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Colorado Legislative Update of Water Issues

problem-solver of water issues to which other western states look for guidance. Justice Hobbs ended his presentation with his a reading of his poem, "Circumference." The poem described how living in a land of scarcity and opportunity connects everyone.

Ellen Michaels

COLORADO LEGISLATIVE UPDATE OF WATER ISSUES

Doug Kemper, Executive Director of the Colorado Water Congress ("Water Congress"), concluded the day-long symposium with an overview of the water-related issues the Colorado legislature is currently discussing. Since 1957, the Water Congress has been the primary organization representing water interests in the state. Created by then-Governor Steve McNichols and then-Attorney General Duke Dunbar, the Water Congress now has approximately 350 members.

The Water Congress has monitored the successful Upper Colorado River Endangered Fish Recovery Program ("the Program") since the 1980s. The Program is a partnership that includes the states of Colorado, Utah and Wyoming, the Bureau of Reclamation ("BOR"), the U.S. Fish & Wildlife Service, the National Park Service, Western Resource Advocates, the Nature Conservancy, and the Water Congress's sister organizations in Utah and Wyoming. The Program protects endangered fish native to the Colorado River, including the Colorado pikeminnow, the humpbacked chub, the razorback sucker, and the bonytail chub. The Program's goal is to delist at least one of these species on the Colorado River by 2023; delisting is an indication that the species has recovered substantially. Mr. Kemper reports that the Program has already completed both the fish bypass structures and the hatchery program necessary for the delisting of each of these species. Impressively, the Program has completed 11,000 Endangered Species Act consultations to date—representing at least 2.1 million acre feet of depletions without a single lawsuit filed. Colorado's share of the cost of this program comes from a state severance tax from oil and gas revenues (ranging from ten to several hundred million dollars per year). About a quarter of the Program's revenue goes to maintaining water infrastructure, with another quarter going to operational accounts, which maintain basin amount and the water supply reserve account to fund the work of the basin roundtables). The Program also includes a fund for species conservation trust fund. Because the legislature has struggled to balance Colorado's budget over the last two years, the Program has pulled \$150 million from the Colorado Conservation Board's cash account that is no longer available for water projects.

Kemper then summarized three recent and pending pieces of legislation: first, Kemper discussed HB1188, regarding rafting and whether or not the "right to float" existed in Colorado from the time of its creation as a state. There has long been legal uncertainty about the

right to float through private property are in Colorado. Colorado State Representative Kathleen E. Curry initiated this bill, which has taken many forms. Initially, the bill read that Colorado would either adopt, or formally recognize that Colorado already has adopted English common law as well as the navigability concept. The Water Congress's State Affairs Committee reviewed the bill, and expressed concern about the bill in its initial form because the law referenced Oregon case law. Often, according to Mr. Kemper, out of state case law is incompatible in Colorado. Generally, the Water Congress's State Affairs Committee believes that there are no navigable streams in Colorado that meet the test proposed by the bill, and therefore the bill will cause more uncertainty about the law. The House version of the bill passed with these problematic areas still intact. However, the Senate version of the bill stripped away the elements problematic to the Water Congress. Accordingly, the Water Congress adopted a neutral position on the current bill. For the first time in history, the Senate has assigned the current bill to the Water Congress, asking them to figure out a resolution. Before the Water Congress assumes this role however, the House must accept the Senate amendments. The bill is currently with the House.

Next, Kemper discussed HB1159, regarding basin of origin and the role of the Interbasin Compact Committee ("IBCC"). This bill did not pass House review, thus the Water Congress never had to consider it. The bill proposed that those who plan to transfer water from one river basin to another, in amounts exceeding 1,000 acre feet, must work out an environmental mitigation agreement with the local water conservancy districts regarding environmental and economic impacts of the water transfer. If parties are unable to come to an agreement, then the petitioner is subject to the 1937 Water Conservancy Act, which states that those seeking the transfer must demonstrate that the cost to existing prospective users will not increase. IBCC provided no specific recommendations regarding the proposed statutory changes ensuring the mitigation of impacts resulting from the interbasin transfer of water. After debating this bill, most legislators believe that the IBCC already conducts this work. Mr. Kemper believes that this issue will return to the legislature and the Water Congress in the next year.

Finally, Kemper discussed HB1051, which is a reporting requirement that the legislature amended to require the water conservation board, Colorado's primary water policy agency, to develop rules and guidelines for information to be submitted. This bill proposes that Colorado law makers should get consistent data regarding water conservation efforts. Such data will aid in long range planning to help Colorado better understand what its municipal demands are.

Kemper concluded his speech by briefly highlighting the following pieces of legislation: HB1204, a water-conservation plumbing-related bill; HB1250, which determines the funding for the Colorado Water Conservation Board and other projects; HB1327, which the Water

Congress opposed because it would have destroyed the Water Conservation Board; HB1358, which requires new homebuilders to offer water conserving options such as low-flow fixtures; HB1303, extended deadlines for water permitting related to oil and gas wells after the recent outcome of *Vance v. Wolfe*, 205 P.3d 1165 (Colo. 2009); and Joint Resolution 004 to fund the state revolving fund administered by the Colorado Water Resources and Power Development Authority for water and wastewater infrastructure.

Sarah Felsen