



Legal and Policy Considerations in  
**Western Water Markets**

NALC [Webinar Series](#). July 16, 2025



The National Agricultural Law Center  
The Nation's Leading Source of Agricultural and Food Law Research and Information



**DOWNEY** BRAND

## “We Know the Value of Water”

### Leading Economic Consulting Firm in Water Resources



WestWater is nationally recognized for our expertise in water right appraisals and have helped define the standards for water valuation in many of the western states.

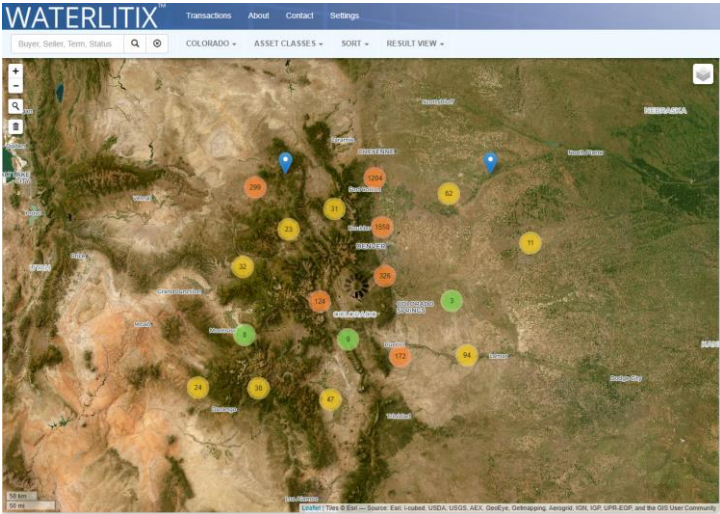
We support the development of robust strategies for water transactions and help to navigate water assets through an information-driven process to achieve a successful transaction.

We ensure clients are well informed on current water resource economics, trading activity, as well as regulatory and policy changes that influence water supply and demand.



## Waterlitix

- Nation’s largest and most comprehensive pricing source for water transactions
- Regularly updated to maintain market-leading pricing information across the state and nation
- **30,000+ water transaction records**



### WestWater Project & Office Locations

Main Office	California	Southwest	Rocky Mountain	Pacific Northwest
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Downey Brand is a premier full-service law firm based in Sacramento, California, with a strong regional presence throughout California and beyond.

For almost 100 years, we have been at the forefront of legal issues shaping water law, natural resources, and environmental regulation. Our team of attorneys brings deep experience in groundwater, surface water rights, water quality, and the complex regulatory frameworks relevant to Western water markets.

Relevant experience:

- Water right litigation before courts and California SWRCB
- Water transfer due diligence
- Groundwater adjudications



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# Webinar Outline

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## 1. Overview of the Western Water Markets



## 2. Legal and Policy Considerations for Water Trades



## 3. Current Changes in Water Law & Policy

## 4. Q&A Session

# Overview of Western Water Markets

A summary of why we see water trading, what is being traded, the scale of trading, and how it relates to agricultural lands



# Western Water Stress & Response

## Supply & Demand Imbalance

Groundwater overdraft	Population growth
Reduced snowpack	Environmental issues / ESA
Reduced streamflow	Industrial uses
Over-allocation	Terminal lake decline
Changed timing of streamflow	Recreational water uses
Seawater intrusion	Irrigation demand hardening
Degraded water quality	



## Regulatory & Market Responses

Water right curtailments	Water right transactions (reallocation)
Groundwater allocations	Incentivized conservation
Dedicated instream flows	Farm buyout programs
Water conservation mandates	New technology developments
Water use scrutiny	New infrastructure projects

## Examples

### Pacific Northwest

Salmon recovery (ESA) → Dedicated instream flows & Water transactions  
Pumping impacts on Snake River → Groundwater allocations & Water transactions

### California & Arizona

Groundwater overdraft → Groundwater allocations SGMA (CA) & AMAs (AZ)  
Reduced snowpack → Water use scrutiny & water transactions  
Population growth → New infrastructure projects & Water transactions

### Intermountain West

Terminal lake decline (Great Salt Lake) → Water transactions & Incentivized conservation  
Localized GW overdraft (San Luis Valley) → Farm buyout programs & water transactions  
Population growth → Water transactions & New projects

# Water Market Activity

## Established Tool to Respond to Water Stress

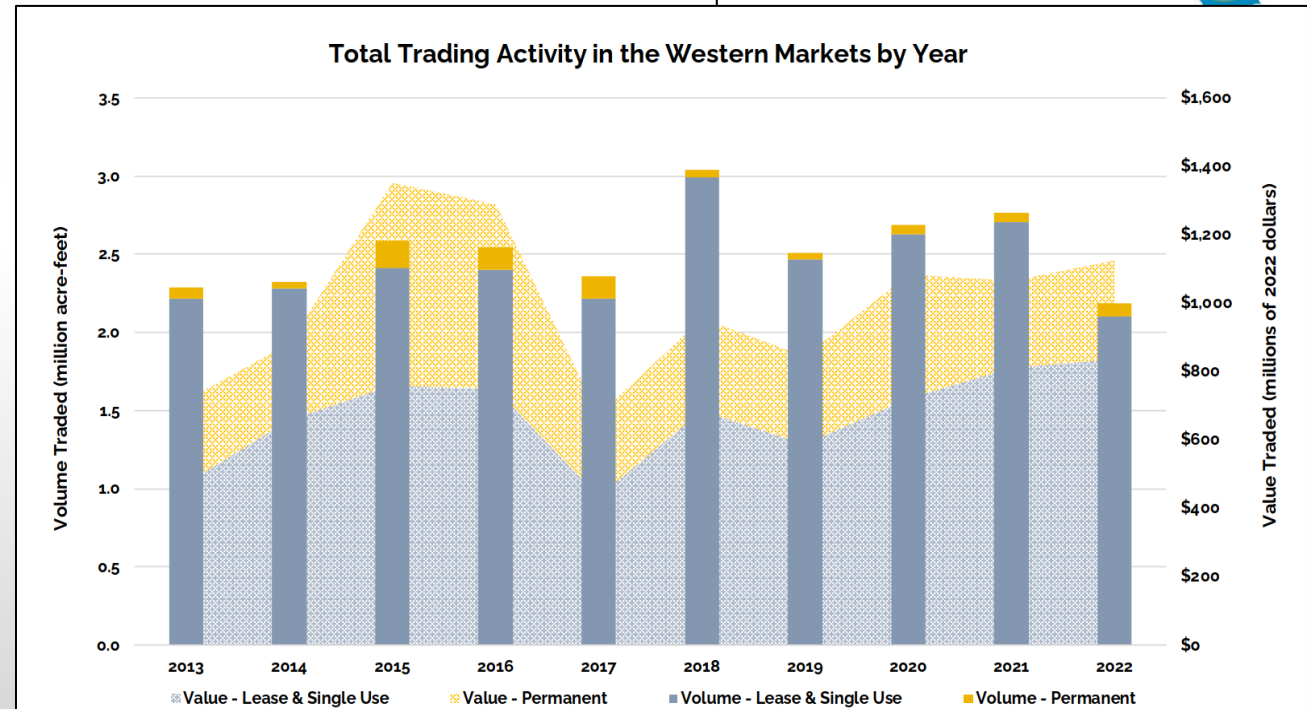
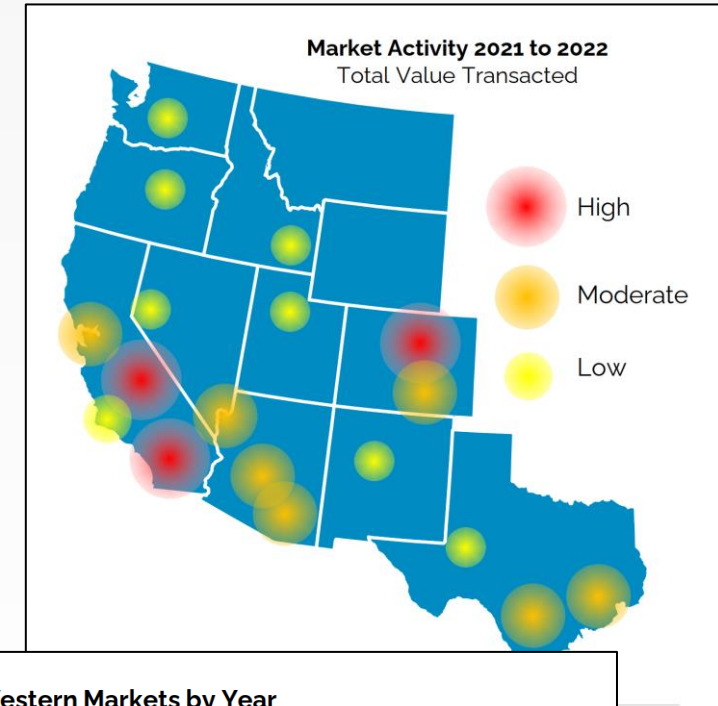
- With variable water supplies and changing demands, we need the ability to reallocate water uses → water right transactions
- Western U.S. water markets have been active and responding to supply & demand changes for over 20 years.

## Water Market Activity is Often Very Local

- Water trades only occur when the physical supply can be accessed by the buyer
  - *California: broad geographic area*
  - *Most other places: 1-2 county area*
- Local conditions define pricing & trading

## Water Leases are Majority of Trades

- Water sales are somewhat rare
- Multiple sectors have turned to water leases and more sophisticated contracts to meet water supply needs  
(*environmental, municipal, industrial*)



# Commonly Traded Water Assets

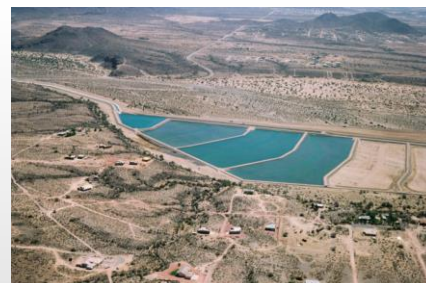
## Surface Water Rights

- Direct use of stream flows when in priority
- Active Markets:
  - California
  - Colorado
  - Nevada
  - New Mexico
  - Utah
  - Washington



## Groundwater Rights

- Withdrawal and use of groundwater through wells
- Active Markets:
  - Arizona
  - California
  - Colorado
  - Texas



## Aquifer Storage & Recovery

- Water stored underground in the aquifer for later withdrawal
- Active Markets:
  - Arizona
  - California



## Effluent

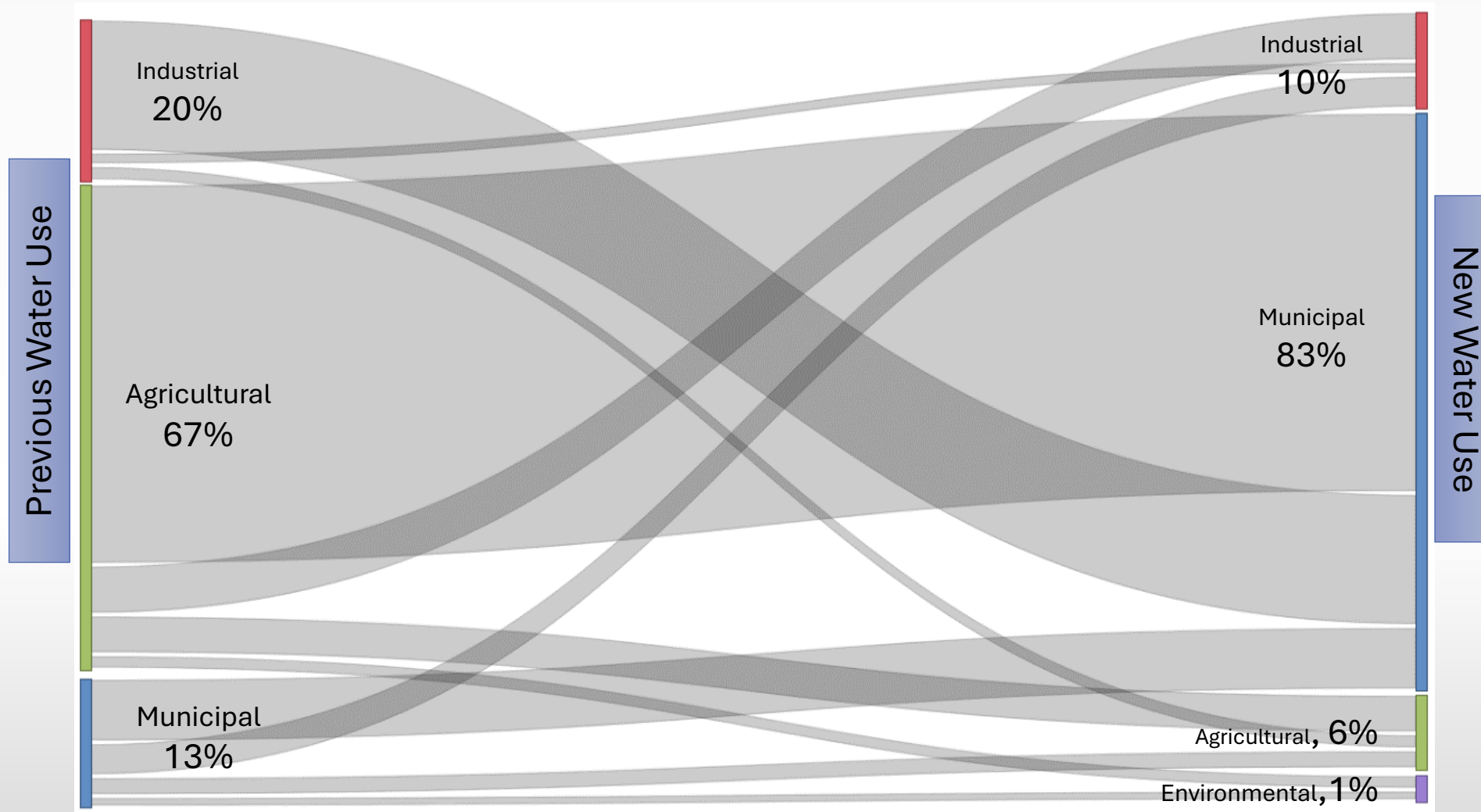
- Entitlement to use treated wastewater, generally for irrigation, industrial use, or groundwater recharge
- Active Markets:
  - Arizona
  - California
  - Colorado

## Storage Water Rights

- Entitlement to store water for use at a later time (e.g., reservoirs)
- Active Markets:
  - California
  - Colorado
  - Idaho



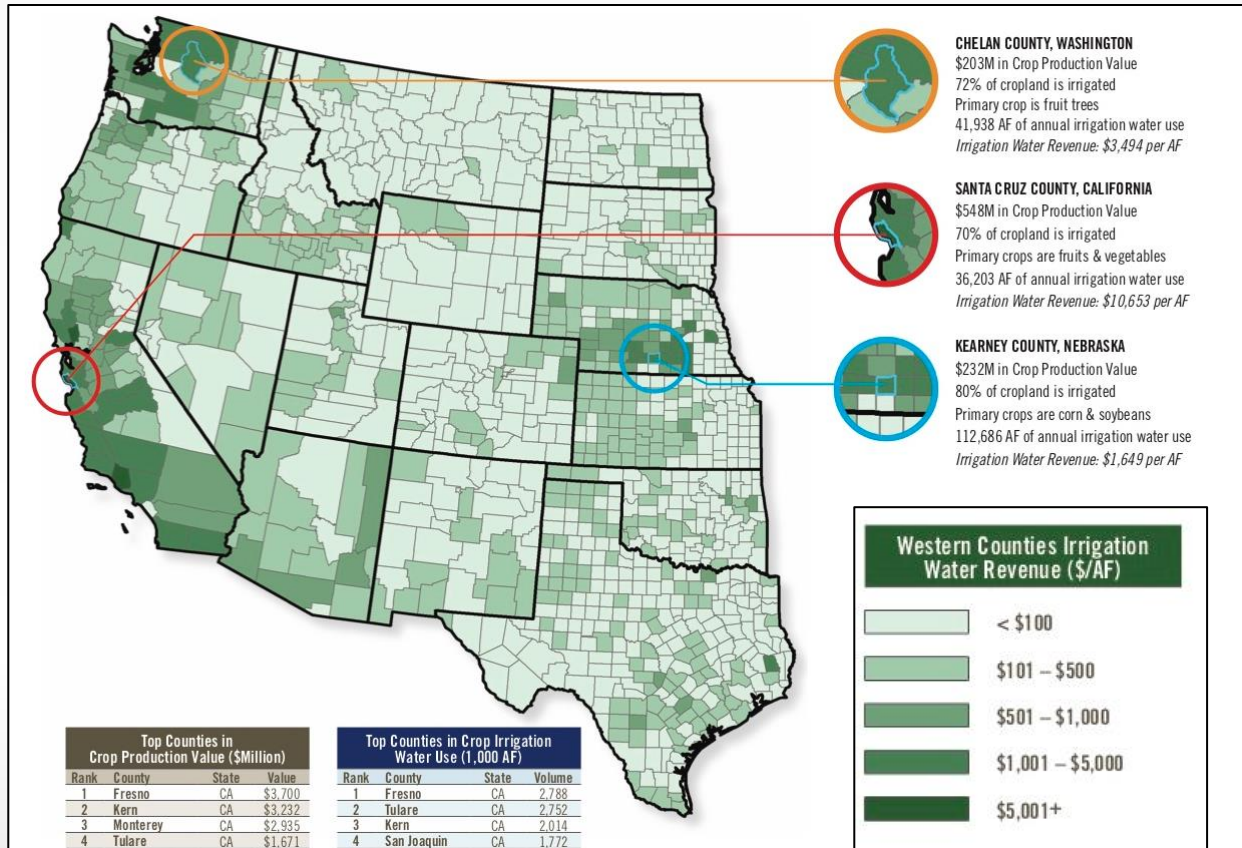
# Market Participation



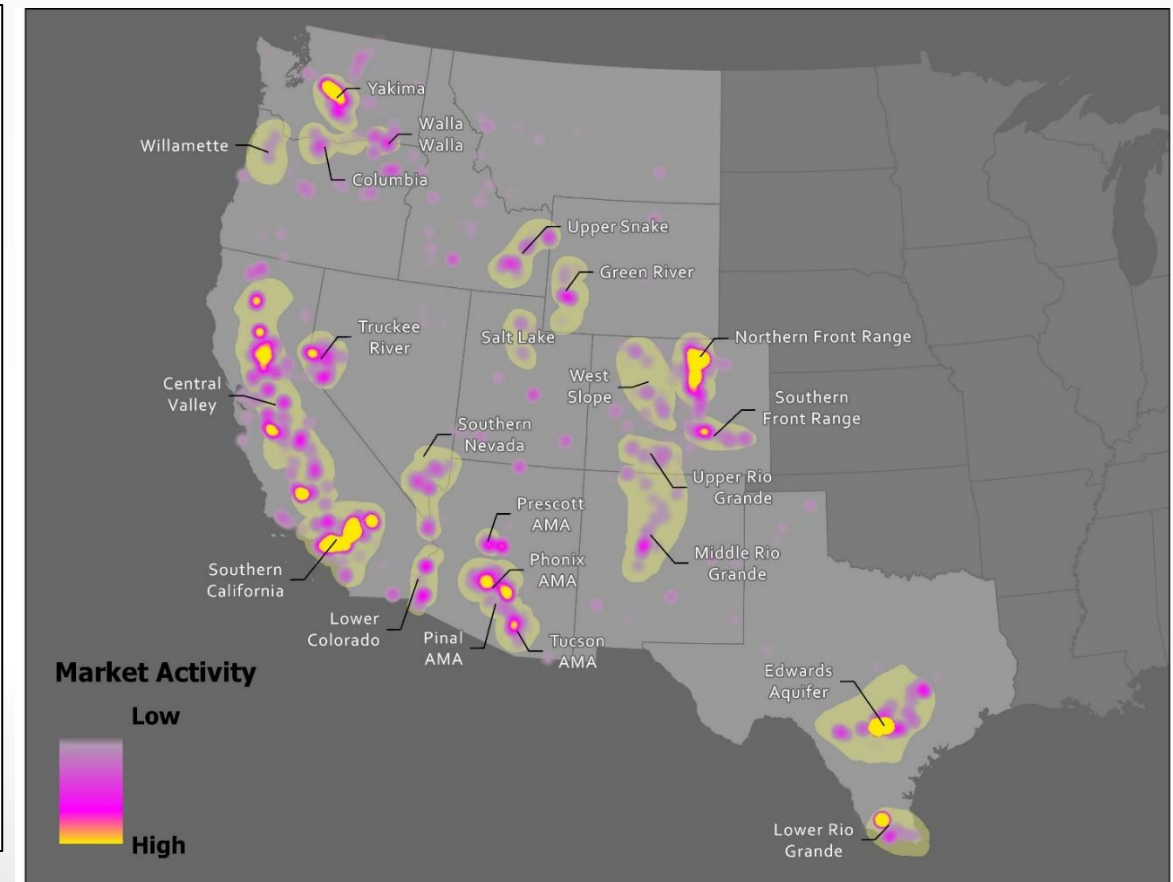
- **Agricultural to municipal** transfers comprise the majority of market activity
- Industrial and environmental water users are active lessors
  - E.g., short-term oil & gas operations
  - E.g., annual response to hydrology and need for in-stream flows
- **Not shown:** Tribes provide significant volumes to the lease market as holders of large, undeveloped water rights

# Pockets of High Water Value

## High Value Water in Agricultural Use



## High Value Water in Transactions



October 2015



November 2020



For more info on  
agricultural water  
values, click on icons



For more info on  
water markets,  
click on icon.

# Water Market Activity & Agricultural Lands

## Most water trades have agricultural sellers

- Most dots of water trading activity are found in places with irrigated lands
- *Trading activity is often demand (buyer) driven*

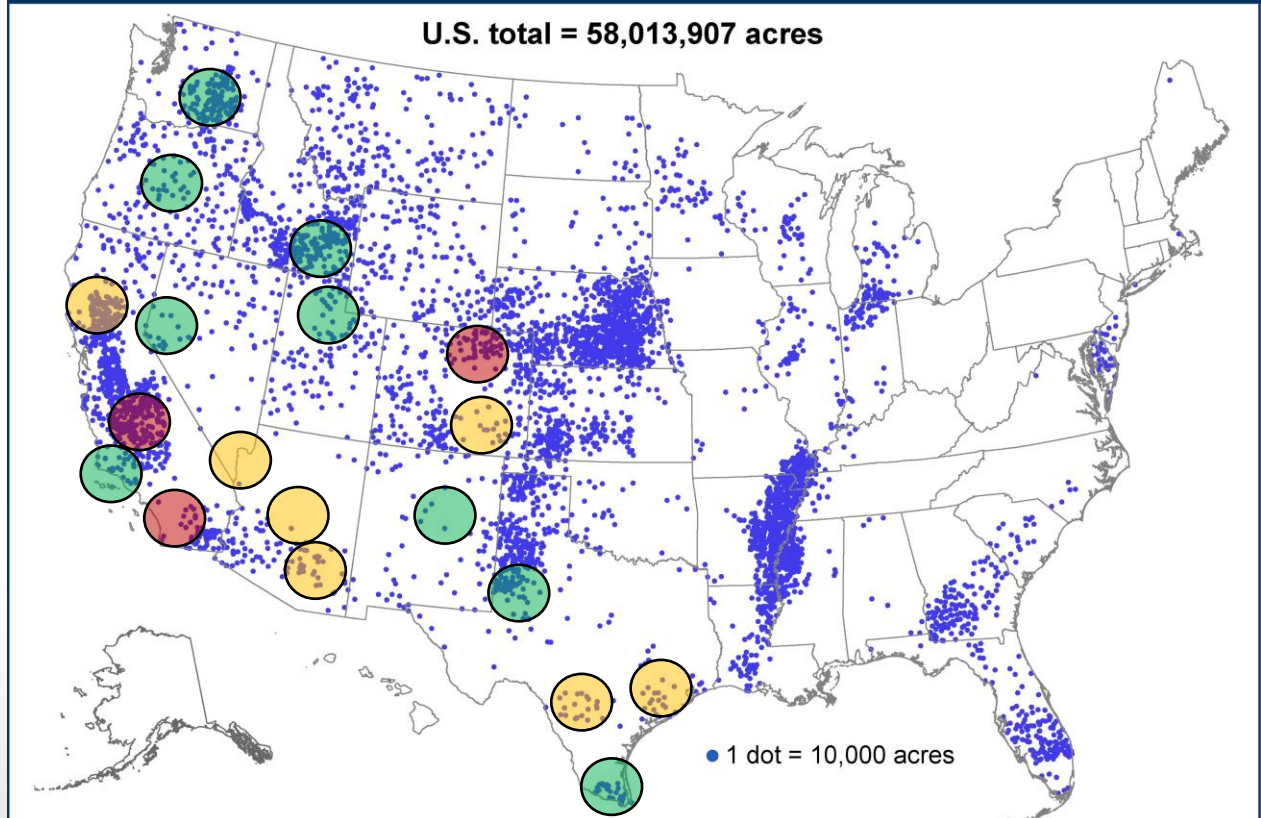
## Water market opportunities for farmland:

- Water leases to various sectors
- Payments for reduced water use
- Water right sales to high value buyers

## Water market opportunities with farm properties are often very local

- Multiple factors (stresses & responses) determine whether water trades are needed
- Pricing and economics of water market opportunities (versus farming) are also very local and influenced by multiple factors:
  - *Value of agricultural production*
  - *Relative scarcity of supply*
  - *Land development & home building*

## U.S. acres of irrigated land by county, 2017



Source: USDA, Economic Research Service using data from USDA, National Agricultural Statistics Service, 2017 Census of Agriculture.

*Colored dots represent water trading activity  
(see previous slide)*

# Legal & Policy Considerations for Water Trades

A summary of legal and policy aspects that are critical to completing water trades or influence trading activity.



# What is a water right?

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- **Water is a public resource.** It belongs to the public and is managed by state governments and courts.
- *A water right establishes that a person or entity may utilize a public resource under strict conditions and subject to the water resource being available.*
- The right to use water is the **property** held by the owner. Water right holders are not owners of the water.
- **Water is managed by state governments.** During western settlement, Congress deferred water appropriation decisions to local customs and court rulings in the new territories, thereby establishing a general rule that water is **not** managed by the Federal government. **This has created differences in water right structures between Western states.**

# Common Water Right Principles in the West

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- **Prior Appropriation.** In all Western states, “first in use, first in right.” But California and other states also recognize riparian and overlying rights (with a superior priority)
- **Priority.** Senior rights are served before junior rights during shortage
- **Beneficial Use.** Water can only be used for purposes that are productive of public benefit and promote the health, safety, and welfare of the people of the state.
- **Use it or lose it.** Extended non-use of *appropriative* rights can result in forfeiture
- **Transferability.** Rights can be bought, sold, or leased (often requiring regulatory approval)

# What does a water right look like?

IN THE WATER COURT IN AND FOR  
WATER DIVISION I, STATE OF COLORADO  
CASE NO. W-7694-74

IN THE MATTER OF THE APPLICATION FOR  
WATER RIGHTS OF  
STATE OF COLORADO, DIVISION OF WILDLIFE  
IN LARIMER COUNTY

FINDINGS AND RULING  
OF THE REFEREE  
AND DECREE OF  
THE WATER COURT

AUG 30 1978

THIS CLAIM, having been filed with the Water Clerk, Water Division I,  
on June 28, 1974 and the Referee being fully advised in the premises,  
does hereby find:

All notices required by law of the filing of this application have  
been fulfilled, and the Referee has jurisdiction of the matter.

Statement of Opposition was filed by Homer S. [redacted]  
No other statement of opposition was filed in the matter  
for filing such statement has expired.

All matters contained in the application having been taken where such testimony  
and testimony having been taken where such testimony  
such corrections made as are indicated by the evidence.

IT IS HEREBY THE RULING OF THE WATER REFEREE:

1. The name and address of the claimant:  
Division of Wildlife  
Bellvue Fish Hatchery  
6060 Broadway  
Denver, CO 80216
2. The name of the structure:  
Bellvue Hatchery Spring
3. The legal description of the structure:  
Bellvue Hatchery Spring is located in the  
of Section 36, Township 8 North, Range 70  
Larimer County, Colorado, at a point which  
47° East a distance of 1689.79 feet to the  
Section 36.
4. The source of the water:  
Natural Spring

5. The date of appropriation:  
December 31, 1924

6. The amount of water:  
0.524 cubic feet per second

7. The use of the water:  
Nonconsuming fish propagation

The priority herein awarded said Bellvue Hatchery Spring was  
filed in the Water Court in the year of 1974 and shall be administered  
as having been filed in that year; and shall be junior to all  
priorities filed in previous years. As between all rights, filed  
in the same calendar year, priorities shall be determined by  
historical dates of appropriation and not affected by the date  
of entry of ruling.

DATED this 30<sup>th</sup> day of August, 1978.

*Thomas S. Aron*  
THOMAS S. ARON, JR.  
Water Referee, Division I

THE COURT DOETH FIND: NO PROTEST WAS FILED IN THIS MATTER.  
THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY MADE  
THE JUDGMENT OF THIS COURT.

Dated: September 30, 1978

*Donald A. Carpenter*  
DONALD A. CARPENTER  
Water Judge, Division I

**Who** is using the water  
*Owner*

**What** water will be used  
*Source*  
*Amount (Volume / Flow Rate)*

**Where** is the water being used  
*Point of Diversion*  
*Place of Use*

**When** will the water be used  
*Period of Use*  
*Priority Date*

**Why** is the water being used  
*Purpose of Use*

# How is a water right transferred?

Its like buying a house...

## Ownership Transfer



Identify goals  
Inventory market  
**Shop the market**



Find a good one  
Prelim. diligence  
**Offer letter**



Offer accepted!  
**Under contract**

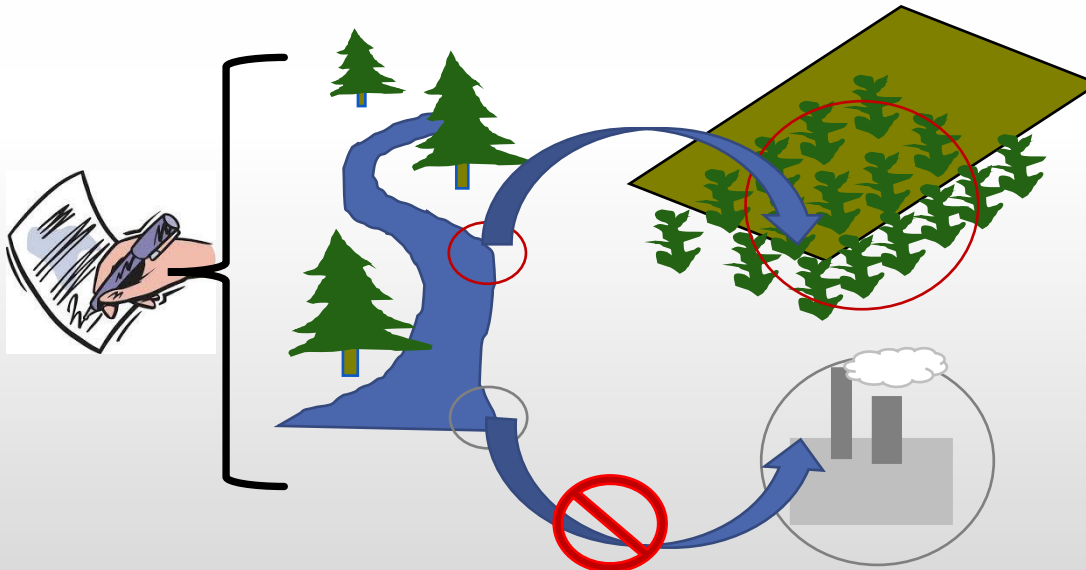


**Due diligence**  
Identify problems



**Closing**  
Official transfer  
of assets

## Regulatory Transfer



- A water right allows the owner to divert water from natural source under **specific conditions**
- **The water right owner cannot independently decide to divert and use water under different conditions or sell the right to do so**
- Water marketing can only occur under **defined frameworks**

# Importance of defining water rights

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- **Certainty and Trust.** Buyers and sellers must know exactly what they are buying and selling—how much, from where, and under what conditions.
- **Enforceability.** Institutions are necessary uphold and enforce water rights and transactions.
- **Transferability.** It is easier to value, trade, and integrate into markets to buy, sell, and lease water.
- **Conflict Reduction.** Certainty limits disputes, reducing litigation and helping to resolve competing claims.
- **Resource Management.** Clearly defined rights and effective governance make it possible to manage the resource in a sustainable manner

# Challenges to marketing water

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- **Transaction Costs.** High costs to determine unquantified correlative rights—see groundwater adjudications in California
- **Scalability.** How to expand small, localized resources into basin-wide, state-wide, or region-wide markets?
- **Regulatory Hurdles.** Federal, state, and local government can control how water is extracted, diverted, used, and transferred to protect public
- **Physical constraints.** Infrastructure needed to move or store water.

# Current Changes in Law & Policy Impacting Water Trading

A few trends & recent changes that may impact the type and scale of water market activity.



# Increased Groundwater Management

Overallocated groundwater rights & permits

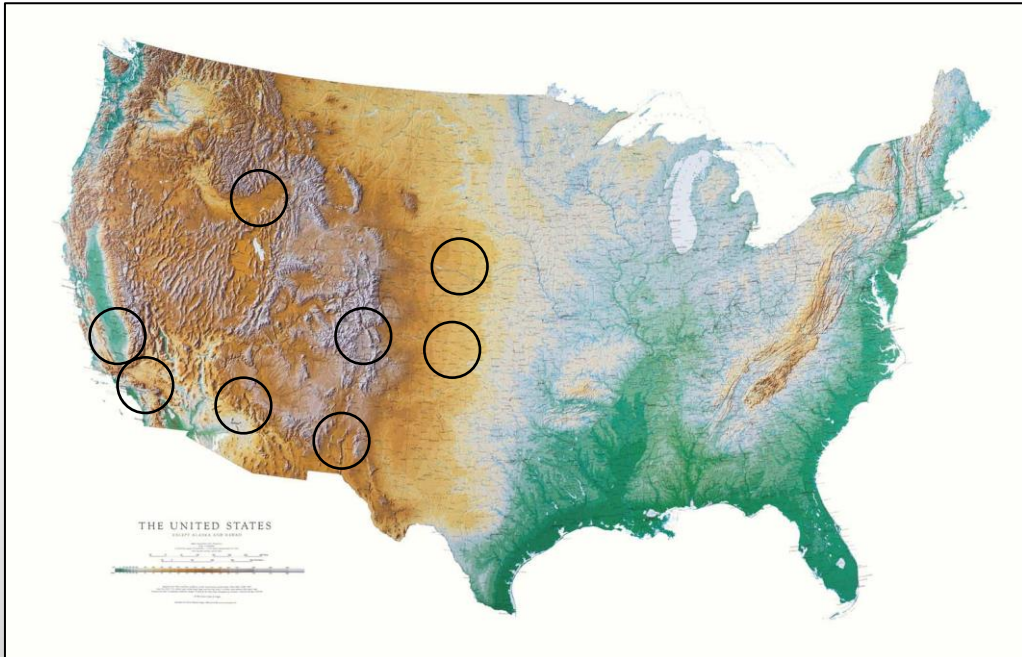
↳ Declining groundwater levels & reduced well yields

↳ **Local & state regulatory action to reduce pumping**

↳ Pumping allocations that do not match demand

↳ **Water market development to:**

1. Trade pumping allocations
2. Access imported water supplies
3. Generate storage credits



# Environmental Policy & Funding Support

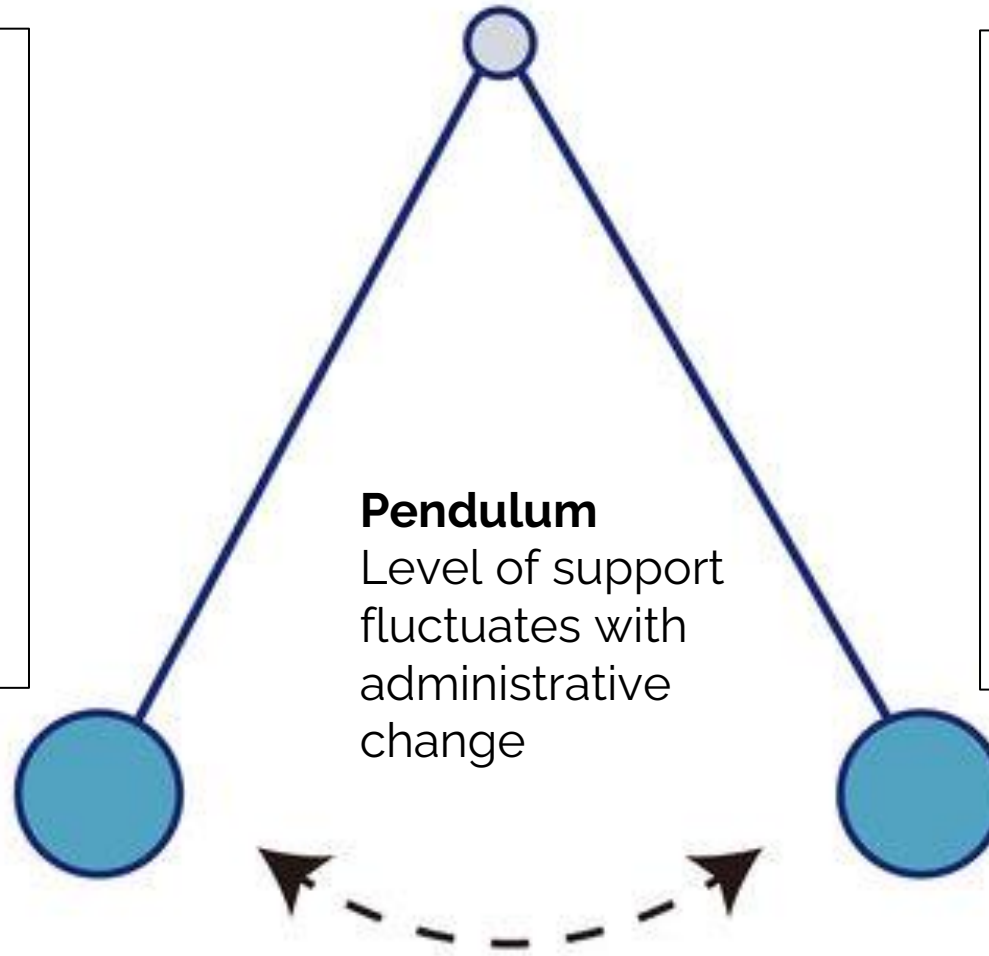
Level of environmental policy support & grant funding influences water trading

## **Low Level of Support**

- ESA issues are not pursued
- Federal funding for instream leases is limited
- Less water allocated for environmental purposes
- More water available for diversions / uses
- Regulatory approvals of water projects are faster

## **High Level of Support**

- ESA issues are pursued
- Federal funding for instream leases is increased
- More water allocated for environmental purposes
- Less water available for diversions / uses
- Regulatory approvals of water projects are slower



# Other Legal & Policy Changes

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- Federal agency budgets
- Federal investments
- *Chevron* Deference
- ESA Enforcement
- Tariffs & agricultural values
- Fed. Interest rates & housing
- Energy & industrial investments

# Questions?

# Comments?

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