

World's First Water Futures Exchange Threatens Right to Water for Fundamental Needs

Framing water as a business proposition marginalizes the fundamental needs of people and natural systems, which should be California's top priority

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On December 7th, the Chicago Mercantile Exchange offered trading of the world's first water futures contracts, or "water futures." [As explained by CME Group](#), which launched the futures, these are legally binding financial instruments that allow buyers and sellers to agree on a price for water on a future date. Investors already may buy futures contracts for commodities like wheat, as well as precious metals, stocks, bonds, and other assets. The water futures contracts differ from some others in that they do not require physical delivery of the water, since [distribution and regulations are highly regional](#). Instead, the water futures are solely financial, focused on price of a certain volume of water at a future specified date (currently, through 2022). Prices are [tied to](#) the [Nasdaq Veles California Water Index \(NQH2O\)](#), which is based on [transactions in California's largest water basins](#), where [scarcity has increased](#). Like other futures contracts, buyers and sellers can transfer water futures contract ownership to others via trades.

Before this development, the buying and selling of water rights only happened in California's \$1.1 billion [spot market](#), in which the right to access water is bought for immediate or near-term use. In dry years, this has translated to water buyers facing higher prices and more uncertainty. Water futures contracts seek to lock in a price to hedge against higher prices in the spot market in the future. Proponents accordingly argue that the exchange will help water users to better manage risk, given the uncertainty that severe droughts, [climate change](#), flooding, pollution, and increased demand are bringing to the availability of water. "Price certainty is what you're buying," said Clay Landry, managing director of WestWater Research, to [CNN Business](#),

[Critics of this development](#) argue that treating water as a tradable commodity puts a fundamental right into the hands of financial institutions and exchange participants who will be literally invested in threats to that right. Indeed, this risk is widely acknowledged, with [CNN Business](#) noting that the new futures market could "invite speculation from financial players, including hedge funds." CME Group itself shared with Bloomberg that [the exchange has already heard from institutional investors](#) such as asset managers and hedge funds. Landry with WestWater Research similarly [told Bloomberg](#) that he expects a "great deal of interest" from Wall Street.



[Critics contend](#) further that the water futures exchange ensures there "will be a group of Wall Street players who would be hurt monetarily by any policies that promote universal access" to this basic life need and fundamental right. [Basav Sen, climate justice project director at the Institute for Policy Studies](#), observes that as "clean, useable water is becoming scarcer, the incentives in capitalism work to commodify it, and work to ensure that the scarcity is an opportunity to make money," creating "profits from human misery."

The human right to safe, clean, accessible, and affordable drinking water and sanitation was first recognized by the [U.N. General Assembly and the Human Rights Council](#) in 2010, following on the [U.N.'s earlier statement](#) that the "human right to water . . . is a prerequisite for the realization of other human rights." The U.N. Office of the High Commissioner for Human Rights swiftly condemned the new water futures exchange in its statement, "[Futures market invites speculators, challenges basic human rights](#)," concluding that a water futures market could lure hedge funds and banks to bet on prices and repeat the disastrous 2008 bubbles on critical necessities.

In the U.N. statement, Pedro Arrojo-Agudo, the [U.N. Special Rapporteur](#) on the human rights to safe drinking water and sanitation, raised the risk of water futures markets “marginalizing and impacting the vulnerable sector of the economy such as small-scale farmers.” He added that water “has a set of vital values for our society that the market logic does not recognize and therefore, cannot manage adequately, let alone in a financial space so prone to speculation.” Arrojo-Agudo concluded that “the news that water is to be traded on Wall Street futures market shows that the value of water, as basic human right, is now under threat.”

Like the U.N., California has recognized the human right to “safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes,” through [passage of AB 685](#) (2012). The law requires agencies to consider this fundamental right when revising, adopting, or establishing relevant policies, regulations, and grant criteria.



In addition to the human right to water, rights of natural systems to water for fundamental needs has been advancing, both worldwide and in California. Joining roughly 50 U.S. municipalities and a dozen nations around the globe, Santa Monica was the first California city to recognize the inherent rights of waterways, in [Article 12](#) of the city’s Municipal Code.

A 2017 [Stanford Environmental Law Clinic Report](#) (Sivas, Melius, Sheehan, *et al.*, “Stanford report”) expanded on this concept for California as a whole, finding that “As a state, we cannot continue to blindly assert rights to water, when the source of the water itself has no right to exist.” The report concludes that “Recognizing waterways’ inherent rights to the flows that they need to survive is an essential step in reversing” the trend of “drying rivers, collapsing aquifers, and

disappearing species.” The Stanford report addressed the commodification of water in this context, stating that:

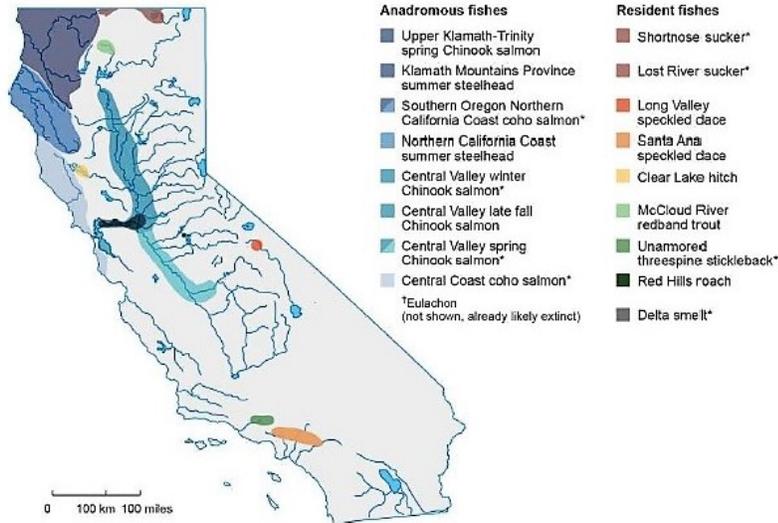
Water markets are the wrong lens through which to view the problem. Water is not real or personal property. It is essential to life itself, and for that reason the state holds it in trust for California’s people and environment and for future generations.

The Public Policy Institute of California (PPIC) recently examined the potential for dedicating specific volumes of water for ecosystem purposes, which would have the “characteristics of a senior water right.” The PPIC recommended establishment of an “independent ecosystem trustee or board of trustees” to manage such a process ([Grantham, Mount, *et al.* 2020](#)).

Efforts to commodify water ignore what the Stanford report describes as the “underlying essence of water” as “life-giving and undeniably public, rather than private and for-profit,” with predictably disastrous results. Despite California’s statutory policy to recognize the human right to water, the state is far from addressing this most basic need. [As observed by Susana De Anda](#), co-founder and director of Community Water Center, “over 1 million Californians are exposed to toxic water on a daily basis,” with [Latino neighborhoods disproportionately impacted](#).

Natural systems and species lack even this most basic attention to their own rights to water for fundamental needs. Among other threats, many California species, including iconic salmon populations, face a “high risk of extinction” during the next serious drought – a permanent consequence of short-term myopia around the value of water.

Many freshwater fishes are at high risk of extinction during the next severe drought



SOURCE: Hanak et al. (2015).

NOTE: This figure shows the ranges of 18 species considered highly vulnerable to extinction if the hot, dry conditions of the last major drought had persisted. Species marked with asterisks are listed as threatened or endangered. The drought ended in 2017, reducing the immediate threat. However, droughts of the future are likely to be increasingly severe as the climate warms, increasing the likelihood of extinctions (Cloern et al. 2011, Mount et al. 2018, Ullrich et al. 2018).

Framing water as a business proposition marginalizes the fundamental needs of people and natural systems, which should be California's top priority. The Stanford report articulates the "moral test" of government as "how it treats its most vulnerable members – particularly with respect to meeting their most basic needs." A price-forward water frame masks such needs and the strategies for achieving them.

For example, [CNN Business](#) describes potential water sellers as "water districts with surplus supply," without questioning the definition of "surplus." Not only does California currently fail to sufficiently prioritize the AB 285 human right to water or acknowledge the [inherent water rights of ecosystems](#), the state also regularly neglects critical legal tools for assigning water towards basic human and ecological needs. These legal tools include the Constitutional [reasonable use doctrine](#) and the [public trust doctrine](#), as well as basic water rights enforcement authorities. Defining current water claims as "surplus" water that can be used for generating profit reinforces the current inequities pervasive in California's water governance system, inequities that will be much harder to correct when new actors have a significant financial stake in the decisions being made.

By law, the state holds California's waters in trust for the benefit of all Californians as well as fish, wildlife, and habitats. Threats to these waters are increasing, and solutions to address relative scarcity are desperately needed – but ["the new futures don't solve the issue of scarcity."](#) Instead, the water futures are being touted as a ["hot topic"](#) among investors seeking previously-untapped sources of wealth. The water futures exchange by design enables participants to enter and exit the market with ease, making the system ripe for the type of market abuses seen in the past. This time, we will see widespread, permanent consequences, given the nature of water as essential to life itself.

California must prioritize its responsibility as a trustor to meet the fundamental water needs of people and ecosystems first and foremost, and reject new methods of pecuniary speculation that will further distort the moral governance of this most precious public and ecological good.

Linda Sheehan, 12/13/2020

Credits:

Photo by Johnny McClung (drinking water)

Photo by Klamath Riverkeeper (Scott River, CA)

Graphic by [PPIC \(Dec. 2019\)](#)