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CONFERENCE REPORTS

TWENTY-FOURTH ANNUAL AMERICAN BAR ASSOCIATION ENVIRONMENTAL, ENERGY, AND NATURAL RESOURCES LAW FALL CONFERENCE

A GLASS HALF EMPTY - FLINT, ENVIRONMENTAL JUSTICE, AND AMERICA'S DRINKING WATER INFRASTRUCTURE PROBLEM

Denver, Colorado October 5-8, 2016

At the 24th Annual American Bar Association Environmental, Energy, and Natural Resources Law Fall Conference in Denver, a panel of three professionals in the field of environmental justice tied themes of environmental justice to the history, issues, and lessons learned from the recent drinking water crisis in Flint, Michigan.

Randy Hayman, from Beveridge & Diamond in Washington, D.C., opened by stating that the Safe Drinking Water Act ("SDWA") is the most important piece of legislation the United States Congress has ever passed, because "water is life." The SDWA gave U.S. citizens assurance that their water would not be contaminated by anything that could cause serious health problems. Considering the necessity of water to human survival, Hayman said the SDWA is inherent to environmental justice.

The majority of Hayman's statements were about the history and execution of the SDWA. Many regulatory checks were put in place by Congress to ensure that everyone is confident their water is safe to drink and use for everyday needs. Other than wells serving fewer than twenty-five people, every public water system is subject to the rules of the SDWA, and failure to meet the standards set forth by the law can result in fines of \$25,000 per day. The damage does not just end with the fine, however. Public confidence in officials erodes when a community violates SDWA rules. Therefore, public officials face the dilemma of whether to publicize the existence of a water crisis, because failure to solve the problem swiftly result in the public's trust quickly diminishing.

The moderator asked Hayman to elaborate on the Lead and Copper Rule, a health standard that minimizes the amount of those contaminants in public pipelines. Lead and copper particles enter the water stream from pipes, pollution, and natural processes. As long as the amount of either remains below a specified "action level," the water is still considered safe for human consumption. An action level is an amount of contamination that will require additional action from water system administrators, including treatment, public notification, or exposure minimization. Exceeding an action level is not a violation itself—nor is it necessarily a health and safety hazard—but it could indicate the existence of a water-pollution problem. According to Hayman, because education about safe contaminant levels is insufficient, news of a community's water

getting contaminated at all sometimes causes panic. Hayman suggested officials should take greater steps to inform the public about lead and copper, since it is only when those measurements rise to very high levels that they become a potential threat to health.

The second speaker was Quentin Pair, a professor of environmental justice at Howard University School of Law who also works in the environmental justice division at the Department of Justice. According to Pair, environmental justice is the civil rights of the Twenty-First Century. In his discussion, Pair said the themes of the civil rights movement are tied directly to modern environmental justice because the Environmental Protection Agency's ("EPA") definition of "environmental" has very similar language to Title VI of the Civil Rights Act—equal treatment is emphasized in both. He mentioned how critical it is to consult the general public first about environmental issues, rather than waiting for elected officials to take notice. He believes grassroots organizing can begin to solve environmental problems much more efficiently and effectively than any other public resource, because local community members, more than elected officials, know which issues are most important to their neighbors.

As part of his discussion, Pair shared the story of the beginning of modern environmental justice in Warren County, North Carolina. Beginning in 1973 a large landfill was used to dispose of contaminants without the knowledge or consent of one of the poorest counties in the state, the populations of which were more than seventy percent black at the time. This controversy was addressed in several lawsuits, including *United States v. Ward* in 1982. This trend has since continued, and three out of every four disposal facilities in the country are located in minority and low-income communities. According to Pair, race is the most significant determinant of the location of these disposal facilities across the country. He said that in order to talk about environmental justice, it is impossible not to consider how much damage environmental racism has caused.

Michelle Wilde Anderson, a law professor at Stanford who focuses on state and local government, was the final speaker on this panel. She brought the discussion full-circle by connecting what the other speakers discussed to the Flint crisis. She described the professionals who initiated the documentation of the contaminated drinking water in Flint, including a pediatrician who investigated the doubling and tripling of lead levels in her patients' blood. Those professionals did what Pair criticized public officials for not doing: they listened to the community and learned what was wrong.

Wilde Anderson also described how the cause of the crisis was a revenue problem rather than a spending problem. Because of an abundance of deferred spending and loans in the 1970s, Flint did not have the resources to meet local needs. Public infrastructure suffered as a result of the lack of resources, and old systems that were not properly maintained grew more vulnerable to leaking contaminants over time. Ultimately, she said, the decision to rebuild these outdated infrastructure systems is left to the taxpayers, and the longer those systems go without repair the more likely health hazards are to occur in the near future. Wilde Anderson views Flint as a warning or a wake-up call to the nation because old pipeline systems will fail without better and more regular maintenance.

The panel then accepted questions from the audience. One audience member asked how federal agencies, including the EPA, could do a better job

dealing with environmental injustice. Pair suggested those problems could not be solved without providing more funding for environmental justice, which Congress has denied. He further noted that many communities do not trust the federal government to solve all of their problems, so the EPA currently has neither the political nor the financial support needed to tackle those issues. Another audience member asked how local communities can recognize access to safe drinking water as a basic human right. Wilde Anderson answered by saying that leaders do not try hard enough to make water available to communities that cannot afford it, so communities fall short of recognizing access to safe drinking water as an essential human right. The costs associated with delivering water to these communities are high, and not many cities have completed these critical delivery infrastructure projects.

Travis Parker

**NATIVE AMERICAN LAW STUDENTS ASSOCIATION, NATURAL RESOURCES
AND ENVIRONMENTAL LAW SOCIETY, AND THE UNIVERSITY OF DENVER
WATER LAW REVIEW PANEL**

**WATER, OIL, AND TRIBAL SOVEREIGNTY: THE FIGHT FOR THE DAKOTA
ACCESS PIPELINE**

Denver, Colorado September 27, 2016

On September 27, 2016, the University of Denver Sturm College of Law (“DU”) hosted a panel discussion about the current legal fight over the Dakota Access Pipeline in North Dakota. The panel addressed legal, historical, social justice, and environmental justice topics related to the dispute. The discussion was co-sponsored by DU’s Natural Resources & Environmental Law Society, Native American Law Students Association, and the *DU Water Law Review*.

Professor Fred Cheever, a DU Law professor and co-director of the school’s Environmental & Natural Resources Law Program, moderated the discussion and introduced the issue. The Dakota Access Pipeline (“DAPL”) is an approximately 1,170-mile pipeline constructed to transport crude oil from North Dakota to Illinois. The pipeline’s path is intended to span four states—North Dakota, South Dakota, Iowa, and Illinois—and cross the Missouri River at a point located a half-mile from the Standing Rock Indian reservation in North Dakota. The DAPL route would pass through tribal lands of great cultural, religious and spiritual significance to tribes.

Professor Brad Bartlett, a visiting assistant professor in the Environmental Law Clinic at DU Law, offered a timeline of events regarding the DAPL legal conflict. In July 2016, Earthjustice, on behalf of the Standing Rock Sioux Tribe, filed a declaratory and injunctive relief complaint in U.S. District Court for the District of Columbia (*Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*). The Cheyenne River Sioux Tribe intervened and joined the lawsuit in August 2016. In the initial complaint, the Standing Rock Sioux Tribe argued that the U.S. Army Corps of Engineers (“Corps”) violated multiple federal statutes, including the Clean Water Act, National Historic Protection Act, and National Environmental Policy Act, when it issued permits to move forward with