

1-1-2008

Desheng Hu, Water Rights: An International and Comparative Study

Patrick Greenleaf

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

Custom Citation

Patrick Greenleaf, Book Note, Desheng Hu, Water Rights: An International and Comparative Study, 11 U. Denv. Water L. Rev. 421 (2008).

This Book Notes is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Desheng Hu, Water Rights: An International and Comparative Study

BOOK NOTES

Desheng Hu, *Water Rights: An International and Comparative Study*; IWA Publishing (2006); 240 pp; \$146.00; ISBN 1843391082; hard cover.

Desheng Hu's *Water Rights: An International and Comparative Study* is part of the Water Law and Policy series printed by IWA Publishing. In seven chapters, the book outlines principles and structures for designing an ideal water rights system in water shortage jurisdictions, specifically through the comparative studies of water-strapped China, South Africa, and South Australia. Hu also includes in the book's annex the 2002 Revision of the Water Law of the People's Republic of China.

The world's water resources, states Hu, are in crisis. *Water Rights* attempts through analysis and comparison to determine appropriate legal mechanisms that water shortage jurisdictions should establish and strengthen in order to ensure the sustainable, reasonable, equitable and efficient utilization of water resources. Hu focuses primarily on the water shortage problems in China, which "has experienced serious water crises in the past, and remains threatened by the increased potential for future water-related catastrophes, including natural disasters such as drought and flooding." *Water Rights* then proceeds to examine what lessons international law, and more specifically the national water law regimes of South Africa and South Australia, might provide for creating an effective domestic water rights legal system for a water shortage jurisdiction such as China's.

Water Rights' first principal section, Chapter 2, sets the foundation for the remaining discussion by outlining the key term "water resources." Hu concludes that although water resource commonly refers only to freshwater, related surroundings also form other types of water resources (such as hydropower and navigation potential) that he considers part of a water rights scheme. Hu then reviews the evolution of the notions concerning water rights, concluding that today there are three aspects of water rights: the property right on water resources, the human right to water, and the environmental right to water. "Under a good water rights mechanism, these three aspects . . . should be addressed with care."

Chapter 3 outlines the current water resources crisis in China and provides an overview of the legal mechanisms currently in force. China currently sustains approximately 22 percent of the world's population but only has 6 percent of the world's renewable water resources, making it one of the world's thirteen "thirstiest" countries. In addition, China suffers from a disproportionate availability of water in

terms of both location (far more water is available in the south) and time (wide fluctuations in precipitation from year to year). Water pollution is also a serious problem in China: nearly 50 percent of river length and 90 percent of city water supply are polluted to differing extents.

Hu states that although the current provisions of Chinese water law address the three aspects of water rights to some extent, certain issues require further attention if China is to properly address its water crisis. First, the China Water Law 2002 inadequately and inconsistently defines "water resource," which often leaves the legal status of certain resources in question. Second, although technically under the law only the state owns water resources in China, in practice there is individual or collective ownership of water resources. For example, individuals and collective organizations often collect water into ponds, local governments contract for transferred water resources, and individuals purchase bottled water. Third, the China Water Law 2002 does not clearly acknowledge either a human right to water or an environmental right to water, enabling the Chinese government and individuals to ignore or relegate in importance such provisions because of their weak status in law.

In Chapter 4, Hu discusses the influence of international law on domestic legislation relating to water resources and water rights. Through examination of the United Nations Committee on Economic, Social and Cultural Rights' General Comment 15 (interpretation of the content of human rights provisions with respect to the right to water), Hu determines that the human right to water has a clear legal status in international law and that states have a legal obligation to take certain appropriate measures in their domestic laws to set a priority for this right. This obligation includes evaluating existing legislation, establishing indicators and benchmarks, and creating effective remedies and accountability mechanisms.

Hu also examines international documents and determines that there is an environmental right to water. This right entitles the environment or nature to the minimum amount of water with appropriate quality to sustain the environment, nature or ecosystem in a healthy order or status. Hu then specifically examines Agenda 21, an environmental compact adopted by more than 178 governments at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992. In accordance with Agenda 21, all states are under a duty to take whatever steps are necessary (according to their capacity and available resources) to ensure that the environment enjoys the right to water. This includes reviewing existing policies, adopting a national strategy, and ensuring sufficient coordination between all levels of authorities.

Chapter 5 reviews the legal solutions implemented by the similarly water-strapped jurisdictions of South Africa and South Australia. Hu

selected these jurisdictions because South Africa and South Australia have (1) a more severe water shortage than China, (2) a necessary inter-basin water transfer, (3) recently reformed or modernized in written law in accordance with modern international law, (4) made significant achievements in water rights areas.

Hu discovers that both South Africa and South Australia clearly define the term “water resources” with their water laws. However, the two jurisdictions’ different backgrounds have led to different understandings of water rights. For example, in South Africa, there are very few provisions concerning the property right to water resources. South Africa strictly regulates water rights and water resources, making it hard to say there is a property right to water resources in a sense of market economy. But in South Australia, a water right also encompasses the right to take water from a natural source and Australia completely regulates this by statute. The right to take water from a prescribed water source with a water license is a property right and may be transferred under the conditions imposed by law.

In addition, though both South Africa and South Australia pay a great deal of attention to the environmental right to water, the human right to water has not played as large a role in South Australia as it has in post-apartheid South Africa. South Africa, for example, makes the human right to water a priority through laws ensuring that the water required to meet basic human needs enjoys priority of use by right and by ensuring that each citizen has access to basic water services.

Chapter 6 presents the author’s comments and observations on creating an improved water rights system in China and other water-shortage jurisdictions. Hu also makes specific recommendations to change the China Water Law 2002. First, Hu suggests that the term “water resource” should be defined more comprehensively, similar to the laws in both South Africa and South Australia. This change would include defining water resource as well as other important terms in one article or one section to avoid confusion. Water resource would include not only the water itself, but also the watercourse or lake, hydraulic power resources, water transport resources, as well as their related surroundings.

Second, Hu advocates state ownership over water resources in their natural state, but private ownership in certain conditions. These conditions would include ownership of water to meet basic human needs and water drawn under a regulated license system. Individuals could therefore have ownership over physical water, rather than all water resources.

Third, China water law should clearly declare the human right to water and the environmental right to water, including appropriate prioritization and clear definition. Hu argues that China should not bury such important legal rights in the law (currently in the third chapter of

China Water Law 2002), but rather put them the "General Provisions" so that all subsequent chapters would reflect such rights.

Chapter 7 presents the author's conclusions. Hu states that with the development of Chinese society, there is a clear trend towards many different water needs. This development has increased the complexity and difficulty of the management of water. Only a proper water rights system can balance these competing needs and address these problems. Such a water rights system must first define what is the scope or definition of a water resource. It also must balance many competing water demands, keeping in mind the three aspects of water rights discussed above. And it must balance rights and duties to its people while acting in accordance with international law. China must improve its water law to deal with its current water rights issues. Following these principles may effectively address the issues that impair sustainable development in China.

In summary, *Water Rights* presents a fairly comprehensive examination of China's current water dilemma and provides useful suggestions for improvement of China's water rights system. Though at times the language is perhaps stilted and somewhat disjunctive, the author clearly presented and supported his main points. Those with an interest in the Chinese legal system as it pertains to water law should find *Water Rights* illuminating.

Patrick Greenleaf

John E. Thorson, Sarah Britton, and Bonnie G. Colby eds., *Tribal Water Rights: Essays in Contemporary Law, Policy, and Economics*, The University of Arizona Press, Tucson, AZ (2006); 291 pp; \$50.00; ISBN 0-8165-2482-3, hard cover.

Tribal Water Rights is a collection of essays by practitioners and academics working in various areas of Indian water law. This collection expands on the editors' previous work, *Negotiation Tribal Water Rights*, by analyzing settlements and cases to give advice for future negotiations. The four major parts of this book, *State-Tribal-Federal Relations*, *Quantification*, *Settlement*, and *Management* fulfill the purpose of giving practitioners the history behind tribal rights and ideas for today's negotiations.

Chapter 1, *Tribal Sovereignty and Intergovernmental Cooperation*, by Rebecca Tsosie, lays the foundation for the entire book by reviewing the history of tribal sovereignty in relation to the federal government. This chapter reviews the effects of treaties, sovereignty, and agreements with state and federal governments on tribal water rights. It also introduces the audience to the influential *Winters v. United States* decision, where the Supreme Court held that the federal government reserved sufficient water rights for the tribes when it established reservations.