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UNIVERSITY OF DENVER WATER LAW SYMPOSIUM 2016: CONFLICTS AND COOPERATION: THE PAST, PRESENT, AND FUTURE OF INTERSTATE WATER COMPACTS

THE HISTORY AND IMPORTANCE OF INTERSTATE WATER COMPACTS

Denver, Colorado

April 8, 2016

The 2016 University of Denver Water Law Review Annual Symposium (“Symposium”) focused on the topic of Interstate Water Compacts, both past and present. The first speaker, retired Colorado Supreme Court Justice Gregory Hobbs, Jr. spoke on the history and importance of interstate water compacts, both in the United States as a whole and Colorado in particular.

Justice Hobbs began the Symposium by noting how interstate compacts illustrate the delicate mix of federalism that makes the United States unique. His presentation centered around the story of Delphus Carpenter, a graduate of the Sturm College of Law and the father of the interstate water compacts created in Colorado. Born in 1877, a year after Colorado became a state, Carpenter grew up working the land in Greeley. After graduating law school, he became a practitioner in Greeley. He was a strong believer in the prior appropriation doctrine. Coloradans at that time, and settlers across the West, believed that they owned the water within their territories, but this view would soon prove incorrect.

Justice Hobbs noted the significance of 1902. The Federal Reclamation Act took effect that year and Kansas sued Colorado over water rights in *Kansas v. Colorado*. Moreover, both the Bureau of Reclamation and the Federal Government asserted that planned reclamation project should receive all unappropriated water. Justice Hobbs explained that the states, including Colorado, were not happy with the situation that was developing in the West, a war of sorts for water rights. In 1907, the Supreme Court finally issued its decision in *Kansas v. Colorado*, holding that a fact specific equitable apportionment analysis would control these types of disputes between states over water rights. Justice Hobbs stated how Colorado “won” the first round of apportionment due to its settled agriculture across the state.

Next, Justice Hobbs discussed how the changing border of the United States in the late nineteenth century affected the development of water rights in the West, particularly in regards to Mexico. At that time, homesteading was the philosophy of the West, and, when federal law granted a homestead it only included surface water rights. Justice Hobbs asserted that this foreshadowed

the eventual difficulty of adjudicating groundwater rights under interstate compacts. Justice Hobbs remarked on the prescience of the framers of the Colorado Constitution, who declared that the water belonged to the public and the people. This idea was part of the homestead philosophy, but had even deeper roots in the traditions of Native Americans who lived in the West long before Europeans had settled there.

Justice Hobbs then turned back to the story of Carpenter. He explained that Carpenter entered into this mix of uncertainty after graduating from law school. Carpenter was a one term state senator. Nonetheless, after he left office, the whole state of Colorado turned to him on a bipartisan basis to assist them in the growing number of disputes over waters within the state. In 1908, the Supreme Court declared that the new reservations for Native Americans needed enough reserve water to sustain their populations and such water was not subject to any state doctrines. Justice Hobbs discussed how it was a rude awakening for the states to learn that they did not own their own water. Additionally, there was growing concern among the citizens of Colorado over lawsuits from downstream states. At this time, Carpenter represented the Greeley Water District, and sought one hundred thousand acre-feet of water from the Laramie River, but Wyoming was not inclined to deal. Justice Hobbs explained how all of these circumstances forced Carpenter to reconsider his belief in the prior appropriation doctrine, and prompted him to begin research on compacts to settle these disputes.

Justice Hobbs described how people in Colorado and the surrounding states were not receptive to the idea of the federal government issuing decrees to resolve these water disputes. Carpenter and others wanted to rely on state sovereignty to resolve the disputes between the states and make binding contracts. These negotiations began in 1922 in Washington D.C. Justice Hobbs described how Carpenter brought detailed maps along with him to show plans to irrigate the entire Eastern Slope. Carpenter also wanted the states to be able to use the water as they saw fit within their own borders. By the end of the negotiations, he accomplished his goal of giving state courts the power to work within their own rules through compacts. Carpenter also set the landscape for how courts adjudicate these water rights today.

Justice Hobbs closed his speech by describing the importance of water storage here in the West, especially as more and more people migrate to urban centers like Denver. Justice Hobbs noted how Carpenter knew this when he worked as a state senator to establish the correct priority dates for the reservoirs in Colorado. To illustrate this point, Justice Hobbs displayed various images of reservoirs across Colorado, including Cherry Creek and the Rio Grande Reservoir. Justice Hobbs asserted that, following the 1922 negotiations, Carpenter laid the foundation from which eight more interstate compacts would arise. However, Justice Hobbs pointed out that the success of interstate compacts does not ensure a conflict-free future. Justice Hobbs finished his remarks by saying: "We want it all, and we think we can do it all. But there is a limited water supply, and we share it."

Brian Hinkle