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## Building Municipal Water Self-Determination in Diverse Metropolitan Communities

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## Building Municipal Water Self-Determination in Diverse Metropolitan Communities

social justice lens is necessary to fully understand the history of what we have done. The only way to believe that water is distributed without discrimination is to view water without any reference to history and to be comfortable with the affluent controlling access to water for all. Professor Pannu could personally attest to the movements on these issues. The changes in California occurred because of community advocacy. Once advocates have lawyers, they not only change individual systems, but they also change the law.

California set aside massive funding for low-income communities that lack access to safe water. However, the state unwittingly made access to that funding incredibly difficult for rural communities. Fortunately, Professor Pannu's clinic is able to provide legal help and education in this area. The clinic serves primarily as a transactional clinic that connects people in rural communities to the funding provided by the state. The clinic helps communities form water cooperatives, provides management training for funding qualification, and facilitates negotiations for contracts between groups that normally do not work together. All of the clinic's clients must meet the state's poverty requirements. Therefore, the clinic works exclusively with low-income communities. The clinic focuses its resources on three areas of water law that are underserved: transactional law, policy advocacy, and strategic research. In their first semester in the clinic, students learn to be community lawyers by combining knowledge of water law and business law. In their second semester, students take on projects that further water justice in the state of California. The clinic aims to render aid to the immediate problem of safe water access in marginalized communities and to help the state think more strategically and holistically about how to move beyond its current policy predicament by establishing more equitable and socially conscious rules regarding water.

Professor Pannu concluded her presentation with a charge to the audience: think about devoting some of your time or practice to help tackle the water justice issues that are pervasive in our country today.

*Sydney Donovan*

**THE UNIVERSITY OF DENVER WATER LAW REVIEW  
ELEVENTH ANNUAL SYMPOSIUM: FORGING SOVEREIGNTY, SELF  
DETERMINATION, AND SOLIDARITY THROUGH WATER LAW**

Denver, Colorado

March 30, 2018

**BUILDING MUNICIPAL WATER SELF-DETERMINATION IN DIVERSE  
METROPOLITAN COMMUNITIES**

The final panel of the day, titled "Building Municipal Water Self-Determination in Diverse Metropolitan Communities," explored how working-class and minority communities use, access, and are impacted by water. Tom Romero, Assistant Provost of Inclusive Excellence Research and Curriculum Initiatives and Professor of Law at the University of Denver Sturm College of Law, presided as moderator for the panel. The speakers came from a range of backgrounds, including Daniel J. Arnold, Staff Attorney for Denver Water, Lizeth Chacón, the Executive Director of the Colorado People's Alliance ("COPA"), and Khyla Craine, Assistant General Counsel for the NAACP.

Professor Romero gave a brief introduction of the panelists and stated that the goal of this panel was to engage in a discussion around the disparity in access to water for marginalized communities. He then asked the panelists to speak on their connections to this discussion and their background on water issues.

Kyla Craine spoke first regarding her background with the NAACP and her part in advancing equal water access for underserved and neglected communities. According to Craine, she plays the role of an environmental lawyer through the lens of social justice. In this role, she tries to empower local communities to seek safe and equitable access to clean water for drinking and sanitation.

She went on to explain that the NAACP became involved in water issues around 2006 by fighting against waste emanating from coal fired powered plants and their polluting effects on air and water quality. These plants often deposit coal ash waste—including carcinogens such as mercury, arsenic, lead, and chromium—in waterways. Those who are most affected tend to be poor, marginalized, politically depressed, and communities of color. NAACP used litigation and community activism to shut down plants causing this pollution. Out of this mission grew a larger social justice concern for the NAACP to provide safe water for drinking and sanitation throughout the United States.

One of the current major focuses of the NAACP is lead contamination in water supplies. The most publicized case takes place in Flint, Michigan, where lead contamination has affected over 9,000 children. This was caused by a series of institutional failures in switching water supplies that corroded old lead pipes in the municipal water system. Now, residents are economically trapped because poor residents already lacked the means to leave, and now their property values have also plummeted due to the contamination. However, this problem is not unique to Flint. A Reuters report found over 3,000 American communities had higher levels of lead than Flint. Pennsylvania, Indiana, and Missouri all have shown elevated levels of lead in children. There are many sources, ranging from coal ash waste in rural areas to leeching from old pipes. To combat this, NAACP takes varying approaches ranging from litigation to activism, but always with the goal of empowering citizens to advocate on behalf of their communities to combat this silent problem.

Lizeth Chacón spoke next about the Colorado People's Alliance and their grass root efforts towards racial and economic justice for clean water. Their efforts began by fighting against fracking in local communities, which has evolved into a comprehensive water justice campaign. COPA's work on water begins within the individual community. COPA members have been participating in a grass roots door-to-door campaign to raise awareness about fracking in local communities. Through these conversations, COPA has found that over fifty percent of citizens in Commerce City and Montbello, Colorado do not feel like their water is safe for use, and they rely heavily on bottled water as an alternative. COPA noticed a clear correlation between unsafe drinking water and community based racial and economic divides.

COPA has started working with these communities to look for a solution to this problem. Part of this process involves helping people get their water tested to ascertain if the water is, in fact, contaminated. The second component is trying to figure out where these safety issues are coming from. Are they leaks from old infrastructures, do they come from mining activities, or are they brought about from some other source? According to Chacón, at the end of

the day, everyone deserves clean and safe water, and the current consensus is that need is not being met. So, COPA is stepping up to help communities find a solution.

Daniel Arnold rounded out the panel as a thirteen-year veteran of Denver Water's general counsel. His work has focused on water quantity and quality issues for the City and County of Denver. But recently, water quality has become an issue of great importance, whether it is keeping operating mines in check to ensure they do not pollute into watersheds or expanding the State's reclaimed water regulations to add new and non-potable uses for reclaimed water. Denver Water also works on a lead response program to identify and help replace sources of lead contamination.

To give a bit of background on Denver Water, Arnold walked listeners through how the utility was created over 100 years ago as an independent agency of the City and County of Denver. It now serves approximately 330 square miles and 1.4 million people. Arnold described Denver Water as the beneficiary of timing, geography, and hydrology—all leading to providing clean, quality water to many communities throughout Colorado's Front Range. Denver's rights are more senior than many other water rights in Colorado, allowing for a consistent, uninterrupted water source. They source water primarily from the Upper Colorado Basin and Upper South Platte River, diverting relatively pristine sources of water for their customers. Hydrologically, most of the water comes from cleaner surface water, while many other communities rely on underground water sources contaminated by waste seepage. Timing, geography, and hydrology combine to allow Denver Water to supply water that meets and exceeds EPA standards.

But Denver Water is still mindful of other pollution sources like lead. This largely comes from the customer line connections or lead solder and fixtures in the lines. Since, historically, customers have owned their own service lines, there isn't a good record of where the lead that does leach into the system originates. However, research shows lead service lines predominate in houses built in the 1950s or earlier, before copper lines came into use. Denver Water has concluded that there are approximately 15,000 lead service lines in the Denver area. Denver Water has started a program to provide free water quality tests to determine if customers have a lead service line or fixture. It also provides loans, at little or no interest, to remove and replace these fixtures. These programs are designed to ensure that anyone can check and reasonably protect the quality of their water coming from Denver Water.

With opening remarks concluded, the panel moved on to the question and answer segment. Romero began the discussion with questions regarding the challenges faced by different communities seeking safe water access. The questions revolved around issues such as how context matters when thinking about water access and delivery (e.g., rural versus metropolitan, or urban versus suburban). Arnold pointed out that urban areas have deeper pockets to pay for the construction of expensive water quality systems, and greater access to certified, trained professionals. As a result, rural communities often get left in the lurch. Craine agreed, pointing out how, in the southern and eastern parts of the United States, waste from coal-fired plants tends to be located in rural communities. This is because cities tend to have a stronger voice to say "not in my backyard." Chacón had a slightly different take. In her experience, economic

class seemed to play a larger role. For instance, from COPA's canvassing efforts, they found distrust of the local water was concentrated in communities of color and in working class communities where the median annual income is \$60,000 and under.

It was interesting to note the different perspectives of the panelists to common issues. Craine and Chacón viewed water access through a more civil rights and social justice perspective, while Arnold's view was steeped deeply in Colorado water law, particularly in the prior appropriation doctrine. However, all the panelists often agreed on the sources of the problem and what viable solutions might look like. Ultimately, it was invaluable to hear these varied perspectives on how to tackle these impending issues and reconcile the problems created by disparate access to and availability of clean water.

*Michael Larrick*

### EIGHTEENTH ANNUAL LAW OF THE RIO GRANDE CONFERENCE

Santa Fe, New Mexico

April 5-6, 2018

#### UPDATES: TEXAS V. NEW MEXICO AND COLORADO

At the 18<sup>th</sup> Annual Law of the Rio Grande Conference in Santa Fe—a gathering of stakeholders from Colorado, New Mexico, and Texas—several professionals took advantage of the opportunity to weigh in on *Texas v. New Mexico & Colorado*, an ongoing case before the United States Supreme Court. Three presenters, one from each state, gave a formal update on its status.

The presenter from Texas provided a brief orientation to Supreme Court jurisdiction and procedure as it relates to the case in question. The Supreme Court has exclusive and original jurisdiction over actions among states. Because that jurisdiction is discretionary, a state must petition the Court for permission to file a complaint against another state. If the Court grants the motion to file, it then appoints a Special Master to hear the case and make a report with recommendations for how it should be resolved. The parties then file any “exceptions” to the Special Master’s Report. The Court reviews the exceptions and issues its Order.

Overview presentations of the Rio Grande Basin provided background for the facts of the case. The Rio Grande Compact is an interstate agreement between Colorado, New Mexico, and Texas that apportions Rio Grande Basin water among the three states. Under the Compact, Colorado must deliver a specific quantity to New Mexico, and New Mexico must deliver a specific quantity to the Elephant Butte Reservoir, from which water is distributed to New Mexico and Texas. Elephant Butte Reservoir, located in southern New Mexico, is a federal Bureau of Reclamation project. *Texas v. New Mexico & Colorado* is based on Texas’ allegation that New Mexico has violated the Compact by allowing diversion of surface water and pumping of groundwater that is hydrologically connected to the Rio Grande below Elephant Butte Reservoir, thereby depleting Texas’ share of water. Given the case’s pending status, New Mexico did not delve into its position at the conference, however, in its 2014 Motion to Dismiss, it asserted that the Compact does not require New Mexico to preserve conditions on the Rio Grande below Elephant Butte Reservoir.