

Unbundling Water Rights: Piloting Efforts to Apply the Australian Experience in the American West

2016 Texas Water Law Institute
November 3-4, 2016, Austin, TX



Professor Mark Squillace
University of Colorado Law School
Mark.Squillace@Colorado.edu

Overview of Presentation

1. Briefly describe Western water law and the obstacles that it presents for water markets
2. Describe the Australian experience and the important lessons that can be learned from that experience
3. Consider opportunities for opening water markets in the Western United States that are practical and politically achievable

Water as State Property

- The water law of most States and nations with positive law universally proclaim that *water is the property of the State*
- *States hold water in trust for the people of the State*
- *Furthermore, all States west of the 100th meridian except Colorado require that their water resources be managed in the public interest*

Western Surface Water Law

- Prior appropriation protects earliest users for their full right before later users receive any water.
- *“First in time first in right”*
- Water rights are approved for *a diversion amount for particular uses on particular tracts of land* (Consumption not tracked)
- Changes from the approved use (*water transfers*) are theoretically possible but practically problematic

Western Surface Water Law

- Because the earliest, long-term users were farmers they tend to enjoy the most senior rights
- In most Western states *agricultural use exceeds 80% of total water consumption though agriculture is generally <2% of the gross state product*
- *Globally, consumptive use for agriculture exceeds 90%*

Western Groundwater Law

- Much more complicated than surface water law
- Unlike surface water, groundwater aquifers often have low rates of recharge leading to groundwater “mining” – *withdrawing water at a rate faster than the rate of recharge*
- Most states, including Texas, have different rules that apply to different basins – *more restrictive where significant mining is occurring*
- Nonetheless, for water marketing purposes, the issues are pretty much the same

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Unbundling Water Rights: Piloting Efforts to Apply the Australian Experience in the American West

Also available as part of the eCourse

[The Valuation and Marketing of Water Rights](#)

First appeared as part of the conference materials for the
2016 Texas Water Law Institute session

"Unbundling Water Rights: Piloting Efforts to Apply the Australian Experience in the American West"