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EDITOR'S NOTE

Time and again, we hear the old saying attributed to Mark Twain - "whiskey's for drinking, water's for fighting about." With climate change and the ever-growing population, Mr. Twain was right. But if we must fight over every drop of water, we must go to the courts. Thus, this issue of the *Water Law Review* focuses on common problems and themes found in water courts today.

Every state has some mechanism which they use to determine who has a right to what water. Colorado is no different. Here, a series of water courts, placed strategically in each major river basin, adjudicates water rights and grants decrees confirming the amount of water a user may appropriate. Colorado water courts also review changes of water rights, exchanges, and augmentation plans.

These Colorado water courts, as well as others across the western United States, rely on expert testimony to explain hydrological science and engineering. In *Hydrology and the Courts: The Role of Expert Witnesses - A Study on Potential Reforms*, Dr. Mariam Masid analyzes the effects of this testimony. Dr. Masid provides a historical backdrop of expert testimony - why courts allow it, what problems surface because of it, and possible reforms. She then turns to a basic overview of the hydrologic model. Dr. Masid illustrates the potential for manipulation of the data these experts produce to the court. Finally, Dr. Masid shares the results of an empirical study highlighting these troubling issues and offers insights for change.

In *Fifth Amendment Takings & Transitions in Water Law: Compensation (Just) for the Environment*, Ling-Yee Huang delves into the history of the 5th Amendment Takings Doctrine and the various systems of allocating rights to water. Ms. Huang then applies the Takings Doctrine to the evolving water systems of both riparian and prior appropriation states. Finally, Ms. Huang highlights the problems attendant in both systems for users stripped of water rights and the high burden these users have to prove a taking occurred.

Jamie Janisch offers a detailed look into a recent Supreme Court case in *Scope of Federal Jurisdiction Under Section 404 of the Clean Water Act: Rethinking 'Navigable Waters' After Rapanos v. United States*. First, Mr. Janisch begins with a history of what "navigable waters" means. Next, Mr. Janisch sheds light on the apparent inconsistencies in the interpretation of the Clean Water Act. Finally, he offers a compromise for courts to use when interpreting "navigable waters" as it applies to wetlands.

In addition to our coverage of conferences, books and the latest court opinions relating to water law, we offer a new feature. In September 2007, the Federalist Society For Law and Public Policy hosted a panel discussion on the enforcement of the Clean Water Act. We are pleased to reproduce a transcript of that panel.

We hope you enjoy the works in this issue of the *Water Law Review*. The *Review* values your continued support, and we hope you will share your thoughts and opinions regarding our publication.

Amy Petri Beard
Editor-in-Chief