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Agricultural Water Conservation: Is It Really So Simple?

**THIRTY-FIFTH ANNUAL AMERICAN BAR ASSOCIATION WATER LAW
CONFERENCE**

Los Angeles, California

March 29, 2017

AGRICULTURAL WATER CONSERVATION: IS IT REALLY SO SIMPLE?

Jan Newman from Tonkon Torp, LLP moderated the panel discussion on water law issues as it relates to agricultural water conservation was moderated. The panel featured three distinguished speakers who contributed their views and experience in water conservation as it relates to agricultural development in the United States. The speakers were James Eklund, outgoing Director of the Colorado Water Conservation Board, Warren H. Peterson, Vice President of Farmland Reserve, Inc. headquartered in Salt Lake City, Utah, and Adam Schempp, Director of the Western Water Program at the Environmental Law Institute in Washington, D.C. The main theme of the panel was whether traditional water law doctrines, such as prior appropriation—"first in time, first in right"—and beneficial use promote water conservation efforts.

Adam Schempp began the panel with a general overview of the challenges western water users face, and the possible solutions to these challenges. Water conservation efforts are restricted by the physical geography of the arid western landscape where sources of surface water and groundwater are intrinsically bound by the layout of the land. There are also inconsistencies in the legal doctrines each state legislature uses as a basis for developing their own water laws. Economic considerations also shape conservation efforts in the various western states. Schempp noted that water conservation is a complex topic, and there are a multitude of issues and considerations in each of the three broad categories described above.

Next, Warren Peterson discussed his views on water conservation efforts based on his work and experience in the Utah water law landscape. Peterson believes that water conservation is always a question that revolves around the reallocation of resources: how much water may be retrieved or preserved after use. He suggested that the best way to promote agricultural water conservation is for farmers to utilize more efficient irrigation techniques. Science and technology are friends of water conservation, and creative new irrigation systems could drastically decrease the total amount of water needed for crops as well as increase the amount of reallocated water leftover after use. To illustrate his point, Peterson presented a quick case study about the hydrology of Utah's Sevier River and the effects of water appropriation for agricultural and urban use on the river system.

James Eklund followed Peterson's discussion with his insights regarding the state of water conservation in Colorado. Eklund began by noting that Colorado is home to two of the world's top eighteen most stressed river basins. This designation is probably the result of the unique physical landscape within the state of Colorado. With a map of Colorado and the surrounding states as a visual reference, Eklund pointed to the fact that Colorado is separated into two distinct regions: the water rich western area and the water poor eastern area. Not only that, many of Colorado's water sources flow out of the state without having a significant amount of water sources flowing in. Tension between water

users from the two regions has shaped the history of water law in Colorado. This tension between the two regions is exacerbated by Colorado's geographical dichotomy as the western regions of Colorado has a low population and is primarily rural agricultural, and the eastern regions of Colorado has a high population and is generally urban. Furthermore, the urban population in the eastern regions of Colorado has increased drastically in recent years. Such a growth puts pressure on the state to allocate enough water to supply the urban populations. This kind of water allocation negatively impacts water rights holders residing in western Colorado. The political battle between the agricultural west and the urban east is constant and greatly affects statewide water use planning and conservation efforts.

After Eklund's overview on the nature of Colorado's water infrastructure, Schempp gave a brief conclusion to summarize the panel discussion. Schempp emphasized the primary purpose of water conservation - to return more water to the stream or, alternatively, to maintain a higher volume of water flowing in stream. The key to water conservation is not to reduce the amount water rights holders may use but rather to use the amount of water they already have in more efficient ways so as to promote a higher return of water to the stream. Current agricultural water conservation projects have mostly been tested on a smaller scale, with individual private farmers. But the results have been positive and overall very promising. Schempp ended the discussion by characterizing successful water conservation as a collaborative effort; states must work together to change laws that are outdated and outmoded, implement new technology and innovative strategies to promote water conservation, and give farmers incentives to utilize their water more efficiently and to produce less waste.

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THE FUTURE OF INDIAN WATER RIGHT SETTLEMENTS IN AN AGE OF UNCERTAINTY

Jennifer Gimbel, a senior research scientist at Colorado State University, moderated the panel discussion entitled, "The Future of Indian Water Right Settlements in an Age of Uncertainty." Gimbel began her introduction by acknowledging that certainty is the main goal when identifying water rights; states and water users want to know what belongs to Indians and how they want to use it. Gimbel introduced two of the most pressing sources of uncertainty—funding and resources. Over the last few years, states "ponied up" a considerable amount for successful settlements. Nonetheless, states want to maintain control over water, making it difficult to determine how water rights should be administered.

Pamela Williams, Director of the Secretary's Indian Water Rights Office in the U.S. Department of Interior ("Department of Interior"), began her discussion by quoting Secretary Ryan Zinke: