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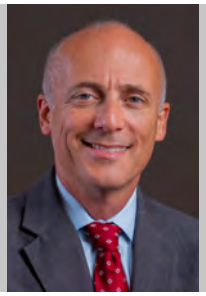
Who Owns the Heat?
Legal and Practical Challenges to Allocating Ownership Rights in Geothermal Energy

Prof. Gabriel Eckstein

Texas A&M School of Law

Professor of Law and Director of the Energy, Environmental, and Natural Resource Systems Law Program



October 16, 2024

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Frederick E. Giesecke Engineering Research Building Third Floor Conference Room and Zoom

Abstract

With 50,000 times more heat energy within the top 10,000 meters (around 33,000 feet) of the Earth's surface than contained in all of the world's oil and natural gas resources combined, geothermal energy is a tremendously promising, clean, and renewable energy resource. Yet, geothermal energy accounts for a mere 0.4% of the total electricity generated in the United States.

One of the more challenging reasons for this predicament is the ambiguity in property rights related to the development and ownership of geothermal energy resources. While landowners can raise ownership claims to oil, gas, water, and other tangible natural resources found in their subsoil, it is unclear whether they have similar claims to the thermal energy located below their land.

The article explores questions of ownership rights and interests in geothermal energy—an incorporeal, uncontainable, natural resource that is better defined as a characteristic of underground formations rather than as a physical or tangible thing. More broadly, it looks at the effects various approaches to ownership might have on the development of geothermal energy resources. The underlying premise of the article is that absent clear property rules for ownership in geothermal energy, commercial and public investment in this promising, clean, renewable energy resource will remain limited.

Hence, the presentation will conclude with a proposed ownership regime that balances the sustainable development of geothermal energy, given its distinct characteristics, with the need to incentivize the private sector to invest in this promising source of clean energy.

Biography

Gabriel Eckstein is Professor of Law and Director of both the Energy, Environmental & Natural Resources Systems Law Program and the Environmental & Natural Resources Clinic at Texas A&M University.

He focuses his research and teaching on water, natural resources, and environmental law and policy at the local, national, and international levels. At Texas A&M, he also serves on the Graduate Faculty for the Water Management & Hydrological Science program; Associated Professor with the Bush School of Government and Public Service; Faculty Fellow with the Center for Health Systems & Design, College of Architecture; and Affiliated Faculty with the Energy Institute.

Eckstein regularly advises UN agencies, national and sub-national governments, NGOs, and other groups on international and US water and environmental issues, and has represented nations before the International Court of Justice. He chairs the Executive Council of the International Association for Water Law, and previously served as President of the International Water Resources Association. He also serves as Associate Editor for the book series Brill Research Perspectives: International Water Law, and on the Editorial Board of the Journal of Water Law. Eckstein holds an LL.M. in International Environmental Law, a Juris Doctor in Law, an M.S. in International Affairs, and a B.A. in Geology.

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