

1-1-2011

An Update on the Colorado Water Congress and Current Water Legislation

Sean Carnahan

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>

Custom Citation

Sean Carnahan, Conference Report, An Update on the Colorado Water Congress and Current Water Legislation, 14 U. Denv. Water L. Rev. 439 (2011).

This Conference Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

water use may affect an existing client, the lawyer must engage in a fact-specific inquiry. This inquiry must consider all circumstances: connections on the stream, what the potential client is retaining the lawyer's services for, and what impact such actions might have on current clients. After doing so, if the lawyer feels that he or she cannot provide diligent representation with informed consent, or that taking on potential Client B will be directly adverse to Current Client A, the lawyer must decline representation.

Chelsea L. Huffman

AN UPDATE ON THE COLORADO WATER CONGRESS AND CURRENT WATER LEGISLATION

Doug Kemper, the executive director, former president, and twenty-one year member of the Colorado Water Congress (CWC), concluded the symposium with his presentation. Mr. Kemper provided a brief historical introduction of the CWC followed by an overview of its inter-workings. Mr. Kemper explained that the CWC represents water interests in the state and has existed for fifty-three years. It was originally created by Democratic Governor of Colorado, Stephen McNichols, and Republican Attorney General of Colorado, Duke Dunbar. The goal was to facilitate statewide representation of water interests. The CWC's 350 members consist of representatives from law firms, engineering firms, and environmental interest groups. The members meet twice a year for a conference. The largest conference is in January, which took place in Australia this year. The other conference meets in August. This year, it was in Steamboat Springs. The CWC has a bicameral legislature of one-hundred members with sixty-five in the house and thirty-five in the senate. Members of the CWC form committees. The House Agricultural Committee or the Senate Agricultural Committee typically hears water related legislation. The most active committee is the State Affairs Committee (SAC), which has 190 members. During legislative sessions, the SAC meets Monday mornings at eight o'clock in the morning to review, introduce, and take positions on legislation. There are more than five legislators and between seventy and eighty attorneys at the Monday meetings. The SAC takes positions on about twenty bills and tracks about forty bills annually. Thirty to forty bills typically make adjustments to Colorado water law each year. In the last thirty years, almost no bill the SAC opposed was signed into law, and about eighty-five percent of the bills it supports are signed into law.

After an overview of the CWC's infrastructure, Mr. Kemper discussed some current legislation while guiding the audience through the Colorado Water Courts website and demonstrating the site's features. The website provides complete access to all information without a login or fee. Users can track and read current legislation as well as listen to audio recordings of discussions of the bills. One

section of the site contains spreadsheets listing all the current bills and the various stages of the process each bill was in. Mr. Kemper discussed four bills. Two bills the SAC opposed dealt with increased costs to water rights owners (HB-1165) and reduced access to ditches (HB-1289). The SAC is tracking two bills as well; one concerns endangered species of fish (SB-203 or HB-1177) on the Western slope and the other involves funding for water projects (SB-226).

The presentation took a different tone as Mr. Kemper concluded his lecture on the CWC and invited his audience to analyze the impact of water on the society in which they live. He showed drought patterns and current drought conditions in the continental United States with special focus on Colorado. Mr. Kemper discussed the greatest challenge with water, which is to maintain low water prices for consumers and sufficient reserves while simultaneously reducing demand through innovative conservation and accommodating an ever-growing population. This challenge, he explained, was for the next generation of professionals to solve. And with those words, he opened the door to the many law students in attendance, and invited them to play a role in the future of Colorado water.

Sean Carnahan

INTER-BASIN COORDINATION

Ted Kowalski, Chief of the Interstate and Federal Section at the Colorado Water Conservation Board (CWCB), and Peter Fleming, General Counsel at the Colorado River Water Conservation District, discussed coordination among the Colorado River basins.

Kowalski's presentation focused on the interbasin coordination across state lines and with Mexico. He began by giving an overview of how various compacts allocated the Colorado River. First, he mentioned that the Colorado River Compact of 1922 established the upper and lower basins. The Boulder Canyon Project Act further established lower-basin allocations in 1928, while the Upper Colorado Basin Compact established the upper-basin allocations in 1948. A treaty with Mexico in 1944 further allocated a portion of the Colorado River. In sum, the Colorado River allocates up to 17.5 million acre-feet (maf) of water, with 7.5 maf going to the Upper Basin, 8.5 maf to the Lower Basin, and 1.5 maf to Mexico. Kowalski mentioned that it is important to note there is approximately 15 maf of average annual runoff. Therefore, the Colorado River is over allocated.

Kowalski next discussed the benefits of interstate compacts for water allocation. First, the compacts could serve Colorado because negotiated compacts are better than equitable apportionment. He explained that because downstream states such as California and Nevada are developing at a faster pace, Colorado would lose out in the race to appropriate senior water rights based on its development. Another benefit of negotiated compacts is that they allow states to