

Law Foundation Report

Introduction

As a recipient of a Law Foundation Fellowship and 2012 South Australia Fulbright Scholarship I spent 10 months in the United States undertaking research as part of my PhD in law at the Adelaide Law School. The funding I received from the Law Foundation allowed me to attend the American Bar Association Water Law Conference and to purchase some excellent texts on American water law.

During my time in the United States, I spent 6 months as a visiting scholar at the Natural Resources Law Center at the Law School at the University of Colorado in Boulder, CO and 4 months at the James E Rogers College of Law at the University of Arizona in Tucson, AZ.

The research I conducted while in the United States will form a critical chapter in my PhD thesis, addressing how interstate water disputes in the United States have been resolved through litigation and whether similar reasoning can be used in resolving interstate water conflicts in Australia. My time in the United States has also given me a broader understanding of the complexities of United States water law.

Having now returned to Adelaide, my immediate plans are to complete my doctoral research in the coming months and, after submitting my PhD, to secure employment either as a lecturer at an Australian university or within a government department dealing with water-related issues.

My wife, Stefanie Wilkins, a former recipient of the Law Foundation Fellowship, accompanied me during my time in the United States.

My Experience in the United States

The first 6 months of my stay in the United States in Boulder, Colorado was one of the most wonderful experiences of my life. I found the faculty at the University of Colorado particularly welcoming and hospitable. At Colorado I was invited to attend many lunchtime staff seminars and was treated like a member of the faculty. I could not have asked for a warmer welcome. A number of the faculty at Colorado invited my wife and I to dinners at their homes, making us both feel very welcome.

I was fortunate enough to sit in on a couple of classes on water law taught by Prof Charles Wilkinson while at the Colorado Law School. I found these classes extremely useful in providing me with an overview of water law in the western United States. It was also interesting from a teaching perspective to sit in on these classes. My perception was that academics in United States law schools are much more willing to call upon students during class and encourage students to answer questions (and that students come prepared to answer these questions for fear of being called upon). This is an aspect of the American tutorial system that I would like to include in my teaching when I return to Australia.



Law School, University of Colorado

The resources at the Law School at Colorado were truly outstanding. The library had an excellent collection of water law texts and the library research staff were extremely helpful.

On a professional level I gained a great deal from my discussions with American academics about interstate water rights. It seemed to me that American academics generally had a more

practical and policy-oriented approach to interstate water problems. That is, they thought that the United States Supreme Court needed to be able to resolve disputes between states and were less concerned with the legal basis that allowed the Court to resolve the dispute. The importance of being able to resolve these disputes seemed more important than the fact that the reasoning permitting the Court to do so might not be strong. This approach is interesting in the Australian context: would the Australian High Court intervene in an interstate dispute where there might be strong practical reasons for doing so, but where the legal basis for intervening is weak or unclear?

I became very good friends with Prof Hal Bruff, who I had never met or corresponded with before arriving in Boulder. Prof Bruff was visiting Australia just after I left Boulder and we had many discussions about Australian culture and history before his trip. Prof Bruff took a keen interest in my research and in my career development. As a very senior member of the faculty and former dean of the Law School, Prof Bruff's advice was often invaluable. Professor Bruff was kind enough to invite my wife and I to dinner at his place for Thanksgiving and we regularly met for dinners with Prof Bruff and his wife. When Prof Bruff visited Australia, he came to the Law School at the University of Adelaide and, despite my absence, my colleagues at the Adelaide Law School made Prof Bruff welcome. I hope that the connection that I and the Adelaide Law School have established with Prof Bruff can be maintained for many years to come. I feel very fortunate to have met such a wonderful person and to have made, what I am sure will be, a life-long friendship. The people I have met, especially Prof Bruff

and his family, has been one of the great highlights of my time in the United States.



Colorado National Monument

My time in Boulder coincided with the United States Presidential election. President Obama visited Boulder twice during my stay and I was fortunate enough to hear the President speak on both occasions that he visited Boulder. Perhaps unsurprisingly, and despite the 4 hour wait to hear the President speak, this was one of the highlights of my time in the USA. As someone who takes a keen interest in politics, the Presidential election was fascinating to watch. I watched all three Presidential Debates at a local sports bar in Boulder. All 24 televisions in the bar were

tuned to the Debates and everyone had their eyes fixed to one of the many screens. Meeting people at the bar during the Debates and speaking to them about US and Australian politics and elections was wonderful. Sharing and discussing some of the differences – such as compulsory voting in Australia – with locals was a great deal of fun.

On a personal level, my time in Boulder was equally wonderful. Stefanie and I joined a running club and met some wonderful people. Joining the running group was a great way to meet people from the local community and to stay fit and healthy. I ran 6 half marathons during my 10 months in the United States.

While in the United States I was fortunate enough to take a couple of field trips that allowed me to observe some of America's interstate rivers. I took a trip across the Rocky Mountains and followed the Colorado River into Utah. What struck me was how little water there was in the River given the



President Obama at the University of Colorado

amount of people that rely on its waters. The snow melt in May and June provides much of the water of this river and, consequently, the ability to capture and store the snow melt becomes important in ensuring there is sufficient water available all year round. I was also fortunate enough to have a behind-the-scenes tour of Hoover Dam as part of the American Bar Association conference that I attended in Las Vegas in June this year. These field trips gave me a greater understanding of the importance of American water law in practice.



Monument Valley

In February we drove from Boulder to Tucson for the final 4 months of my time in the United States. Driving through the desert regions of New Mexico and Arizona certainly gave me a greater appreciation for how important water is for the survival of communities in the western United States. A large part of the trip followed the Rio Grande and it was interesting to see the irrigation works along the river as we crossed the arid regions of New Mexico.

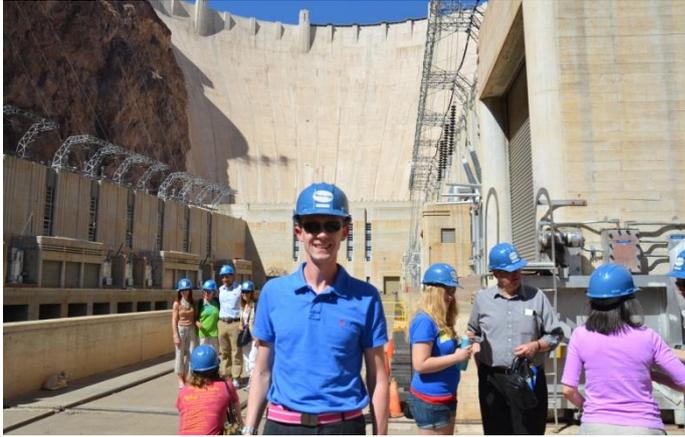
After living in the Rocky Mountains at an altitude of 5000ft, moving to Tucson, in the Sonoran Desert 50 miles from the Mexican border could not have been more different. The dry, arid conditions of Tucson reminded me of parts of rural Australia. From a water law perspective, it was interesting to see some of the water conservation techniques that were being implemented in a place such as Tucson and to compare them to some of the schemes operating in Australia. One of the interesting water issues facing the United States that becomes readily apparent in Arizona is not just the sharing of water between states *within* the US, but also the sharing of water with other countries, specifically, Mexico and Canada. This is one of the issues that only further complicates water regulation in the United States.



Tucson, Arizona

The University of Arizona Law School held a monthly Environmental Breakfast Club. The Club invited speakers from across a variety of disciplines to speak about their research. A couple of the presentations that I attended related directly to water regulation in the south west of the United States and I found this an excellent way of learning a little more about some of the important environmental issues facing this region.

At the end of my time in the United States I attended the American Bar Association Water Law Conference in Las Vegas. This was a great way to meet members of the legal profession specializing in the United States. The complexity and importance of water regulation in the United States has meant that there are a large number of attorneys who specialize solely in water law.



Hoover Dam, ABA Water Law Conference, Las Vegas

I shared my United States experience during my time away in two blog posts for the Adelaide Law School: <http://blogs.adelaide.edu.au/public-law-rc/2013/04/08/interstate-water-rights-in-the-united-states/> and

<http://blogs.adelaide.edu.au/law/2013/05/13/fulbright-scholar-adam-webster-shares-united-states-experience/>

My PhD Research

My time in the US has greatly assisted my PhD research. While in the US, I wrote an important chapter of my doctoral research that examines how interstate water disputes have been resolved by the United States Supreme Court and how the Supreme Court has allocated water from rivers that flow between or form the boundary of two or more states. Since Federation states of Australia have continually threatened litigation in an attempt to resolve disputes over the allocation of water from the River Murray. My research examining litigation in the US involving interstate river disputes has highlighted to me that litigation should not be seen as a quick-fix or easy solution to disputes in Australia involving the River Murray. Australian Governments must understand that interstate litigation over the Murray is likely to be complex and lengthy. Similar disputes in the United States have taken the US Supreme Court years to resolve. Court action is not necessarily quicker than negotiation.

My time in the United States provided me with a new perspective on examining the current dispute between Australian states over sharing the waters of the River Murray. Whilst not every interest group is happy with the current Murray-Darling Basin Plan, the achievement of reaching an agreement is important. Many similar disputes in the United States over the past 100 years have ended in a stalemate and resulted in litigation, which has only further prolonged the dispute.

The past 10 months have been the busiest and most wonderful time of my life. I tried to make the most of every moment: working hard during the week and experiencing as much of the United States as I could on the weekends.

Conclusion

I am extremely grateful to the Law Foundation for the funding that has been provided to me. Attending the American Bar Association Water Law Conference in Las Vegas in June 2013 was one of the highlights of my time in the US. Meeting so many experts in United States water law in such a short space of time was a wonderful way to end my 10 months in the USA.

I look forward to sharing my research with the legal profession and the wider community now that I am back in Adelaide.

Adam Webster
July, 2013