

1-1-2008

Out Damned Spot

Maria Hohn

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



Part of the [Law Commons](#)

Custom Citation

Maria Hohn, Conference Report, Out Damned Spot, 11 U. Denv. Water L. Rev. 390 (2008).

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.

Out Damned Spot

applies to Indian reserved water rights. Mr. Bartell concluded by mentioning some current adjudications of water rights.

Christopher Rich, of the Office of the Solicitor, United States Department of the Interior in Salt Lake City, Utah, was the final panelist. Mr. Rich opened his presentation with a jaunty limerick and proceeded to explain how the Reclamation Act of 1902 affects water appropriation.

Professor Abrams synthesized these three methods of water allocation. The riparian theory allows any riparian to use a water source in a reasonable way with all uses have equal weight. Riparians use these water rights on their land and the right transfers with the sale of the land. Anyone can own water rights through prior appropriation so long as the water is unappropriated. First in time is first in right for prior appropriation with the amount of water right determined by how much the user diverts and puts to beneficial use. The water can be used anywhere, but the user may not use if it harms other users. Finally, the United States holds the rights to reclamation water but the contract holder holds the right to use the reclamation water. The United States must obtain rights in the water and reclamation project users share any shortages pro rata. Acreage served by the reclamation project drives the amount of water allocated to each user but water is transferable within the project. Reclamation water users may only use the water on lands within the contract boundaries.

Overall, this early session provided a perfect basic foundation of water law for any professional.

Amy Petri Beard

OUT DAMMED SPOT

The morning continued with a panel discussion titled "Out Dammed Spot," which addressed the myriad of issues related to dam removal. Thomas Berliner, a partner at the San Francisco office for the international law firm of Duane Morris, LLP, moderated the session. Mr. Berliner recognized from the start that making a decision to remove a dam is very controversial and complex, with many positive and negative aspects on both sides of the decision. Therefore, he explained that this panel would refrain from that debate and just discuss the necessary considerations once an entity has already made the decision to remove a dam.

Jock Conyngham, a Research Ecologist for the Army Corps of Engineers ("Corps") and a self-proclaimed "water-hugger and fish-kisser," began the panel. Mr. Conyngham suggests that there are really two options for dam removal: 1) a "blow and go" approach; and 2) an incremental approach. The "blow and go" method is common with small dam removals, while the Corps often uses the incremental approach with larger projects. The major consideration with incremental dam removal is sediment management, as well as other environmental

issues such as increases in invasive plants. Overall, Conyngham advised that dam failures are becoming an increasing problem in the United States, with over forty dam failures occurring each year. Therefore, with this problem on our doorstep, he recommended that it is extremely important for this dialogue regarding the implications of dam removal to continue.

Julie Keil, the Director of Hydropower Licensing for Portland General Electric Co. ("PGE"), continued the discussion by providing a case study, which looked at the decommissioning of PGE's Bull Run Project. The Federal Energy Regulatory Commission ("FERC") operated the Bull Run Project, which involved three rivers in the Sandy River Basin in Oregon. Because of serious water quality issues, endangered species concerns and the interests of PGE's customers and shareholders, PGE decided not to re-license the project.

Maria Hohn

INTERSTATE CONFLICTS OVER SHARED GROUNDWATER BASINS

The second session of the morning turned its attention to interstate conflicts over shared groundwater sources. Christopher H. Meyer, of Givens Pursley LLP in Boise, Idaho, moderated the plenary session and began the discussion with an offering of eight factors of interstate water allocation, using them as a springboard for the well-versed panelists. Meyer's fourth factor, "informal agreements," seemed to fall outside of any other mentioned legal characterizations and became the center of discussion, especially whether "less is more" in the realm of interstate relations, law, and shared groundwater resources. Professor John Leshy, Washington attorney James Davenport, and Metropolitan Water District of Southern California General Manager Roger Patterson batted around the idea in their particular capacities, addressing interstate relations ("opening the kimono can improve relationships"); shared technological/scientific understanding of the groundwater resources ("collective agreements through collective understanding"); and cooperative efforts versus mandates in negotiations between states ("we did less, but it feels like more").

It would be difficult to summarize such a wide-ranging discussion succinctly, but the role of various levels of politics came up a number of times. If the theme of the discussion ended up as "less is more," then the panelists appeared to agree that more information, and less political posturing, would lead to more effectively managed interstate resources.

Paul Tigan