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Carl J. Bauer, Siren Song: Chilean Water Law as a Model for International Reform

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Hunter and Waterman ascertained that because of the incredible diversity in the regulatory environment, strict enforcement is unlikely to occur, but implementing several steps could promote a strict approach. If EPA can obtain more funding, EPA could increase the number of enforcement personnel, making strict enforcement more feasible. Another step would be to fortify the provisions of environmental laws at both the state and federal levels. Additionally, EPA could make the burden of proof against violators more reasonable. Another change would be to ensure a portion of the money from civil penalties makes it to EPA or to the state environmental agencies. In addition, an increase in administrative fines and an increase in permitting costs would aid in strict enforcement. Hunter and Waterman found that to accomplish minimizing the variations of enforcement across the states we must promote the strict approach, utilize technological development, change the focus from outputs to outcomes, or change the focus of the NPDES enforcement to one that tries to internalize the costs of pollution.

Lastly, critics have said that environmental regulation has failed because the command and control regulatory approach is inflexible. The authors determined that moving toward an economic-incentive based method would offer a variety of different approaches that would aim at internalizing the external costs of pollution. According to proponents, this system would be more efficient, effective, and easier to implement. Hunter and Waterman conclude that in the framework of a diverse regulatory environment, economic incentives may be a more suitable system.

Kathleen Brady

Carl J. Bauer, *Siren Song: Chilean Water Law as a Model for International Reform*, Resources for the Future, Washington D.C. (2004); 172 pp; \$33.95; ISBN 1-891853-79-1, hard cover.

Siren Song provides an overview and analysis of the free-market Chilean Water Model in the context of international water reform. Bauer, a water researcher with extensive experience in Chile and elsewhere, brings a social science perspective to the largely economic discussion on water rights in developing Chile. The author takes the reader through background on the international water policy debate, an historical overview of the free-market Chilean system, the issues surrounding reform of the Water Code, a present-day analysis of its successes and failures, and a look towards the future.

This book evaluates the 20-plus year history of the Chilean Water Model in order to provide the reader with insight into the Chilean experience and to highlight the significance of Chilean water policy in the international arena. The Chilean Model has treated water rights as heavily privatized, fully marketable commodities, and the international

economic community has largely hailed this free-market approach as a success. However, likening the Chilean Model to the alluring but dangerous song of a siren, Bauer attempts to show that initial praise of the system has failed to recognize some of its severe inadequacies. In short, he examines whether the current free-market framework is capable of handling modern water issues, such as inter-basin management and environmental quality. Furthermore, as applied within the international context, the author explores the lessons learned from the Chilean Model and argues for a more qualitative and diverse economic approach.

The first chapter, *The International Context: The Water Crisis and Debates about Water Policy*, focuses on international trends in water use and water management perspectives. Multiple competing interests are driving the current global water crisis, including social, economic, and environmental demands. As such, three themes have dominated international water policy debates: 1) integrated water resource management ("IWRM"), 2) economic approaches that rely on market incentives, such as the Chilean Model, and 3) emphasis on poverty and social inequity. The IWRM approach recognizes the need for comprehensive and interdisciplinary water management and closely parallels concepts of sustainable development. The so-called Dublin Principles articulate this approach and call for recognition of water as an "economic good." The chapter then explores the conflicting perspectives on the "economic good" principle, from narrow, market-oriented policies that focus on costs, to broader approaches that incorporate human rights and other values. The Chilean Model has been in the international spotlight because it represents the extreme of market-oriented policies, and because it received widespread promotion by the World Bank. Nonetheless, Bauer asserts that this early support was premature and lacked empirical data on whether the Chilean Model truly marked victory for neoliberal economists.

Chapter two, *The Free-Market Model: Chile's 1981 Water Code*, provides an historical overview of how the Chilean system developed and the unique attributes that affect its current implementation. The 1981 water reforms embraced the laissez faire economic principles of the incumbent military government regime and resulted in vast changes to the water system. The new Water Code separated water rights from land ownership and privatized their use, almost eliminating any form of government control, such as permits, taxes, or fees. This new neoliberal system was a vast pendulum swing away from the agrarian reforms of the 1960s, which resulted in a social redistribution of water where all water rights were in the public domain. The purpose, in part, of the 1981 reforms was to provide economic incentives for private investment in the country's deteriorating infrastructure of dams and canals.

However, over the last twenty years since the Water Code's implementation, Chile has struggled to reconcile the free-market model with

its changing social system, as discussed in the next chapter, *Reforming the Reform? Policy Debate Under Chilean Democracy*. During the 1980s, there was little debate over the water policy because the government remained under military control and the water system was still in its early stages of implementation. However, many changes occurred in Chile at the beginning of the 1990s, including a transformation to a democratic government, rapid economic growth, and emerging issues with putting the system into practice. Hence, the new legislature called for reforms to the Chilean Model because of social inequities created by the large water monopolies, inefficiencies resulting from non-use and hoarding of water, the inability of the private sector to fix the crumbling infrastructure of Chile's water system, and the failure of the Water Code to address other emerging water issues such as water quality.

Over the subsequent decade, two major rounds of proposed reform took place. The first wave of proposed reform failed largely because it attempted to solve efficiency issues through a use-it-or-lose-it policy for non-use, which neoliberal members heavily objected to. The second round reform was more limited and pragmatic, proposing fees for non-use, judicial oversight of water disputes, and consideration of in-stream flow rights to promote water quality and environmental protection; nonetheless, the proposed amendments met strong opposition which paralyzed the legislature. Finally, in 1997, the legislature passed very limited amendments to the Water Code, but the debate continues over whether the rejected tax and fee structures could strengthen the legal security of water rights, provide incentives to use water, or increase efficiency within the system. Arguably, the free-market system has been far from a complete success in Chile, and the country has continually struggled to amend its shortcomings.

Chapter four, *The Results of Chilean Water Markets: Empirical Research Since 1990*, provides an external examination of whether the Chilean Model has succeeded. In the international arena, Chile's free-market approach is so representational of neoliberal policies that the debate has become ideological instead of pragmatic. Therefore, organizations such as the World Bank have lauded the Chilean Model as a success while ignoring some of its lackluster performance in practice. The United Nations, however, has been more careful in its assessment, taking notice of the large gaps in the economically driven system, such as social and environmental policy. Nonetheless, the overall trend in the early 1990s was a lack of any real data on system performance, leading to exaggerated or misguided claims. Bauer then discusses some of the more recent research on the system, finding that the market was generally inactive for the first decade and that problems have surfaced regarding efficiency, monopoly, reallocation, and the strength of title. Recent analysis suggests that the current system is too inflexible to deal with more comprehensive problems, such as environmental impacts

and water quality, return flows, paper versus actual rights, inter-basin management, multiple use, non-consumptive use, seasonal flows, infrastructure, and social equity. The author then reviews a number of case studies regarding management for non-consumptive water uses in a number of different basins. Ultimately, the system is somewhat paralyzed because the Constitution vests very little authority in the water agencies or courts to address water disputes, and thus far amending the Constitution for water reform has proven difficult.

In the final chapter, *Conclusions and Lessons about the Chilean Experience*, Bauer asserts that there is growing consensus on the need to reform the Chilean Model to address the global water crisis. Based on the original goals of the 1981 amendments, the Chilean Model achieved increased legal security for private water rights, freedom of use, autonomy, and developing hydropower infrastructure; however, it failed to increase efficiency or provide for private development of water infrastructure, and it resulted in power monopolies. Furthermore, the Chilean Model is ill-equipped to handle the more modern water issues of river basin management, resolution of conflicts, social equity, and environmental protection. Therefore, in answering the essential question of whether the Chilean Model, a narrow and free-market approach to water economics, is compatible with IWRM, the author asserts that the answer is no. The Chilean Model is part of an ongoing debate on how we should define water rights, and Bauer proposes that a better alternative would be interdisciplinary, provide for public participation and representation in the process, and be more flexible to deal with evolving conflicts.

Siren Song adds an informed and pragmatic voice to the debate on whether the Chilean Model provides a successful blueprint for water reform. The book presents a much needed counterpoint to globally influential organizations, such as the World Bank, that have championed the free-market approach while ignoring its inadequacies. Bauer avoids some of the classic ideological pitfalls when discussing water policy and instead relies on a scientific, results-based approach in his analysis. At a time when the global water crisis is at the forefront of environmental concerns, understanding the strengths and weaknesses of this infamously free-market system is paramount for any practitioner who desires an in-depth understanding of economic water policy. Moreover, *Siren Song* reiterates the call for better social and environmental policies in water use and management.

Sarah Quinn