

Is Western Water Law Sustainable?

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1. Western water law was not designed to provide sustainable use of water resources, but to allocate a scarce resource among "productive" (consumptive) uses.
2. *Water law* is part of natural resource law, not environmental law.
3. Water law is a utilitarian product of history and geography.
4. Oregon codified the prior appropriation doctrine in the 1909 Water Code, and the basic framework remains the same, with a few notable additions.
5. Federal reserved rights are superimposed on the system of state-issued water rights.
6. Recent environmental laws coexist awkwardly with the historical framework of water laws.
7. If you started out to design a system of sustainable water management and water law, you would not come up with the current system.