwater. The first (in brief) puts the main responsibility for reaching agreement on how to recognise iwi rights and interests in water with the Crown and iwi – including agreed allocable quantum and discharge allowances.

The second is how about how these agreements can be given effect through local government – including reserving for iwi "unallocated portions of allocable quantum and discharge allowances in under-allocated catchments". The third outlines a broad range of mechanisms that should be considered for giving effect to agreements between the Crown and iwi.

Natural Resources: the co-governance model

As debate continues to hot up around who "owns" controls and manages this country's natural resources, the Office of the Auditor-General (OAG) has released a new report examining effective approaches to shared governance.

Principles for co-governing natural resources outlines topline thinking behind some of the best ways to co-govern and, to a lesser extent, manage environmental initiatives.

Throughout the country, a growing number of iwi hapu, community groups and local authorities are working together to monitor, protect and enhance the health of the environment.

In Canterbury, the Te Waihora Co-Governance Agreement focuses on the health of Te Waihora (Lake Ellesmere) and surrounding catchments. The largest lake in Canterbury and an important link in the chain of coastal lagoons and estuaries along the South Island's east coast, Te Waihora has suffered from declining water quality due to changes in land use and the clearing of wetlands. The Te Waihora co-governance group comprises representatives from Canterbury Regional Council and Selwyn District Council alongside the chairperson and members of Te Runanga o Ngai Tahu.

The OAG report cautions public entites to be careful not to make "unrealistic demands" straight away and to help build capability among the co-governors.

While there are few surprises in the five main principles that the OAG outlines in its report, as many people involved in co-governance can testify, these ideas are easier said than done.

The full report can be downloaded from www.oag.govt.nz. **WNZ**