

# Water thieves

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## Abstract

The use of tropes is a defining feature of resource regulation and is fundamental to both the way legal theories have evolved and to the practical, localized interpretations and implementations of law. This article offers a discursive study of the "water thief" trope in order to clarify the ways in which language users are able to perform and construe broader notions about individual and communal rights to water. I underline the palpable shift from a conventional law-based account of theft to a logic incorporating key characteristics of criminality and immorality. The study builds on critical discourse analysis to show how the water thief trope creates a new water world in which "water thieves," although technically not criminals under formal law, are created and made to matter.

**Keywords:** environmental crime, tropes, discursive resources, water appropriation, environmental governance, law

## Résumé

L'utilisation de tropes est une caractéristique déterminante de la régulation des ressources et est fondamentale à la fois dans l'évolution des théories juridiques et dans les interprétations et mises en œuvre pratiques et localisées du droit. Cet article propose une étude discursive du trope du « voleur d'eau » afin de clarifier la manière dont les locuteurs de la langue sont capables d'exécuter et d'interpréter des notions plus larges sur les droits individuels et communautaires à l'eau. Je souligne le passage palpable d'une vision conventionnelle du vol fondée sur le droit à une logique intégrant les caractéristiques clés de la criminalité et de l'immoralité. L'étude s'appuie sur une analyse critique du discours pour montrer comment le trope des voleurs d'eau crée un nouveau monde aquatique dans lequel les « voleurs d'eau » – bien que techniquement pas des criminels au sens du droit formel – sont créés et amenés à avoir de l'importance.

**Mots-clés:** criminalité environnementale, tropes, ressources discursives, appropriation de l'eau, gouvernance environnementale, droit

## Resumen

El uso de tropos es una característica definitoria de la regulación de recursos y es fundamental tanto para la evolución de las teorías jurídicas como para las interpretaciones e implementaciones prácticas y localizadas del derecho. Este artículo ofrece un estudio discursivo del tropo del ladrón de agua con el fin de aclarar cómo los hablantes de la lengua son capaces de realizar e interpretar nociones más amplias sobre los derechos individuales y comunitarios al agua. Destaco el cambio palpable de una visión convencional del robo basada en la ley a una lógica que integra las características clave de la criminalidad y la inmoralidad. El estudio se basa en un análisis crítico del discurso para mostrar cómo el tropo de los ladrones de agua crea un nuevo mundo acuático en el que los "ladrones de agua," aunque técnicamente no son criminales en el sentido legal formal, son creados y adquieren importancia.

**Palabras clave:** crimen ambiental, tropos, recursos discursivos, apropiación del agua, gobernanza ambiental, derecho

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## 1. Introduction

In "Love Poem to Los Angeles," the 2014 Los Angeles Poet Laureate, Luis J. Rodriguez, (2016) writes of his deep love for the "multi-layered city, / unceremoniously built on hills, valleys, and ravines." His passion for the city is complicated, though, by a hate that makes him "want to kick its face in/ bone city, dried blood on walls/ wildfires, taunting dove wails/ car fumes and oil derricks/ water thievery/ with every industry possible/ and still a 'one industry town'...." In a subsequent interview about his poetry, Rodriguez explained that the things he hates about LA are "terrible things" arising from acts made legal because society wanted to declare them "okay . . . allow[ing] certain people to do certain things like steal people's land, steal their minerals, steal their labor, steal their water...." (Sexton, 2020). Rodriguez elaborated by retelling the story of Los Angeles taking billions of gallons of water from the Owens Valley, leaving the once verdant land parched and covered in toxic dust. He called that act a "terrible theft" even as he acknowledged it was technically legal.

Rodriguez's writing and commentary challenge us to reassess the political ecological relations that foment transgressions destructive to both humans and non-human nature. In reflecting on the power of law to sanction or excuse those acts, Rodriguez calls attention to the fundamental imbrication of law, moral intuitions, and environmental politics. His commentaries urge us to ponder a question of significant interest to political ecologists (Beitl, 2013; Kosek, 2006): How does use of resources become wrongful?

Political ecologists, in turn, have long recognized the salience of discourse in answering that question (Hajer, 1995; Moore *et al.*, 2003). In their sweeping examination of environmental conflicts and ideologies across four continents, Guha and Martínez-Alier (1997, p. 13) suggest that whether "in field or factory, in ghetto or grazing ground, struggles over resources have always been struggles over meanings." Engaging in those struggles, individuals and communities necessarily draw from what Sandra Harding (1988) refers to as "discursive resources": those metaphors, models, and narratives that organize production of information to create, disseminate, and, ultimately, legitimate perspectives on a topic, event, or objective. These discursive resources fundamentally shape not only the meaning of material resources – their uses, value, and the like – but also announce and perform our relationship to them (Svarstad *et al.*, 2018). As Kathleen Sullivan (2006, p. 5) has suggested, discourses "are materially constitutive in the production of the real, in particular in the production of material and differential outcomes in the lives and livelihoods of differently positioned people."

Building on these insights, I focus on the increasingly popular trope of the "water thief" as a discursive resource used to delineate "good" from "bad" water use across space and time. Tropes are figures of speech in which words are used in non-literal ways (Oswick *et al.*, 2004) that both reveal and constitute meaning (Nelson 1998, p. 30). Tropes can be surprisingly powerful influencers on thought and action, simultaneously accomplishing short-term goals through rhetorical persuasion and generating stable, normalized ways of thinking about persons and things (Agha, 2006).

To claim taking of water is theft does not, in fact, make it so, and I do not purport to judge – in a legal sense or otherwise – the "truth" of theft. What I am interested in is how the water thief trope contributes to the struggles over meaning and shifting perceptions about who gets to use water and for what purposes. Linguists and philosophers have long noted the rhetorical value of appealing to familiar terms with strong emotive meanings. Because tropes have specific associations, use of tropes capitalizes on those associations while subtly moving the audience towards the speaker's preferred position (Stevenson, 1938). The power of the water thief trope lies in its ability to construct the meaning of appropriation and to shape responses to it. Thieves are lawbreakers, and the trope of the water thief implies that the behavior in question constitutes something criminal, which in turn suggests a breach of acceptable social norms that evinces some moral wrongdoing or injury that offends against society and its members. The trope of the "water thief" moves negotiation over water use from the standard fare of legal analysis – who was using it first or using it best – to discourse about transgression, immorality, and illegality. Such intuitions are deeply rooted, often in conflict, and sometimes not rational; but they become apparent through discursive iterations of thievery. My analytic approach tracks this discourse to illuminate how actors discursively construct norms of water use by re-appropriating and re-situating an event, a response, and even the rules that inform and guide interpretation of problems and solutions.

## 2. Aims and scope

This article has two aims. The first is to provide a discursive analysis of struggles over water appropriation through analysis of the water thief trope. Tropes are both constitutive and regulatory; they create a version of the world by describing it as "just so" while simultaneously working to realize that version by "defin[ing] various forms of agency, administer[ing] silences and prescrib[ing] various forms of intervention" (Brosius, 1999, p. 278). Attuned to these multiple functions, I pay particular attention not only to how the water thief trope construes water uses but also to how it makes certain uses possible, by whom, and in what contexts. In the following sections, I elaborate various perspectives on the water thief to engage a set of key questions: How is the "thief" configured? Which actors and actions are enabled, and which are disabled by use of the trope? Where and how do theft discourses align with powerful interests? How does the use of the term "water thief" assume immorality beyond illegality? Taken together, the discursive constructions of the water thief can reveal the motivations, interests, and actions of various actors vying for access to and control of water as they work within—but also against—existing legal and political regimes.

My second aim is to use this analysis to provide a more nuanced explanation of the interplay between law, politics, and environmental governance. Political ecologists are attuned to the instrumental role of law in constituting power relationships in human-environment interactions, especially with respect to conflicts over distribution of resources. Environmental conflicts around water can be – and often are – construed as conflicts over the people who take advantage and who lose access to water under applicable laws (e.g., Gillespie, 2017; Kay, 2016; Müller & Boutié, 2022; Randle, 2021; Walsh, 2022). In such formulations, the law is generally treated as stable and unambiguous, readily found in the pronouncements of courts and legislatures, albeit subject to critique and challenge beyond those institutions.

Another way to explore the power of law is to treat it as something just as unstable and contested as politics and the environment (Cole & Bertenthal, 2017). Rather than emerging solely "in books," law is constructed via an array of symbols, stories, rituals, and worldviews (Coutin & Fortin, 2015). Sociologist Ann Swidler (1986) describes this process as the use of a cultural "tool kit." Swidler's metaphor emphasizes how law takes different forms at different moments, depending on which elements are emphasized, when they're emphasized, and by whom they're emphasized. Applying this understanding of law to analysis of environmental struggles broadens existing formulations of law's power beyond traditional notions of boundary-setting to focus instead on the law as a strategically constructed resource that can be deployed to shift the very scale and stakes of the conflicts in which it intervenes. This is precisely how tropes come into play: They function as "tools" that give form to law and enable it to be used in particular ways by players performing in different venues and for audiences apart from official courts, judges, trials, legislatures, and policymakers.

Tropes are discursive frameworks, but also material artifacts; they emerge from and are grounded in text (Kallis & Bliss, 2019). To collect those texts, I searched numerous databases, including Google, Worldcat, LexisNexis, and library catalogues for terms including "water" and "thief," and cognates such as "theft" and "stealing." I also relied on recommendations from colleagues, friends, and participants in my ongoing ethnographic exploration of environmental governance in California, and on my own encounters with the figure of the water thief in popular media, literature, and film. Because I was interested in the ways in which the "water thief" was invoked in popular and specialized discourses, my search for the trope was deliberately broad. The total number of texts I reviewed and analyzed amounted to more than 350.

I relied on critical discourse analysis (Fairclough, 2013) and a grounded theory approach (Charmaz, 2006) to illuminate the work the water thief trope accomplishes in the constructions of water use and relations among water users. In legal and technical terms, water is not the same; different states have different rules governing water use and different forms of water are regulated differently even within a single state. In following the water thief trope through its textual manifestations and turns of speech, I did not confine my inquiry to a specific controversy or case and the interpretations that emerged do not necessarily conform to existing regimes of meaning. Indeed, the very power of the trope lies in its ability to subvert conventional understandings and to discursively reconstruct new "realities." In the following sections I provide examples of these discursive manifestations. The examples I offer are illustrative rather than comprehensive, selected because they demonstrate common themes derived from my broader analysis. Conceived as an interpretative

project, my exploration of the water thief trope functions as an exercise in the recovery of the power of language to (re)organize ideas about the world, (re)describe it, and (re)orient the search for explanatory links.

### 3. Conventional accounts of water theft

As Americans moved West in the 1800s, displacing indigenous populations in order to mine, farm, and develop the land that they forcefully claimed, they created an urgent need to regulate distribution of land, resources, and, especially, water. Regulating water has never been easy. As one California court recently remarked, the material properties of water, and specifically, the "metaphysics" of hydraulic flow (People v. Davis, 2016) make it hard to hold water still, let alone hang onto it either as owner or usurper. As legal scholar Samuel Wiel (1911, p. 13) explained, water "is a substance wandering at large, obeying its own will and ever changing its form and position, uncontrolled by man...."

The material qualities of water, though, have not stopped people from trying to control water by regulating who can use it. Through lawsuits and legislation, new principles emerged and fundamentally changed rules about who could use water, when, and for what purposes. One of the biggest shifts in water rights can be seen with respect to fresh water, such as that found in rivers and streams. The history of water law in the American West is complex and nuanced. In general terms though, it might be characterized as a rejection of riparian rights in favor of the prior appropriation doctrine. Under the system of riparian rights which prevails in the Eastern states, landowners are each entitled to a continued "natural and usual flow" of the water (Hunt, 1907, p. 585) that runs over or next to their property. This assurance is grounded in the tenet that no person can claim a property interest in water and that everyone has use of streams, rivers, lakes, and the sea. Wiel (1911) described this common right as a "negative community of interest." Wiel's "community" refers to humankind as a whole, and the "negative" implies these things cannot belong to any one person or group: they are not subject to ownership. People have rights in the use and flow of running water, and it is those universal rights and uses that must be protected, rather than specific ownership interests.

In contrast, prior appropriation rules favor the person who takes water first as long as they put it to beneficial use. As the Supreme Court of the first western state, California, observed, the doctrinal swing from riparian rights to prior appropriation was necessitated by shifting social and political conditions under which settlement expansion and economic development depended on sufficient and certain access to water even for those whose land did not include or abut sources of water (Wilkinson, 1985). Even as it was influenced by societal conditions, the instantiation of the prior appropriation doctrine effectuated its own momentous shift: to modify the principles governing regulation of water use, courts had to recast the right to use water. The passive rights inherent in negative community – where no one could claim ownership – were reasserted as active ownership by the state on behalf of all (Tarlock & Robinson, 2022). Thus, as legal doctrines transformed, so too did conceptions of water users and their relations to each other. Rather than subsisting in a negative community where the individual reigns supreme, water users are bound together as a "public," where each use must be measured from the perspective of others, and individuals cede some autonomy to the state to ensure that uses are fair to the public as a whole.

If everyone owns water, or no one owns it, it is not possible to steal it because theft is defined as depriving one of personal property that is subject to ownership. In 2016, an appellate court told the State of California as much when it overturned the conviction of Kenneth Ralph Davis, a resident of Butte County who had been found guilty for "stealing" water from a stream to irrigate his marijuana crop (People v. Davis, 2016, p. 716). Engaging in extensive analysis, the court came to a simple conclusion: "[T]here cannot be a simple larceny of uncaptured flowing water" (pp. p710-711). In so holding, the court embraced the longstanding view of running water as a natural resource that "belongs to the people" (p. 714) in interest but not in right. It further explained that water is "unlike [a] watch or...shoes" and as "a subject of public concern to the whole people of the State," any interest in it necessarily "incorporates the needs of others" such that any member of the public should enjoy "unfettered access to its "gift of natural bounty" (p. 714). The court concluded that the defendant had merely been exercising his right to the water and could not be charged with theft.

Although the law rejects theft of "natural flow" water, it does recognize water theft in other instances, such as when a person redirects, tampers, or reconnects water utility services such as water hydrants and

pipelines. Indeed, after the California Governor signed a Bill that would increase penalties for such actions, California Assemblymember Adam Gray argued that harsher sanctions were necessary "to avoid creating circumstances where it is cheaper to steal water and pay the fine than to buy it legally" (Gray, 2022). It's important to note that the law recognizes theft in these cases because the utility has a legally recognized property right in the water it has captured. The contrasting outcome in cases such *People v. Davis* reveal a fundamental point about water thievery under law: thievery is not defined by the act of taking but by the validity of the claim to the water, and specifically, whether there is someone who can assert a recognized property interest in it.

Invoking the "water thief" in legal discourse generates a means of regulating ownership over water because what can be stolen can be owned; what cannot be stolen cannot be. The water thief in the legal context is thus a divisive figure; one that cleaves established ways of knowing and being in a community. To recognize water theft in law not only recognizes a breach of social order but also acknowledges a breach in established legal doctrine, splintering the notion that water is owned by none or all.

The lawful/unlawful opposition provides a ready example of division, but divisions also arise even when a thief is not as readily recognized or called out as such. As some commentators argue, water can "be stolen by law," through policies that deprive indigenous people and sovereign tribes of water rights and uses that had been established long before modern water law redirected water to settler populations and prioritized uses deemed beneficial to them (Denetclaw, 2022). When anthropologist Alfred Kroeber and his students canvassed California to document indigenous oral traditions, they encountered many narratives that challenged appropriation of water from native lands and people. For example, Susie Baker, an Owens Valley Paiute elder from Big Pine, California, recounted a story long passed down in the Paiute oral tradition about the Frog sisters, who enjoyed a fresh spring near their home until one day, as the sisters were napping, Rattlesnake crept down and stole the spring water by drinking it all up (Baker 1935, cited in Bauer, 2016). In 1935, when this story was told to Kroeber's students, the United States and Los Angeles were negotiating over the future of the Paiute people in the Owens Valley, as Los Angeles urged the Department of the Interior to create new reservations on land offered by the city in exchange for federal parcels already allocated to the Paiute and Shoshone peoples, which carried rights to the Owens River (Bertenthal, 2021). Stories recorded by the anthropologists during that time are only partially revealed through the process of narration and transcription; and they are not subject to a single interpretation. Historian William Bauer (2016), who is a citizen of the Round Valley Reservation in the Owens Valley, suggests that at least one reason stories such as the Rattlesnake and Frog sisters were told was to publicly contemplate and critique the consequences of the historical struggles over water in the Owens Valley. He observes that the Rattlesnake mimics Los Angeles's actions and that someone – perhaps the Office of Indian Affairs, Paiute leaders, or Owens Valley settlers – slept while Los Angeles came in and stole the Valley's water (Bauer, 2016, p. 118). By reading the Frog Sisters tale in the context of these struggles, Bauer reveals an important aspect of theft: although the taking of water may indeed be effectuated and legitimized by law, one might still construe it as theft.

#### 4. Identifying the "water thief"

The "water thief" conjures images of derelicts and other unsavory characters: stealthy, untrustworthy types who will take something precious from someone or something else. This characterization appeared consistently across the texts I reviewed. For example, consider the history of the clepsydra. Before the advent of mechanical clocks, people around the world depended on both sun clocks and water clocks to tell time. The water clock – especially useful because it functioned indoors and on cloudy days – is known as a "clepsydra," which comes from Greek words that translate to "water thief" (McNown, 1976). The clepsydra was filled with water that gradually seeped out as the minutes passed, and one could tell time by measuring the remaining water against carefully graduated lines inside the vessel.

A large sculpture of the clepsydra stands within the Nevada Museum of Art. Diana Al-Hadid, the artist who created the sculpture, noted in an interview that she selected the title "Water Thief" for her installation "because it suggests a stealthy clock, a clock not to be trusted" (Mann, 2011). Hidden from view, time – like water – just disappears. Indeed, those who can't be trusted can also be dangerous, as evidenced by Henri Salvador's (1989) song, "Voleurs d'eau" ("water thieves"), which tells the story of "gringos" who plan to build

a dam that will flood villages lower down. Once the water is stolen, the villages and people who had once relied on the free-flowing water will be destroyed. Urging the villagers to resist, Salvador draws our attention to thieves' willingness to trade lives for money.

Yet the identity of the water thief is not unambiguously negative. Sometimes, the act of stealing is portrayed as a purposeful act that (re)distributes resources. One children's story entitled "The Water Thief" tells of "a magical woman who lives in a pond" who, upon returning from a trip, finds the water gone (BPCO, 2017). She asks all the animals "who drank the water?" until finally, she asks the sun, who laughs and tells her "I am your thief." The sun explains that it stole the water because it had become dirty. Then the sun dips behind a cloud, and rain begins to flow and the pond is refilled with "pure, clean water." The story is used to teach children about the water cycle, in which theft via evaporation becomes a means of replenishment, transferring out unwanted water so that it can seed clouds and be returned in the form of clean rain.

Similarly, firefighters use a tool called the water thief, which is used to divide one large water line into several smaller hose lines, each controlled by an independent valve. Prior to the invention of this mechanism in the 1930s, firefighters had to choose between the better flow volume in longer hoses and the maneuverability of shorter hoses. By taking water from the main channel and redistributing it to connecting hoses, the water thief makes it possible to combine both advantages (Leihbacher, 1999). In celebratory texts describing the invention, we learn that thievery can be an uncontroversial good, with the firefighters' "water thief" operating as a mechanical Robin Hood taking water from the rich and redistributing it to the needy.

Even the history of the water clock suggests there can be purpose to theft. The Greeks trace the clock's origin to the great battle between Zeus and Prometheus over fire, which splintered time and left mortals in darkness. According to legend, humans came up with the clepsydra as a means of both retribution and of regaining control. If the gods stole fire, they would steal water and use it to keep track of time, thus "liberating themselves from the divine fire-thieves who do not care to make time uniform" (Allen, 2003, p. 73).

Overall, the identity of the water thief is multifaceted, with attributes both admired and abhorred. What stands out among the many descriptions of the water thief is how closely tied assessment of character is to perception of theft and especially to the effects of that act on the broader community. Given this close imbrication between identity and act, it should come as little surprise that responses to the water thief both reveal and shape responses to the act. In the next section, I elaborate the discursive turnings that invite different responses.

## 5. Configuring responses

As described in the previous sections, the water thief trope has the power to change conceptions of people and things. In this section, I discuss another function of that trope: to divert standard ways of perceiving and responding to appropriation of water. Just as water distributed or divided carves new channels, so too does changing discourse make possible new ways of organizing and responding to water use. Conceptualizing the water thief trope as diversion plays with the etymology of the term trope as a "turning." In this section I identify at least four such turnings. First, the invocation of water thief can turn a licit – if not always desirable – taking into something sinister, violent, and morally reprehensible, thus complicating the civil/criminal opposition and inviting new punishments into the litany of conventional responses to water appropriation. Second, the trope turns an environmental disaster into a crisis whose cause can be attributed to certain groups of people doing certain things. Third, the trope turns even natural uses into condemned ones. And, fourth, by linking theft and drought, the trope turns law enforcers into unlikely conservation heroes. This section follows those turnings in various social and cultural contexts in which water thieves are identified and described.

### *Takers and thugs*

In the American West, legal doctrines justify the taking of water by private landowners from the state, by settler communities at the expense of indigenous rights and access, and by individuals from each other (Curley, 2021). Under the doctrine of adverse possession, one can claim possessory rights over another's water after a period of open and uncontested beneficial use of that water. The rationale is that water must be put to productive use and the person who does so should enjoy the benefits of ownership over it (McCoy, 1986). Thus,

the miner who diverted someone else's water to his claim over a period of time was rewarded with rights to that water. Similarly, nineteenth-century mining codes penalized miners who did not make use of water, with some even going so far as to give another miner rights to a claim if water were present and the original claim owner was not working it (Clay & Wright, 2005). Although all of these cases involved someone taking what belonged to another, there was no punishment. On the contrary, in states where adverse possession of water is recognized, the law incentivizes such taking, and legitimates the taker as one who saves a valuable resource from going to waste.

The contemporary doctrine of correlative rights to groundwater in California presents a ready illustration of this practice and its justifications. In early conflicts over groundwater, courts previously applied the common law rule of absolute ownership, allowing the surface landowner to do whatever he wanted with the waters below, even if that meant depleting the underground supply. As later geological studies revealed the relation of groundwater to surface flow, courts and legislatures began to shift their view of the rights of the overlying proprietor, allocating to them only the water that could reasonably be put to use and allowing other individuals – and even the state – to take the surplus in order to protect community interests and ensure the neighborhood remained habitable. The language of the legal opinions executing this shift perform more than a reversal of longstanding doctrine, by flipping the relative positions of the property owner and those taking water from him or her. As the California Supreme Court explained:

By pumping out the water from his lands [the overlying proprietor] can perhaps deprive his neighbors of water . . . and . . . render their land valueless. In short, the members of the community . . . have a common interest in the water. It is necessary for all, and it is an anomaly in the law if one person can for his individual profit destroy the community and render the neighborhood uninhabitable (Katz v. Walkinshaw, 1907, p. 140).

The property owner who unreasonably uses water is thus condemned for stealing the water from his own community, disadvantaging the greater good by privileging himself. Those who took the owner's water therefore became "beneficial" users, supporting not just their own needs but also the interests of a larger public.

Takers may be abided and even celebrated, but thieves are decidedly not. The 1974 movie, *Chinatown*, starring Jack Nicholson and Faye Dunaway, operates as a "surrogate public history" that dramatized the plans to take water from Owens Valley, California to supply a growing Los Angeles (Davis, 1990, p. 44). That taking was commonly characterized as theft (Liebcap, 2007), and, as a writer in *The Economist* (2003, p. 15) observed, "has become the most notorious grab by any city anywhere." The plans to acquire water from the Owens Valley are central to the movie's plot, which begins with a simple request to Jake Gittes, a private detective, to confirm the suspected marital infidelity of the chief engineer for the city's water department. As Gittes follows the engineer's movements during his life and after his untimely death, he uncovers an intricate scandal involving the surreptitious acquisition of water from the valley. Behind it all is Noah Cross, a business tycoon who conspired to steal water from unsuspecting farmers and deliver it to newly acquired properties in the city. Despite his elegant manners, Cross is revealed to be a brutal villain who impregnated his own daughter and murdered the city's chief engineer to cover up his ongoing water theft. His henchmen are equally ruthless, at one point cutting off part of Gittes's nose to warn him against pursuing his investigation into the water dealings.

From destroying water tanks and poisoning wells to murder and cover-up, Cross's actions reveal a more sinister facet of the water thief. Rather than approaching water theft as a complex claim driven by a set of competing needs and interests, the water thief embodied by Noah Cross is greedy, devious, self-interested, and cruel. When confronted by Gittes about his incestuous relations with his daughter, for example, Cross explains, "I don't blame myself. You see, Mr. Gittes, most people never have to face the fact that at the right time and the right place, they're capable of anything." His justification echoes the sentiment behind the now-infamous words of William Mulholland, the real-life water engineer who masterminded the aqueduct used to transfer water from the Owens Valley to Los Angeles: "There it is, take it."

The alleged crime of incest, and Cross's refusal to take responsibility for it, works on multiple levels, simultaneously constructing the movie's villain while also commenting on the reasons for water theft. Cross's

character stands in for the water thief, speaking to the greed, opportunism, and violence of theft. While takings have elsewhere been described as justifiable, even necessary, *Chinatown* underscores the unambiguous detriments of theft, and Cross exemplifies the inherent thuggery of the would-be thief, whose rationalization is so devoid of morality that it can justify even incest.

### *Black markets and "Liquid Gold"*

It is not only the "water thieves" who are characterized as criminals; their acts also are characterized as criminal. In contemporary newspaper articles, references to "water theft" are abundant, pointing to a wide range of activities aimed at securing water in times of scarcity. For example, during one recent drought in California, many articles focused on individuals taking water from public hydrants and fire departments, which the authors and their sources characterized as "thieves" stealing water (e.g., Bender, 2015; Murray, 2014). Other cases of alleged water theft in California include so-called "straight piping," or the use of small pipes to bypass city meters; siphoning water from the Los Angeles Aqueduct and city pipes (Nidever, 2014); and transferring water from a running river into a water tank (Vodden, 2015). In one well-publicized case, the actor Tom Selleck was accused of stealing water after local police tracked a truck filling up at a fire hydrant then driving back to his California ranch (Oh, 2015).

It is not only the words used, but the more generalized tropes of criminality that mark these emerging discourses about theft. As cultivation of marijuana is legalized in many Western states, a new source of conflict has arisen, pitting both authorized and unauthorized marijuana growers against drought restrictions and against those who grow more traditional crops. An increasing number of news stories focus on the taking of water to irrigate marijuana crops. "It was one of the most blatant and ugly things I've seen," said one sheriff who had destroyed 72,000 marijuana plants that were being irrigated with an "illicit system of pumps and hoses" from a nearby stream (Selsky, 2021). Officials speaking to the newspapers – and indeed news writers themselves – make apparent that the "ugliness" of water appropriation is generated by its association with drugs and those who would sell them. Consider this characterization of water misuse from a 2021 article about marijuana farmers looking for water in California's parched Ventura County:

As drought grips most of California, water thievery across the state has increased to record levels. Bandits in water trucks are backing up to rivers and lakes and pumping free water they sell on a burgeoning black market. Others, under cover of darkness, plug into city hydrants and top up. Thieves also steal water from homes, farms and private wells, and some even created an elaborate system of dams, reservoirs and pipelines during the last drought. Others are MacGyvering break-ins directly into pressurized water mains, a dangerous and destructive approach known as hot-tapping. (Cart, 2021)

In this description, thieves and bandits skulk under cover of night to seize water that doesn't belong to them. They're stealthy and clever, capable of "MacGyvering"<sup>2</sup> their way into the water supply. Despite the ubiquity of their target, they work in the shadows, generating a "black market" for the commodity they help to transform into "liquid gold."

A logic of transference across time and space fuels these popular media accounts of contemporary water theft. In places where marijuana is now legal, it is no longer possible to condemn farmers for growing the product. But by tapping into outrage against usurpation of valuable water, news stories about water thieves taking water to irrigate their marijuana crops continue to propagate a narrative that marijuana and the people who grow it are villains who harm society by cultivating and selling drugs. Local politicians exploit the farmers' heavy demand for water, using water scarcity as a reason to further crack down on marijuana farms. In Mount Shasta Vista, a small city in Siskiyou County, California, for example, the local Sheriff declared "marijuana cultivation public enemy number one." In 2020, Siskiyou County filed two lawsuits on behalf of a group of

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<sup>2</sup> The terms implies simple solutions to complex problems. "Mac" MacGyver was a fictional star of a TV series set in California that aired from 1985-1992. He was known for his spontaneous innovation.

residents whose wells had gone dry, alleging that farmers selling water to the cannabis growers in the subdivision were depleting groundwater resources, and jeopardizing the lawful use of water for thousands of other residents. Soon thereafter, the county passed a law declaring it illegal to extract groundwater for growing marijuana and, in 2021, implemented two ordinances imposing restrictions on importation of ground water and well water into the county.

In their coverage of these acts, some reporters opined that the "extreme water scarcity" facing the region "was not the result of dwindling snowpack or plummeting reservoir levels" but, rather, due to the county's efforts to regulate marijuana via regulation of water, which drastically restricted residents' ability to import or extract water (Wigglesworth & Do, 2021). Residents of the county saw even more sinister forces at work, noting that the crackdowns only occurred after Hmong farmers began populating the predominantly white area in 2015. Several Hmong farmers filed a motion seeking to enjoin implementation of the county's ordinances. A federal judge granted the injunction, concluding that "[t]he dehydration and de facto expulsion of a disfavored minority community cannot be the price paid in an effort to stop illegal cannabis cultivation and any attendant harms" (Iovino, 2021). As the judge's comments suggest, the logic of transference has worked in expansive and insidious ways, transforming protection of water into a convenient means of rejecting certain people and certain activities. The outcry and social reaction – with episodes of water theft at their center – describe a classic case of moral panic (Cohen, 2004), in which anxieties over drought ripple out and coningle with anxieties over changing times and changing populations.

#### *Unnatural thieves*

The water thief need not be human. "Water is the essence of life," professed David Gowan, an Arizona legislator seeking to shore up his 2014 campaign for re-election to the U.S. House of Representatives with promises to keep "being water-wise" (Reynolds, 2014). The politicization of water is hardly new (Bakker, 2012), but Gowan's appeal was framed in a surprising way, arguing for eradication of plants and trees. As Gowan explained in an interview from the campaign trail, some plants can "siphon the water from underground," using too much water that was needed elsewhere. Such plants, he argued, wasted the precious resource and should be removed.

Gowan is not the only one to characterize plants as thieves. Writing on behalf of the Colorado Supreme Court, one judge labeled the salt cedar lining a river's banks as a "water thief," noting that "[t]he trees, which did not have to go to court to seek any right, merely 'sucked up' the water from prior appropriators" (Southeastern Colorado Water Conservancy District v. Shelton Farms, 1974, p. 188). Although eschewing the term thief, a judge writing for the Supreme Court of Montana upheld a decree requiring the removal of brush and trees lining irrigation ditches, suggesting that they "wasted" water through natural absorption (Morrison v. Higbee, 1983, p. 506).

By depicting trees as stealing from a water source and from others who would make use of that water, these judges were tapping into a longstanding discourse about "botanical monsters": the phreatophyte plant species that includes tamarisks which converge around water in arid regions (Chew, 2009, p. 235). In places where the tamarisk proliferates, writes biologist Matthew Chew (2009), scientists and water managers vilify it for consuming large quantities of water through their roots. By way of example, Chew (p. 260) cites a 1952 article by T.W. Robinson, titled "Water thieves," which estimated that 25 million acre-feet (30.84 bn m<sup>3</sup>) of water was lost to the consumptive waste of phreatophytes. Chew (p. 256) asserts that articles such as Robinson's propelled public opinion against the tamarisk, making it a convenient scapegoat for the issues encountered by water managers, who used it to transform problems of over-consumption into problems of uncontrolled theft "not merely impeding commerce and security, but flouting American values and even natural propriety."

Propriety, though, is no match for necessity. In Paolo Bacigalupi's (2006) short story, "The Tamarisk Hunter," the main character, Lolo, rips tamarisk from the riverbanks of the Colorado Basin in exchange for US\$2.88 a day plus bounty in the form of water. The destruction enables him to live, "where other people have dried out and blown away...: a tamarisk hunter, a water tick, a stubborn bit of weed." While ostensibly working to keep the river clear, Lolo was secretly reseeding tamarisks to ensure a steady supply of brush to hunt and bounty to collect. Lolo keeps that quiet, not even telling his wife, because "[l]ike all of the most shameful

crimes, water theft is a private business...." In this way, Bacigalupi illustrates how crimes are multi-dimensional: the tamarisks steal from the river; Lolo steals from the tamarisks and from the authorities who are oblivious to his subterfuge. Yet, as it turns out, Lolo, too, is the victim of theft. As the story progresses, he learns that California has built "The Straw," a long pipe – "flopped out on the desert like a long silver snake" – that siphons water from the Colorado River and carries it all the way to California. It was senseless theft, another hunter told Lolo, despairing the loss of water that could have been allocated to them: "Some Californian's probably filling his swimming pool with last year's water bounty right now."

As Lolo soon finds out, the Straw has been so successful in pulling water that tamarisk clearing is no longer needed; the promise of bounty is terminated and, in the ongoing drought, Lolo's irrigated land will almost certainly dry up. In measuring these accumulating thefts, we see yet another facet of the water thief trope: the bigger and more audacious the theft, the more likely it is to become normalized. Tamarisks, which draw water through their roots are considered "unnatural"; Lolo and his fellow hunters are also unnatural, as their identities as "water ticks" are made wholly by circumstance. Yet the Straw – the massive concrete and carbon fiber pipe into which the river "just disappears" – is protected, and eventually accepted, outlasting trees and water ticks alike.

### "Water Cops"

The negative characteristics of the water thief are highlighted not just by the actions of the thieves but also by those who oppose them; dichotomies of good and evil are essential to constructing the problem of water theft. Alongside the water thief also emerge "brave and virtuous heroes who stand for the social values being threatened and offer protection from the onslaught of different and dangerous ones" (Kappeler & Kappeler, 2004, p. 178). The dichotomies between good and evil are highlighted by the media, which glorify heroic responses to water theft. These versions of the so-called "water cop" work to generate negative stereotypes about water thieves and solidify their status as lawbreakers. In 1988, for example, the *San Diego Tribune* celebrated the initiative of local officials who "decided to protect their own precious resources" by creating a special police force of "water cops" (Petrillo, 1988). The article extols the new police force that will "crack down on waste and theft of any of the \$100 million-plus worth of water that flows yearly to this city's 1 million people" and noting that "[a]lready, one supervising compliance officer is on the job, trying to stop thieves, who steal more than 800,000 gallons a year." In such laudatory prose, we find a hero whose virtues are apparent because he confronts a problem of great magnitude and import. Moreover, the article's author evinces high confidence in the water cops' power to fight villains in both human and non-human form, predicting that "armed with the water cops and water-saving laws established last year, San Diego could be way ahead if drought hits home."

As water thieves have proliferated, so, too, have water cops, although only some "cops" are formally affiliated with state agencies. "Water cop" has become a generic term used to describe those who seek to prevent water waste. Some of these individuals take such measures on their own initiative, while others are "deputized" by local officials. In Las Vegas, Nevada, and Tucson, Arizona, for example, water agencies encourage their customers to report water waste to local authorities, and in San Diego, California, agencies distribute door hangers that neighbors can leave at nearby houses if they see water going to waste (Parkinson, 2009). Some water cops are not even human, as, for example, the automatic shut-off valves marketed as "WaterCops," which can sense leaks and close water supply lines to prevent water waste. One manufacturer of a watercop valve promises "This cop is ready to stop leaks cold!" While these versions of water cops romanticize those who police water use, not everyone is enamored with them. One resident in Elk Grove California complained on a blog about the self-appointed "water cop" in her neighborhood, who proselytized to his neighbors about water regulations and deactivated their sprinklers during the night (Lizzie, 2013). The resident tagged her post "creepy neighbor" and others in the forums concurred that he was "crazy."

A less flattering side of water cops is shown in the video, "California Water Cops," which parodies the decades-old reality television program "Cops" that sources footage of real people and their arrests to, as one commentator put it, "valorize police and mock their targets" (Horton, 2022). In the "Water Cops" version, the camera follows two officers as they effectuate arrests on people washing their car, drinking out of plastic water

bottles, possessing almonds, keeping hot tubs in their backyard, and taking too long in the shower (The Station, 2015). In the clip, the officers make clear that the water crimes they police are not limited to small infractions. "Worst day I ever had was a Halloween party," one officer tells the camera as he drives the squad car. "Bunch of kids dressed up as the wet bandits from *Home Alone*, left the sink running. Cost the city nine billion dollars in damages." The police tactics shown in the video – knocking down doors, searching cars, frisking people on sidewalks, tackling fleeing suspects – are those commonly deployed by police on the streets. By effectuating them on so-called "hydraters," the video clip self-consciously draws parallels between those who flout water regulations and the drug dealers and violent criminals portrayed on the real-life "Cops" show. Yet by drawing laughter through obvious parody, the video turns the joke back onto the cops, whose over-the-top antics make us doubt their claim to being on the "good side."

## 6. Conclusions

When it comes to discursive framing of water appropriation, the law seems well settled, even solidified. The water thief exists in oppositional hierarchy to the water owner. Yet those categories are blurred, transgressed, and revealed to be fluid and malleable. Popular media, literature, law enforcement officers, and ordinary individuals consistently construct water theft in many contexts that extend beyond those in which it might be recognized by law. In doing so, the water thief serves as a fulcrum around which different notions of community turn. In short, the identification of the water thief generates new channels of action and reaction to water appropriation, while also supporting normative assessments of that appropriation as "rightful" or not.

As the American West continues to contend with disappearing water, a crucial task for scholars and policymakers is to understand how new ways of water governance emerge from and depend on consensus about the "right" and "wrong" ways to use water. The elaborations of the water thief trope illustrate its power to reimagine law and lawfulness. These shifts are not just discursive or theoretical: cultural meanings cannot be disentangled from the strategies of action they support (Swidler, 1986). There is now emerging a new water world in which "theft," though technically not criminal under formal law, is nonetheless created and made to matter through language. As the water thief increasingly emerges in discussions over regulation of water, we should expect a shift in the foundational premises of managing water use from that aimed at best serving the community to that which identifies and punishes those who breach hydro-social norms. Through a political ecology lens, we can understand these policies as differentially implemented and experienced. The analytic approach undertaken here encourages us to attend to discourse as an entry point for achieving that understanding; the focus on tropes offers insight into how results are accomplished. As the water thief trope flows in and out of genres and texts, it can illuminate not only different meanings of water use but also the very porosity of boundaries delineating who and what is a water thief and what should be done about water theft.

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