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Colorado law requires that "every constitutional amendment or law proposed by the initiative be limited to a single subject, which shall be expressed clearly in its title." A proposed initiative violates the rule if the subject has at least two distinct and separate purposes not dependent or connected with one another. Essentially, the proposed subsection must be necessarily and properly connected to the single subject of the initiative.

On April 16, 2012, the Colorado Supreme Court determined that indeed each initiative contained a single subject. The Court held that Initiative 3 was necessarily and properly connected with the subject of "the public's right in waters of natural streams" because the Initiative's language properly fell within the delineated purpose of protecting the public's interest in the water of natural streams. The Court further held, in a separate opinion, that the subsections in Initiative 45 are dependent upon and connected with one another under the title "the public control of waters."

Prior to the court's decisions, Kemper argued that a "single subject" finding would be incorrect because the initiatives deal with much more than one subject - the initiatives affect water quality statutes (statutes that are not the subject of one monolithic concept), diversion of water issues, and access rights. However, because the Title Board is entitled to significant deference in their findings, the Supreme Court declined to overturn the Board's decision. A fiery dissent from Justice Hobbs on each decision highlighted many of the same concerns Kemper identified in his presentation.

Chelsea Huffman

TRIBAL WATER LAW, TRIBAL SOVEREIGNTY, AND WATER DEVELOPMENT THROUGH COLLABORATION AND PARTNERSHIP

Celene Hawkins, Associate General Counsel for the Ute Mountain Ute Tribe ("UMUT"), discussed a cutting edge issue in Indian Water Law of multi-Tribal water organizations and Tribal/non-Tribal water organizations.

Because tribal water rights are governed by federal law and are not dependent upon state law or procedures (*Cappaert v. United States*), Hawkins began with brief overview of Federal water law. The seminal case *Winters v. United States* established the concept of implied federal reserved water rights for tribes. The *Winters* court held that Tribal water rights, now commonly referred to as *Winters* rights, are implied from the federal reservation of lands for Indian Tribes if the federal government's reason for reserving the land inherently requires access to water. The priority date for *Winters* rights are either the date of the creation of the Indian Reservation or time immemorial. *Winters* rights are not subject to abandonment or forfeiture under state law, and once *Winters* rights are quantified, Tribes are not required to put *Winters* rights to any particular use at any particular time.

Initially, because federal sovereign immunity prevented litigants from joining the United States in any state lawsuits, quantification was only feasible in the federal courts. However, in 1952, Congress passed the McCarran Amendment, which waives federal sovereign immunity for general stream adjudications and the administration of federal water rights. Now, Tribes may be forced to litigate federal reserved rights in state courts.

Many other issues arise because Tribes have historically been left out of federal water infrastructure development plans. Therefore, even if tribes have rights to water, they have little or no infrastructure to deliver and distribute that water. Tribes may be willing to take money or infrastructure (or money for infrastructure) during quantification in exchange for significant portions of water to which they are entitled.

Other problems arise from upstream or downstream non-tribal development of important Tribal surface water resources, which can diminish historical Tribal uses. States inevitably try to protect these non-Indian water users who have state law-based appropriative water rights, and the principles of federal reserved water rights do not easily mesh with how prior appropriation states administer water rights. Because litigation involving the quantification of *Winters* rights is costly and time-consuming, tribal water rights claims are often resolved through negotiation and/or settlement, which as Hawkins addressed later in her presentation, present a unique set of problems as well.

Hawkins then discussed tribal sovereignty and governance and its role concerning water. On reservations, the tribal government is often the central landowner and land manager in charge of providing water for municipal water services, economic development, and agriculture. Tribes also have inherent authority to regulate water quality on reservations, and may integrate water resources planning with water quality or water protection measures. Some tribes may have additional delegated federal authority, as well as some additional jurisdiction over non-Tribal users if the tribe has treated as states or "TAS" status under the Clean Water Act. For example, UMUT has TAS status for Clean Water Act enforcement, and is therefore responsible for its own implementation plan, just as a state is responsible for a "State Implementation Plan," or SIP. The tribe is also responsible for maintaining tribal water resources, for example, maintaining traditional areas for hunting, gathering, and other uses through litigation, negotiation, and settlement.

After providing this important background information, Hawkins moved on to discuss tribal water development through collaboration and partnerships. The obstacles tribes encounter in balancing all of their unique responsibilities for water management under federal law and the conflicts that arise between states and other tribal water rights breed an atmosphere of mistrust, and set the stage for extremely contentious litigation and negotiations. Despite these obstacles, collaboration does occur. Such collaboration is becoming increasingly possible because of the common interest among tribes in "big-picture" planning and water devel-

opment efforts, as well as smaller basin-wide or regional water planning and development efforts.

In 1992, ten tribes with reserved rights in the Colorado River basin came together to form the Ten Tribes Partnership ("Partnership"). Members of the Partnership are located in both the Upper and Lower Basins of the Colorado River. After the tribes formed the Partnership, the Colorado River Water Users Association ("CRWUA"), which was originally comprised of only non-Tribal water users, added three trustee seats for the Partnership. In 2012, George Arthur, a Ten Tribes trustee, became President of the CRWUA.

In 2011, the Partnership began work to address issues of common concern with the Bureau of Reclamation Colorado River Basin Water Supply & Demand Study. In 2012, the Partnership submitted a quantification option based on protection of "undeveloped" portions of tribal water and voluntary transfer mechanisms.

The Animas-La-Plata Project ("ALP"), located in La Plata and Montezuma Counties in southwestern Colorado and in San Juan County in northwestern New Mexico, was authorized by the Colorado River Basin Project Act of September 30, 1968. ALP, originally authorized for non-tribal uses, provided for a multi-purpose project primarily for irrigation and municipal and industrial uses. In 1986, ALP became an important component of the water rights settlement and quantification between UMUT and the Southern Ute Indian Tribe ("SUIT"). In response to significant scrutiny for endangered species and other issues in the 1990s, both Colorado Ute tribes and non-tribal users gave up significant irrigation and infrastructure components in order to secure funding and approval for the now-downscaled ALP. Since reauthorization in Congress and amendments to both UMUT and SUIT settlement decrees, the downscaled ALP has moved forward and the Tribes continue to work on development of mutually beneficial infrastructure projects related to ALP.

The Animas La Plata Operations, Maintenance and Replacement Association ("Association") was formed in 2009, and is comprised of three tribal entities (UMUT, SUIT, and the Navajo Nation) and three non-tribal entities in Colorado and New Mexico. Despite the members' different, and sometimes divergent, interests in water-related issues, the Association continues to work together to manage infrastructure projects related to ALP.

After detailing these examples of successful collaborations between tribal and non-tribal entities in contentious water issues in the West, Hawkins concluded with this final admonition: when there is sufficient trust and sufficient impetus, tribes and non-tribal entities can successfully work in collaboration on a regional scale and on large planning and policy issues.

J. Tobin Weiner