FARM FOUNDATION® FORUM

WATER RIGHTS AND POLICY IN AGRICULTURE TODAY

APRIL 25, 2023

Today’s webinar is made possible by a grant from Farm Credit

#FarmFoundationForum
MARTHA KING
Vice President, Programs and Projects
Farm Foundation
Farm Foundation is an ACCELERATOR of practical solutions for agriculture.

We accelerate PEOPLE AND IDEAS into ACTION.
OUR MISSION AND VISION
GUIDE OUR WORK

MISSION:
To build trust and understanding at the intersections of agriculture and society.

VISION:
To build a future for farmers, our communities, and our world.
BECOME A FRIEND OF FARM FOUNDATION

See link in chat function

- Donate to Farm Foundation to support our mission
- Receive exclusive benefits and curated content
- Help us continue to provide valuable content like today’s Forum
CONNECT & COLLABORATE WITH US!

farmfoundation.org

Connect with us on social media:

@farmfoundation @thefarmfoundation

Farm Foundation @thefarmfoundation

#FarmFoundationForum
Submit questions by clicking on the Q&A Button at the bottom of your screen.

Please include your name and company so questions may be contextually understood.

Due to time limits, we may not be able to ask all questions submitted.

This Forum is being recorded and will be posted on our website at farmfoundation.org as well as the Farm Foundation YouTube channel.

Please take the short survey at the conclusion of the Forum.
FARM FOUNDATION®
FORUM
WATER RIGHTS AND POLICY
IN AGRICULTURE TODAY
APRIL 25, 2023

Today’s webinar is made possible by a grant from Farm Credit

#FarmFoundationForum
RICHARD MORRISON
Moderator
Manager
RNM Enterprises
A. DAN TARLOCK

University Distinguished Professor Emeritus
Professor of Law Emeritus
Chicago-Kent College of Law
EASTERN UNITED STATES WATER RIGHTS

EMERGING CHALLENGES FOR AGRICULTURE

Dan Tarlock, April 25, 2023
Eastern Surface Water Rights: The Common Law Inheritance

- The original thirteen colonies adopted the English common law. This included the law of riparian rights.

- Riparian rights were limited to land owners along a stream and within the watershed.

- All riparians were entitled to make a reasonable use of the stream.

- Common law riparian rights were favorable to agriculture because it allowed farmers to divert the water needed without regard to other users unless they challenged the use which was and is difficult to do.
The Law of Groundwater Use Has Always Between Favorable to Farmers

• 1. The Common Law was a pure rule of capture with almost no limitations on use regardless of the impact on other users.

• 2. Most states, with the major exception of Texas, have limited groundwater use to reasonable use. This rule basically allows cities to develop wells fields and compensate farmers for some of the costs of lowered water tables.

• 3. The benefit of the common law is illustrated by Nebraska which follows prior appropriation for surface water use but NOT for groundwater.
The Disadvantages of the Common Law of Water Rights and the Remedy

• 1. Riparian rights are unstable because they can be displaced at any time,

• 2. Riparian rights are incoherent, making it impossible to predict the amount of water to which the right holder is entitled,

• 3. Groundwater rules encourage aquifer mining,

• 4. Thus, starting with Iowa in the 1950s and Florida in 1972, most states have adopted some form of regulated riparianism,

• 5. Which includes time limited permits and protection of prior uses.
The East-West Divide, The Straddling States and California
Eastern and Southeastern Agriculture Has Not Been Overly Impacted By Regulated Riparianism

• South Carolina case in point. In 2017, South Carolina adopted a permit system for large users but exempted agricultural users. They must only register the amount of their withdrawal, no questions asked and no time limits on the registration. Other riparian users challenged this as a violation of the public trust and an infringement on common law rights, but the Supreme Court upheld the exemption. They did, however, note that other riparians could challenge an agricultural use as unreasonable under the common law. Good luck. Jowers v. South Carolina Dep’t Health and Environmental Control, 814 S.E.2d (S.C. 2018).
Looking to the Future

• 1. Interstate water litigation in the East is increasing.
• 2. All states are entitled to an “equitable” share of interstate rivers and groundwater basins. Priority is relevant but is not absolute.
• 3. If a state is required to share water with another state, the responsibility lies with that state.
• 4. For over three decades, Alabama, Florida, and Georgia have made inconsistent claims to the Chattahoochee Basin. In brief, Florida wants flows to support an oyster fishery, and Georgia wants to grow peanuts and Atlanta.
The Tri-State Basins
FLORIDA V. GEORGIA, 2021

• Florida pins the collapse on Georgia through a multistep causal chain. It argues that Georgia’s unreasonable agricultural water consumption caused sustained low flows in the Apalachicola River . . . that these low flows increased the Bay’s salinity . . . Georgia points to a more direct cause—Florida’s mismanagement of its oyster fisheries. According to Georgia, Florida caused the collapse by overharvesting oysters and failing to replace harvested oyster shells. And even if low flows contributed at all, Georgia says, they were driven by climatic changes and other factors, not its upstream consumption.

• 2. The Supreme Court agreed 9-0 that Florida had not proven that Georgia’s uses injured it.
SARAH PORTER
Director
Kyl Center for Water Policy at Morrison Institute
Arizona State University’s Morrison Institute for Public Policy
Mission: promote informed public dialogue on critical water issues in Arizona and the West

• non-partisan
• research & analysis
• historical understanding
For the first time since the signing of the Colorado Compact in 1922, a Colorado River water shortage has been declared.
Colorado Basin

- 40 million people
- 7 states, 29 tribes & Mexico
- 5 million acres of agriculture
- Significant biodiversity
- Grand Canyon & other national parks & monuments

Source: US Bureau of Reclamation
Is there anything to worry about?

Source: US Bureau of Reclamation (2022)
Urban Growth is Not a Driver of Shortage
Central Arizona Water Use by Sector, 2000 - 2018

Acre-feet

- Agriculture
- Municipal
- Industrial
- Indian
- Total

Years: 2000 to 2018
LOWER COLORADO BASIN WATER DEMAND

- **Agriculture:** 74%
- **Municipal & Industrial:** 26%
Arizona Agriculture

Market Value of Crops - $2,094,218,000

- vegetables & melons $ 1,009,125,000
- other crops & hay $ 401,709,000
- nursery, sod $ 195,925,000
- cotton & cottonseed $ 184,002,000
- grains, oilseed, beans $ 157,833,000

Top Crops in Acres

- forage (hay) 369,229
- cotton 182,175
- vegetables 145,000
- wheat 104,650
- lettuce 72,411

USDA Census of Agriculture (2017)
Sarah Porter
602-4996-0586
s.porter@asu.edu
MATT MORELAND

Partner
Moreland Farms
90th Anniversary Gala

Celebrating 90 years of accelerating practical solutions for agriculture.

Join Us!
Thursday, June 15, 2023
5:30 PM

The Drake
Chicago, Illinois

https://farmfoundation.swoogo.com/90thgala
THANK YOU

Support our Mission
Become a Friend of Farm Foundation today!
farmfoundation.org/friends

We hope to see you at a future event!

#FarmFoundationForum