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## Water and the Market Economy

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## Water and the Market Economy

water rights certificates if the potential user built pipes and pumps, but never put a single drop of water to beneficial use. The Supreme Court stated that this exceeded state authority, but current legislation may allow these future water rights.

The session concluded with a question and answer session that highlighted the problems associated with allowing municipalities to hold future water rights: what must municipalities show to retain these future rights without actually putting the water to beneficial use and what constitutes forfeiture of these rights?

*Amy Petri Beard*

#### WATER AND THE MARKET ECONOMY

Because of the scarcity of water in the American West and increased demand, many have seen an opportunity for profit in the area of water resource development. This panel, moderated by Reagan L. B. Desmond, an associate with the firm of Ball Janik, LLP in Bend, Oregon, discussed commodization of water resources, the establishment of water markets, and anti-speculation laws. The panelists were Pat Donoho of the International Bottled Water Association in Alexandria, Virginia, Richard E. Howitt, professor and chair of the Department of Agricultural and Resources Economics at the University of California at Davis, and Sandra Zellmer, professor at the University of Nebraska College of Law. The discussion provided an overview of what water attorneys need to know about emerging later markets.

The major point of contention in the area of water and market economics is whether water should be treated as a commodity. Currently, many western states have laws that prohibit speculation in water and require any appropriator to have an existing beneficial use for the water. However, Professor Zellmer argued that anti-speculation laws and market development are not mutually exclusive because of statutory exceptions to anti-speculation laws as applied to municipalities, foreign and developed water resources and instream flows. Professor Howitt agreed with this analysis, stating that water is already treated as a commodity, although not a widely traded one. Water markets currently exist in the West; however, they are largely dominated by leases. Professor Howitt stated that these markets need to evolve to provide for greater risk sharing among market backers and beneficiaries, accommodate conjunctive use, and sell conveyance capacity as well as stored water.

*Nora Pincus*