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Breakout Session 1B: Cities First - Water for Municipal Growth

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that the FDA should consider environmental impacts of disposed pharmaceutical waste in order for drugs to get regulatory approval, particularly because the health effects are basically unknown.

Ryan McLane

BREAKOUT SESSION 1B: CITIES FIRST – WATER FOR MUNICIPAL GROWTH

Christopher H. Meyer, of Givens Pursley LLP in Boise, began his discussion about Idaho's municipal water law by proclaiming that, while Idaho was not known for being on the cutting edge of many things, it is on the cutting edge regarding its regulation of municipal water law. Mr. Meyer discussed the basic challenges for municipalities within the prior appropriation framework. He noted that while in most industries in the United States, speculation is seen as important, but in water law, speculation is despised. The feeling of many western states regarding water is "use it or lose it." This, of course, is difficult to reconcile with the planning that municipalities must take part in regarding their water supplies. Municipalities need to have leeway when it comes to gathering the amount of water that they will need in the future. In the past, the "Great and Growing Cities Doctrine" and the "Growing Communities Doctrine" have acknowledged this need.

These doctrines are essentially an exception in most states to the forfeiture rule. In Idaho, rate of flow is the measure, and not the actual quantity of water. Mr. Meyer noted that this rule was not planned, but randomly came to be. However, municipalities have been required to engage in full disclosure and long time planning for their future water supplies, which results in the municipalities having to quantify their water rights. In Idaho there are several prohibitions on speculation, including a prohibition on obtaining future needs if there are conflicting plans, and the prohibition against the sale of future water rights.

Idaho learned from Colorado's method for dealing with municipalities. By doing so, Idaho made it optional for municipalities to operate under the 1996 Act. In Idaho, there must be an affirmative step to protect a water portfolio under the 1996 Act. Also, a municipality must show its entire water portfolio before being allowed to adjudicate a new water right. Idaho has also expanded the definition of municipal providers.

John Arum, attorney at Ziontz, Chestnut, Varnell, Berley & Slonim in Seattle, represents western Washington Indian tribes regarding the Washington Municipal Water Law of 1993, which is very similar to Idaho's 1996 Act. The tribes are concerned about the law because they have rights to harvest salmon, which are substantially affected by the water levels in the rivers. From the Tribes' perspective, the expansion of municipal water rights is done at the expense of water rights of others. The definition of a municipal law provider in the 1993 Act has resulted in the expansion of what qualifies as a municipality and

overwrote prior case law on the subject. This definition included private developers as being municipalities.

Under Washington law, a perfected water right certificate cannot be perfected based on system capacity, but must be perfected based on beneficial use. The 1993 Act overrode this law for municipalities. The 1993 law also allowed municipalities to expand their areas of water service without going through an actual change process. The Tribes see this as bad because the municipalities have no need to show they are not injuring other users. They only have to show that the change is consistent with a land use plan. This has taken a water adjudication process and turned it into a planning process. Most Tribes and individuals are left out of such planning procedures. Mr. Arum is concerned that this law is poorly premised on the fact that water is still abundant in the state of Washington. However, this is not true, as most basins are fully appropriated.

Generally Mr. Meyer and Mr. Arum provided two very different views of municipal water supply planning, however both were able to agree upon the fact that inevitably in water supply planning, one party will be harmed, be they municipalities, farmers, Indian Tribes, or the physical environment. They agreed that there is no perfect answer to satisfy all parties. However, they were also in agreement that there was some need for change in both of their states.

Kathlyn Bullis

BREAKOUT SESSION 2A: THE ENERGY – WATER NEXUS

Christopher Ellison, of Ellison, Schneider & Harris, L.L.P. and moderator of the panel, opened the discussion noting that connections between energy and water exist in a variety of fashions. As examples, he noted that nineteen percent of California's electricity use is for water related purposes, and that in the year 2000 electrical generation accounted for thirty-none percent of water withdrawals. Mr. Ellison stated that because of the connection between energy and water uses, any changes in water use will effect energy use, and vice versa. Because of this connection, and because of society's expanding need for more water and more energy, there is a real need to address the interplay between the sometimes competing uses.

John Merson, the Water for Energy Project Lead for Sandia National Laboratories, spoke next regarding the technical ties between energy and water use. Mr. Merson began by discussing the use of water in generating and producing energy. He first stated that when it comes to energy production, increased water use is often a tradeoff to increased or more efficient energy production. As an example, he spoke about new methods of cooling processes used in electrical generation plants, which withdraw less water but actually consume more water. He then talked about the need to develop alternative energy sources to fossil fuels and how nearly all of the alternative energy