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Historical Perspectives: Does Mitigation Stand the Test of Time?

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to adopt similar principles. Some of the main standards include: (i) zero discharge of wastewater until a treatment standard is adopted; (ii) recycling wastewater at a rate of at least ninety-percent; (iii) closed-loop containment of drilling fluids; and (iv) groundwater monitoring both prior to the start of the operation and after the operation has concluded.

Overall, the conference highlighted the importance of water in the oil and gas industry and the need to continue developing environmentally sustainable practices. The speakers covered a wide range of topics, which provided a strong basis for the water issues that can arise within the oil and gas industry.

Dane Mueller

COLORADO WATER CONGRESS 2014 SUMMER CONFERENCE: RALLYING OUR WATER COMMUNITY

Snowmass Village, CO

August 20-22, 2014

HISTORICAL PERSPECTIVES: DOES MITIGATION STAND THE TEST OF TIME?

As part of the Colorado Water Congress's ("CWC") annual summer conference, Jim Lochhead, CEO and manager of Denver Water, moderated a four-panelist discussion entitled "Historical Perspectives: Does Mitigation Stand the Test of Time?" The discussion centered on Colorado transbasin water projects and the mitigation of their environmental impacts. The panelists were chosen to represent differing perspectives and to talk about what they have learned from the past and what has changed in regard to today's physical, political, and cultural environment. Lochhead noted that disputes over transbasin diversions are not new and have existed since *Coffin v. Left Hand Ditch Co.* in the nineteenth century. He also pointed out that, in addition to cities on the Front Range of Colorado, many Western Slope cities make use of transbasin diversions on both large and small scales.

Harold Miskel, formerly the water resource manager of Colorado Springs Utilities, and Larry Simpson, formerly the general manager of the Northern Colorado Water Conservancy District ("Northern"), presented the perspective from the East Slope of Colorado. During his career, Miskel was involved in the Homestake Water Project, a water supply project jointly operated by the cities of Colorado Springs and Aurora that transfers Western Slope water from the Eagle River basin to water users on the East Slope. Starting in the early 1960s and for the rest of his thirty-year career, Miskel took part in the conflicts that resulted from the project, many of which are ongoing today. He acknowledged that the basin roundtables happening today are beneficial because they create better collaboration. However, he also stated that in his experience there are

three categories of people who get involved in the collaboration process: collaborators, opportunists, and obstructionists. He noted that obstructionists—those who are willing to defeat you at all costs—can really hinder the progress of a project.

One of the main issues Miskel encountered during his work on the Homestake Project was the 1041 permitting process (named after Colorado House Bill 1041, enacted in 1974). Miskel discussed the past fifteen years of litigation surrounding the process, the fact that it is still not completely resolved today, and the immense increased project costs associated with the permitting. Miskel's experiences left him with the perspective that the 1041 permitting process needs revising, and he suggested that the new Colorado state water plan presents an opportunity to do just that. Also, he stated that, while he does believe in the value of mitigation, the current process undesirably gives counties decision-making authority on issues of state-wide concern.

Larry Simpson followed by sharing his experiences with the Windy Gap Firing Project. The Windy Gap Firing Project is a water supply project designed to improve the reliability of supply to the Colorado-Big Thompson Project, a transmountain diversion that supplies water to northeastern Colorado from the Lake Granby area. Simpson stated that his and Miskel's experiences were similar. The Windy Gap Firing Project was negotiated extensively with the Colorado River Water Conservation District and the Grand County commissioners and resulted in large mitigation efforts and compensatory storage as part of the deal. He gave the opinion that our current permitting and litigation process creates opportunities for stalling, which ultimately causes the costs of a project to increase with little benefit. He stated that compensatory storage essentially makes someone pay for something that he or she already owns, which could be considered a form of extortion. Simpson ended by stating that he believed mitigation would not stand the test of time because other interests and their successors will keep trying to take another bite out of the apple.

Eric Kuhn, general manager of the Colorado River Water Conservation District, and James Newberry, a Grand County commissioner, gave a perspective from the Western Slope. Kuhn noted that the issues surrounding transmountain diversions have persisted since the 1930s. In his view, this is one of the factors making current mitigation negotiations more difficult; in order to be successful in mitigation, everyone needs to be included from the beginning. He also said that the issues are not only transbasin issues, but also interbasin issues, and they need to be viewed as a connected system in terms of water exports.

James Newberry addressed earlier comments about the 1041 permitting process. He thought the process gave everyone a chance not to be blind-sided. From the Grand County perspective, he continued, the way that the Colorado-Big Thompson Project was operated prior to the 1041 permitting negotiations did not do a good job of distributing effects between all the parties involved. He said the rivers of Grand County were being negatively impacted and noted that river conservation organizations recently listed the Fraser River as endangered. Newberry was a part of the early negotiations with Northern and Denver Water regarding Fraser River water use; he credited them for stepping out of their comfort zone, doing the right thing, and looking for solutions. In Newberry's opinion, leaders stepped up, created an adaptive management plan, and are now going forward joined at the hip. He reminded the audience that while

it is easy to identify problems, it is not nearly as easy to find solutions. He drew a laugh from the audience by comparing “Free Tibet” bumper stickers to the Save the Fraser (River) campaign—it is easier to say it than to actually do it. Newberry reiterated that he thought the 1041 permitting process was beneficial because it identified issues and did not overly streamline the process. In his opinion, the process requires people at the grassroots level who understand what the rivers need in order to help save them.

Lochhead ended the discussions by suggesting that, if this experiment in partnering fails, we could end up in a state of gridlock.

Kevin Boyle

DISCUSSION POINTS: CONSERVATION, REUSE, COLLABORATION

Conservation, reuse, and collaboration were prominent themes woven through this summer’s Colorado Water Congress conference. From August 20 to 22, 2014, political leaders and prominent members of the water community traveled to Snowmass Village, Colorado, to discuss pressing water issues. As droughts continue to plague the West, this year’s speakers commented on how both the government and citizens are responding to the changing climate.

On Thursday morning the Water Congress welcomed Melissa Meeker, Executive Director of the WateReuse Association & Research Foundation, to the stage to discuss water sustainability and the importance of reuse in water supply portfolios. Based out of Alexandria, Virginia, WateReuse is a nonprofit organization that works to promote sustainable water sources through education, research, and advocacy. Using California as an example, Meeker noted that there is a chronic imbalance of supply and demand. In states that have water shortages, balancing water demands with the limited resource poses an ongoing challenge. Population growth and droughts are driving the discussion of reuse. Meeker pointed out three main areas required in making water reuse part of our reality. First, she noted, leadership is key. States need strong advocacy to create flexible policies and provide funding for reuse projects. Second, more research is needed in the area to come up with answers to critical questions. Finally, Meeker stressed the importance of education and outreach so the public understands the reason behind the creativity with water projects. She explained that nothing can terminate a project like public outcry.

Changing the public perception to view treated water as a water source people will want to use will require both education and branding. As Meeker mentioned, “every drop of water we consume or use has already been used . . . Water reuse does not involve drinking directly out of your toilet.” Rather, she explained, it involves taking wastewater and running it through various treatment processes for specific purposes. Getting this message across will aid the spread of water reuse. After conducting a public perception research project, she found that labeling water as certified and describing the process of reuse made participants more receptive to using treated water.

WateReuse is taking steps to educate the public about water sustainability. On September 28, 2014, it hosted a media workshop as well as a gala to educate the press and public about water reuse. The gala, which took place in New