



Water Wars: Who Controls The Flow?

by NPR STAFF

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All Things Considered

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Amelia Templeton for NPR

So often, we take water for granted. We turn on the faucet and there it is. We assume it's our right in America to have water. And yet, water is a resource. It's not always where we need it, or there when we need it.

Rivers don't follow political boundaries — they flow through states and over international borders. And there are endless demands for water: for agriculture, drinking, plumbing, manufacturing, to name just a few. And then there's the ecosystem that depends on water getting downstream.

So what are our legal rights when it comes to water? And who decides?

There are two doctrines that govern surface water rights in the U.S. — one for the West and one for the East.

'A Reasonable Right'

The riparian doctrine covers the East. "[Under] the riparian doctrine, if you live close to the river or to that water body [or] lake, you have reasonable rights to use that water," says Venki Uddameri, a professor and the director of water resources at Texas Tech University.

The Western U.S. uses the prior appropriation doctrine. "As people started exploring the West and started looking for water for agriculture and mining, there was a need to move water away from the rivers," Uddameri tells Jacki Lyden, host of weekends on *All Things Considered*.

People wanted a claim to water but often lived too far away from a river for the riparian doctrine to make any sense. So the prior appropriation doctrine was devised.

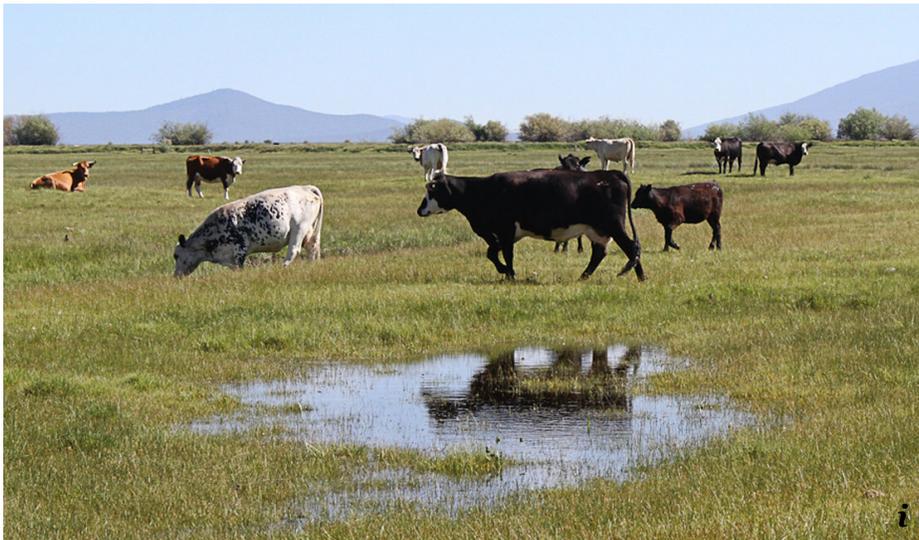
Uddameri explains: "It allocates rights based on who started using the water first. So if you are first in time, you are first in rights. And historically, it was based on a permitting process where you go and say you asked for the permit first, so you became the first user.

"But then there's been a shift saying not first use strictly based on who asked for the permit first, but who was actually there first," he says. "So the Indian tribes who were there first may not have asked for a permit, but there's recognition now that they were the first users of water, so they get that first appropriation."

Two rivers on opposite sides of the country — the Klamath and the Chattahoochee — may provide lessons for the inevitable and growing dispute over how we manage our most precious natural resource.

Conflict Over The Klamath

Prior appropriation has sparked controversy in Oregon. This week, water regulators ordered ranchers near the headwaters of the Klamath River in southern Oregon to shut down their irrigation pumps.



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The state says it was necessary to protect treaty rights of Indian tribes who live downstream. But the water shut-off jeopardizes a multimillion-dollar cattle ranching industry, reports Amelia Templeton from Oregon Public Broadcasting.

The Sycan River is one of dozens of tributaries that join to form a massive lake in Southern Oregon's Klamath Basin, which in turn feeds the Klamath River. Tributaries like the Sycan provide water for salmon and suckerfish all along this river system.

The Sycan is also where rancher Becky Hyde gets her water. "We irrigate out of the Sycan River, and water makes things magical wherever you end up putting it," she says.

Hyde's ranch is a square of bright green that stands out in the dry juniper and sagebrush. She has a water right — a permit from the state to take water from the river every summer for her 500-acre ranch. Hyde uses the water to grow grass to feed beef cattle.

Until last week, a giant pivoting sprinkler was irrigating a pasture where she's raising about 80 young cows. Now, Hyde is trying to figure out somewhere else to move the cattle. She's one of many ranchers along the upper tributaries of the Klamath River whom the state ordered to stop irrigating.

The move came after the Klamath Indian Tribes, just downstream, said they needed more water left in tributaries to protect their fishery. Hyde is upset, but she also respects the tribes' right to the water.

"This is a tragedy for this community and for our family personally," she says. "But it is also a wake-up call to say people besides agriculture have a water right."

'You Don't Own The Water'

Water rights attorney Bill Ganong says, "When all of this country was developing, no one was really thinking about fish or wildlife."

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For decades, the government encouraged draining marshland and converting it to farms. As a result, Ganong says, the state of Oregon handed out lots of water rights.

"You don't own the water," he says. "Your water right is the right to use it; it's a right of use."

In an arid place like the Klamath Basin, there often isn't enough water available for everyone who has a right to use it. And the person with the oldest water right gets all the water they are entitled to first.

For 38 years, groups in the Klamath Basin have contested who holds the senior water rights on tributaries like the Sycan River. The state finally reached a decision this year. The date of the tribe's right? Time immemorial.

Every spring, the Klamath Tribes hold a ceremony to celebrate the return of the suckerfish. The now endangered suckerfish were once the staple food of this tribe.

They look a little like miniature sharks with a vacuum cleaner for a mouth. Don Gentry, chairman of the Klamath Tribes, says the tribes have not been able to fish for suckerfish for the past 27 years.

"The condition of our fish is just so dire," he says. "They're on the brink of extinction. And I believe that those fish are an indicator of the health of the watershed."

The tribes are in negotiations with ranchers to come up with a better plan to share water in dry years. Gentry says even though it's an uncomfortable situation, the Klamath Tribes have a responsibility to

ensure that suckerfish — and the river ecosystem itself — survive.

'The Fluid Of This Century'

Water management may seem like it would be more of a problem in the arid West, but it's a national issue.

"Oil was probably the fluid of last century where there was a lot of turmoil, and I think water is the fluid of this century," says Michael Walsh, a major general with the U.S. Army Corps of Engineers.

"The Corps of Engineers operates hundreds of reservoirs across the nation," he tells Lyden, "and we impound trillions of gallons of water, regulating the flows of multi-state river systems, but all of them have [been] put into effect by congressional mandates. We did a lot of the construction in the 1920s through the 1940s."

Since those dams were constructed, demands on the water stored behind them in reservoirs has changed.

Chattahoochee Tug-Of-War

That's the case for the Chattahoochee River. It flows from the Georgia mountains through metropolitan Atlanta, down Alabama, through Florida and then into the Gulf of Mexico.

As metro Atlanta expands, the city sucks more water out of the Lake Lanier reservoir, on the Chattahoochee, which means people living downstream, in Alabama and Florida, have less.

And since the Army Corps of Engineers operates the four federal dams on this river, the Corps is right in the middle of the conflict.

Operation orders come from Congress, which decides what the Corps should do based on compacts worked out between the three states.

But, Walsh says, "in this case, the Congress did put a compact together and they did work for, I think, 5 to 8 years to see if they [could] work through that. The states couldn't and have been bringing lawsuits against the Corps of Engineers and other federal agencies to prevent us from updating the water control plan until they come to some agreement."

A Lengthy Court Battle

Gil Rogers is an attorney with the Southern Environmental Law Center who has been following the Chattahoochee water wars. "This is an issue that's been going on for literally decades," he says.

"It really began when the Corps of Engineers, which operates the dams that control the lakes above Atlanta, started to think about revising how it was going to manage those dams," Rogers tells Lyden. "And of course that means there's going to be a difference in how much water goes downstream."

"And so Georgia's neighboring states, Alabama and Florida, were paying very close attention and ultimately all of that ended up in court," Rogers says. The court battle went on more than 22 years, he says.

Interstate compacts were created to try to resolve the conflict, and the issue went all the way to the Supreme Court.

"These river basins are not following political boundaries," Rogers says. "They flow from one state to another and from one community to another, and there's a lot of tension over how much water is going to be available for everybody to do all the things that we need to do with these rivers."

Rogers says the Corps of Engineers has the next move: "They're revising their protocol for operating their dams, and we expect that to take another few years. They're going through an environmental impact review process now ... we'll have to see what they come up with in terms of how much water they're going to be releasing from these dams."

A Focus On Conservation

What needs to happen to reach an acceptable resolution?

"We've got to continue emphasizing water conservation and water efficiency, particularly in metro Atlanta but going all the way down the system — and that's for all water users," Rogers says. "The Flint River is a companion river to the Chattahoochee and it's basically been put in a permanent state of man-made drought because of all the water withdrawals that happen from that river. It's just not a sustainable pattern."

Are there any lessons from this, nationally?

"We've seen a lot of these conflicts play out in the West," Rogers says. "I think we really need to start thinking about how we're growing, where we're growing, and whether there's enough water available to sustain that growth."

"And that's not what we have been used to doing in the past," he says. "It's been much more opportunistic and the water supply issue has been more of an afterthought than a forethought. And so I think one lesson is just to put good management policies in place on the front end, so that you're not trying to play catch-up. [That] is something that will ultimately guarantee good, sustainable economic growth as well as better environmental health for these river systems."

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