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## Reason Energy and Environment Newsletter

June-July 2015

*Edited by Julian Morris*

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### Lessons for California from Australia's Water Reforms

As Californians search for solutions to the worst drought in the state's history, some have looked across the Pacific to the example of Australia, which has dramatically improved its management of water over the past two decades. Unfortunately, [some advocates](http://click.email.reason.org/?qs=89dd93027355f76fb2e0740aadf3b27bf372e1c705d4b99302543079f67c832d) <<http://click.email.reason.org/?qs=89dd93027355f76fb2e0740aadf3b27bf372e1c705d4b99302543079f67c832d>> seem to have misconstrued the central lessons from Australia, suggesting that it justifies more government intervention.

A [new paper](http://click.email.reason.org/?qs=89dd93027355f76fd9c9850bc2f1be84f6006d9686eb0e58b3d3cf86c8288d77) <<http://click.email.reason.org/?qs=89dd93027355f76fd9c9850bc2f1be84f6006d9686eb0e58b3d3cf86c8288d77>> for Reason Foundation by top Australian environmental economist Jeff Bennet shows that while government has a role to play in improving the definition, enforcement, and tradability of water rights, it should otherwise get out of the way. [As I note](http://click.email.reason.org/?qs=89dd93027355f76f6ee2e29a1f64d62a4d410d0f6832decaac75241414ead5b6) <<http://click.email.reason.org/?qs=89dd93027355f76f6ee2e29a1f64d62a4d410d0f6832decaac75241414ead5b6>>, the lessons for California are clear:

1. California needs a quick, simple and inexpensive means of determining the actual amount of water allocated to each rights holder. Since precipitation varies from year to year, such allocations would ideally be shares of the total, rather than absolute amounts.
2. California should change its "beneficial use" requirement so that rights owners may store their water; currently, they must use it or lose it. Rights owners would

then conserve water during wetter years, so that it might be available for use during years of drought.

3. Restrictions imposed by state and federal agencies on trading water must be eliminated so that water can be put to its highest valued uses.

4. Water storage and transportation infrastructure owned by state and federal governments should be sold or leased to private companies or nonprofits that have stronger incentives to ensure the infrastructure is maintained, improved, and used to store or move water where it is most highly valued.

5. Instead of requiring mandatory diversions for "environmental" uses (which currently account for about fifty percent of all the state's fresh water), California should allocate funds (perhaps including some of the \$7.5 billion water bond voters supported last November) to match those raised by non-profit conservation groups to purchase water rights. Those non-profits would then have to take into account the value others place on water when prioritizing investments in conservation of species and habitat, rather than lobbying for "free" transfers.

6. Convert municipal water agencies into private, mutual companies. Prices would then be determined by the shareholders, i.e. domestic users, and would better reflect both scarcity and supply costs. Consumers might then choose to use less water but would not be forced to do so by diktat.

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## **EPA Dramatically Expands Waters Under Federal Jurisdiction**

While Australia's experience demonstrates the importance of decentralized management, federal water policy seems to be headed in precisely the opposite direction. At the end of May, the Environmental Protection Agency and the Bureau of Land Management released their final "Clean Water Rule"

<[http://click.email.reason.org/?qs=](http://click.email.reason.org/?qs=89dd93027355f76f077727fada58ff14c02088e64cf30f3d3cdc8c40e9e9e959)

89dd93027355f76f077727fada58ff14c02088e64cf30f3d3cdc8c40e9e9e959>, which expands the definition of "Waters of the United States"

<[http://click.email.reason.org/?qs=](http://click.email.reason.org/?qs=89dd93027355f76f2aa9fc85396cd6e0eb21fd1db8e3c249aba5fa1c109420fa)

89dd93027355f76f2aa9fc85396cd6e0eb21fd1db8e3c249aba5fa1c109420fa>

and thereby their jurisdiction under the Clean Water Act. While the stated intention of the Clean Water Act is to improve water quality, the likely consequence of this new rule is to replace local incentives to manage water in accordance with local needs with arbitrary federal controls. In many cases this is likely to have the opposite effect to that intended.

The ostensible purpose of the Clean Water Act is to regulate discharge of pollutants into what are known as "navigable waters." But over the decades the Environmental Protection Agency has expanded this to include isolated wetlands and pools of water unconnected to navigable waters, and tiny streams that can only be navigated by a toy boat, not the type of adult-sized boat for which the

legislation was originally intended and common sense dictates. This regulatory expansion has caused significant hardships for many landowners who find, among other things, that low-lying areas that only hold a few inches of water when it rains, or seasonal streams that are dry for much of the year, are subject to regulation and permitting under the Clean Water Act - all of which is enforced with threats of jail time and huge fines.

Now the Environmental Protection Agency has extended the regulatory reach of the Clean Water Act to encompass even more waters that are not navigable <<http://click.email.reason.org/?qs=89dd93027355f76f8e616230dd69db8788c5248a61fa6ad1bac108382753b4d1>>, including: irrigation ditches if any portion was dug from a watercourse that flows eventually, but not necessarily directly, into a navigable water; any watercourse or water drainage so long as it has a bank, bed and high water mark; and any water feature, including those that are not navigable, within  $\frac{3}{4}$  of a mile of a so-called "jurisdictional water" as long as the feature meets any one of nine extremely broad "significant nexus" criteria.

This expansion will not only create significant hardships for America's landowners; it will also likely be detrimental to endangered and at-risk species <<http://click.email.reason.org/?qs=89dd93027355f76f3bc6065edf9890bc935c87a37577d9b7c1845b8571afef0f>>. America's landowners are the key to endangered species conservation because they own more endangered species habitat than the public sector. Yet the Endangered Species Act, like the Clean Water Act, can create significant financial hardships for landowners that harbor endangered species. Now, with the added burden of the new definition of Waters of the U.S., landowners will be under increasing pressure, with the result that they are less likely to be amenable to conserving endangered species, which includes collaborating with public agencies and allowing researchers on their land to conduct surveys for species.

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## **Celebrate Endangered Species and America's True Conservationists, Not the Endangered Species Act**

In a [recent commentary](http://click.email.reason.org/?qs=89dd93027355f76f25a654921d98ae81df4669a0240bf19d9dc54e060f6d0d34) <<http://click.email.reason.org/?qs=89dd93027355f76f25a654921d98ae81df4669a0240bf19d9dc54e060f6d0d34>>, Reason Foundation's Brian Seasholes reflects on America's marvelous diversity of species and the private landowners who are the key to successful endangered species conservation - as well as the counterproductive way the federal government goes about protecting these species, most notably the Endangered Species Act.

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## The Real Story Behind the Teddy Bear's Conservation

In this op-ed <http://click.email.reason.org/?qs=89dd93027355f76fedd13aebe5abdbebaa01bb22e2bf597d556520076dec0712>, Reason's Brian Seasholes notes that the "teddy bear" is poised to come off the endangered species list. The proposed delisting (which will take about a year to finalize) is being hailed as a great success story of cooperative, feel-good conservation that allegedly resulted from listing under the Endangered Species Act. In reality, the story is far different. Contrary to popular opinion, the Louisiana black bear - nicknamed "teddy bear" after President Teddy Roosevelt refused to shoot one under what he considered unsporting conditions - is a symbol of how the Endangered Species Act works through threats, intimidation and compulsion to gain landowners' "voluntary" compliance.

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## Arbitrary Sage Grouse Decisions

The Interior Department [decided not to list](http://click.email.reason.org/?qs=89dd93027355f76f55a0eca445f0164440a6451608948f3bf91f8f37ef3bd249) <http://click.email.reason.org/?qs=89dd93027355f76f55a0eca445f0164440a6451608948f3bf91f8f37ef3bd249> the bi-state population of the greater sage grouse, which lives along the border of California and Nevada, under the Endangered Species Act. This is good news for the bird and the landowners who harbor it. Due to the Endangered Species Act's penalty-based approach, listing under the Act can often backfire by creating strong incentives for landowners to stop conserving the species, and to destroy and degrade habitat.

Yet last November the Interior Department [decided to list](http://click.email.reason.org/?qs=89dd93027355f76f3b3fe99e4327605ef03c6ed4553d7a4ecbdda1bbceae9813) <http://click.email.reason.org/?qs=89dd93027355f76f3b3fe99e4327605ef03c6ed4553d7a4ecbdda1bbceae9813> the Gunnison sage grouse, which is closely related to the bi-state population and has a similarly small population, even though more than two decades of conservation work, especially in Colorado, resulted in a slowly increasing population (as Reason's Brian Seasholes has written about [here](http://click.email.reason.org/?qs=89dd93027355f76f0632398e522845a18aa331fcd27f21c1ac2768cd18e80c4d) <http://click.email.reason.org/?qs=89dd93027355f76f0632398e522845a18aa331fcd27f21c1ac2768cd18e80c4d> and [here](http://click.email.reason.org/?qs=89dd93027355f76f3d11381c2a2d07bd266620ea641d34610bf7a3c93c7fa04a) <http://click.email.reason.org/?qs=89dd93027355f76f3d11381c2a2d07bd266620ea641d34610bf7a3c93c7fa04a>).

So despite that far more conservation measures, over a much longer period of