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more difficult to manage. Water short areas, such as the Colorado River Basin, will face conflict and uncertainty over water supplies. If Congress and the global community fail to address the issues, water systems will no longer function sufficiently to meet the demands of a growing population.

Daniel Vedra

THE DORMANT COMMERCE CLAUSE AND WATER EXPORT: OPEN FOR BUSINESS OR SUCKERS BEWARE?

Professor Christine A. Klein of the University of Florida Levine College of Law began by discussing the water regulation challenges currently facing states. States have a greater interest in importing water rather than in exporting water, particularly with the increasing stresses on water resources. Professor Klein noted that many people are sensitive to water exportation. As an example, she referenced a billboard depicting people from around the country with straws into the Great Lakes water supply. Professor Klein then addressed whether states should have the ability to restrict water export.

As background, Professor Klein discussed *Sporhase v. Nebraska*, 458 U.S. 941 (1982). In *Sporhase*, a landowner, who owned property in both Colorado and Nebraska, wanted to irrigate the Colorado property with Nebraska water. The state of Nebraska brought action under a Nebraska statute to enjoin the landowner from using the water in this manner. The United States Supreme Court struck down the Nebraska statute, finding it violated the Commerce Clause. Thus, the Court held that a ban on exporting water across state lines is unconstitutional.

Professor Klein thought the question the Court asked in *Sporhase* of whether water is an article of commerce was the wrong question. Instead, she said that the Court should have asked whether the export of water has an effect on interstate commerce. As a result of asking the incorrect question, *Sporhase* overrode state water law. Following *Sporhase*, courts struck down various state and federal regulations preserving the states' regulations of water law. However, the Court started recognizing congressional limits on the Commerce Clause in *United States v. Lopez*, 514 U.S. 549 (1995), thus slowly giving states more regulatory authority.

In terms of reform, Professor Klein suggested that states, the federal government, and individuals consider water along a continuum instead of a "one size fits all" article of commerce. She argued that courts need to evaluate whether the actions or regulations in a specific context or case interfere with interstate commerce. To show the complexity of water law issues, Professor Klein provided a categorical listing of different water classifications and possible applicable doctrines. As such, Professor Klein advocated for a more nuanced analysis of water export cases.

Professor Klein perceived that the courts are diminishing the

regulatory void of both the Dormant Commerce Clause and the affirmative Commerce Clause. In support, Professor Klein cited both *Gonzales v. Raich*, 545 U.S. 1 (2005), in which the Court upheld a federal regulation on marijuana, and *GDF v. Norton*, 362 F.3d 286 (2005), in which the Court upheld federal regulations protecting cave insects. In addition, Professor Klein detected signs of increasing tolerance for state water export regulations. In support of this notion, Professor Klein cited *United Haulers v. Oneider-Herkimer Solid Waste*, 550 U.S. 330 (2007). *United Haulers* dealt with the state of New York requiring all waste to go through one facility. The Court upheld the state regulation despite the holding being in direct contrast to *Sporhase*. The majority of the justices supported the decision and distinguished *United Haulers* from *Sporhase* on the facts. Justice Thomas, in his concurrence, discussed the Lockner freedom of contract era, how the Court then adjusted precedent, and finally dismissed the idea. Justice Thomas suggested that the Court might follow the reasoning of *United Haulers* and eventually reject the Dormant Commerce Clause.

Professor Klein concluded that expansion of regulations shows an increased tolerance for the state regulation of water resources. As climate change becomes a greater concern, however, the Court may again strike down state regulations on water export.

Serena Hendon

THE SECURE WATER ACT: FIRST YEAR PROGRAMS AND IMPLEMENTATION

Melinda Kassen, Esq., Managing Director of the Western Water Project at Trout Unlimited, discussed the SECURE Water Act ("SECURE"), its new formulation as the WaterSMART Program, and the effects the legislation will have on the practices of the Bureau of Reclamation (Reclamation) in relation to climate change and potential long-term drought.

Senator Jeff Bingaman of New Mexico introduced SECURE, and Congress approved the legislation as part of the Omnibus Public Land Management Act in March of 2009. The Department of the Interior announced a departmental reorganization in February 2010 and placed many of the important elements of the SECURE legislation under the new WaterSMART program. Kassen noted, however, that the reorganization has not affected the important legislative goals established in SECURE. Most importantly, the department is now required to give credence to the importance of looking at the environmental impact in areas where Reclamation is active, in addition to the traditional concerns of the department such as the rights of water users and addressing potential water shortages.

According to Kassen, SECURE, now WaterSMART, provides Reclamation with additional authority and requires the agency to face the potential impacts of climate change on eight different river basins.