

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

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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

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