

REDEFINING WATER RIGHTS—A NEW APPROACH TO MARKETING WATER

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Water marketing is frequently suggested as a way of improving water efficiency. In the West, water markets are hampered by the need to account for third party effects before a transaction can take place. This can add substantial costs to the process. Although some have suggested that better scientific approaches could speed up the process and lessen costs, a better approach would be to simplify the way water rights are defined. At present, surface water rights in the West are based on the amount of flowing water diverted and put to a beneficial use. The amount that can be sold however is the amount that is consumed or taken out of the system. We need to change the way water rights are defined so that the consumptive amount is incorporated. In the past consumptive amount has been determined on a case by case basis. This approach is cumbersome and needs to be simplified. A few simple rules of thumb need to be developed and then applied even handedly to all water rights. Arguments against this approach include the notion that redefining the right would be an unconstitutional taking of property. In addition, many argue that redefining water rights would be politically impossible. My paper addresses these concerns and concludes that this approach can be both politically and constitutionally acceptable. The policy changes suggested can be accomplished by simple changes in administrative rules. The changes include using discount rates to account for third party effects and for defining consumptive amounts. Water users should be agreeable to such changes because they will enhance marketability and thus the value of water. A similar approach has been taken in Australia where their success has included marketing water across state boundaries. We can learn from this example.