

Potential “ERCOT-Like” Improvements to Water Policy

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Problems

- Lack of transparency /enforcement of water rights.
 - Practice of permitting to drought of record is inefficient.
 - Hidden subsidies.
- Lack of efficient mechanisms for water right transfers.
 - Policy of state to promote voluntary transfers
 - Transfers necessary to optimize use of resource (drought transfers)
 - Permanent transfers administratively difficult
 - Temporary transfers. During periods of shortage, existing structural and institutional barriers prevent water from being temporarily reallocated to the highest and best use (economic or societal).
- Short-term water planning.

Potential ERCOT-Like Solutions

1. Create and use an independent entity to efficiently monitor and enforce water rights.
2. Decide on a consistent, non-ad hoc, approach to reallocation of rights – market-based approach or utility-based approach.
Implement the chosen approach.
3. Integrated/flexible planning.

Clearinghouse

- ERCOT provides a centralized repository of data regarding planning, real-time supply/demand, and market clearing.
- Prior adjudication system needs a clearinghouse to implement first-in-time/first-in-right.
- All users need information about uses within the basin – future and real-time.
- Ideally – not a state agency or not subject to case-by-case APA review.
- Most of the necessary roles can be provided by Watermaster under existing statutory provisions.

Commit to an Approach

- Current TCEQ enforcement/reallocation approach is ad hoc. No way to predict outcomes. Dependability/reliability of rights uncertain.
- Possible solutions
 - Market Approach. [ERCOT Generation]. Make rights freely transferable. Establish market for supervision/clearing.
 - Utility Approach/Mutualization. [ERCOT Transmission]. Transfer all water rights in basin to single owner w/ tariff governing allocation/rates.
- Variations – different basins, different approaches. Rio Grande/Colorado/Brazos.

Market-Based Approach – Need to Commodify Water Rights

- Need a fungible commodity for market solutions to work.
- Deregulation of vertically-integrated electric utilities – required standardization of product
- Current system too bulky/rights too unique to be easily transferred/reallocated.
- Need standardized method to quantify diversion amount, change location, etc. Problem – No Injury Rule
- BRA Sys/Ops – attempt to achieve through permit.
- TCEQ has statutory power to partially commodify water rights – use of rulemaking to address issues rather than individual permits.

Utility-Based Approach/Mutualization

- ERCOT Transmission essentially controlled by ERCOT/State with rents paid to transmission owners.
- Some (all?) Texas basins not suited to market-based solutions. Lack of liquidity, concentrations of market power
- Legislative incentives to promote voluntary transfers of water rights in a basin/sub-basin to a single entity.
- Alternative - water right holders could be incentivized to transfer water rights in exchange for shares with entitlements to specific quantities of water.
- Development of appropriate and binding tariffs for each basin. [LCRA Water Management Plan].

Planning

- ERCOT plans on a variety of horizons - identifies expected demand, allows market to find solution.
- State water planning – good for identifying long-term supply needs (large reservoir planning), but not suitable for facilitating short-term or market-based solutions.
- Need an entity (TWDB or watermaster) capable of spotting near-term problems and brokering near-term solutions.
- Regional/State water planning not well integrated with electric generation planning. Mostly useless for meeting future needs for future generation.

Further Reading

- Anderson/Snyder, *Water Markets – Priming the Invisible Pump* (Cato Institute, 1997).
- George Gould, *Transfer of Water Rights*, 29 Nat. Resources J. 459 (1989).
- Mark Squillace, *Water Transfers for a Changing Climate*, 53 Nat. Resources J. 55 (2013).
- *Water Markets in Australia – A Short History* (2011).