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Urban River Restoration

ENVIRONMENTAL AND ECONOMIC PRESSURES ON PUBLIC WATER SUPPLY

The first breakout session of the conference addressed the environmental and economic pressures on public water supplies. The three professionals on the panel all hailed from Phoenix, Arizona, and the presentation was a great case study feel that allowed the audience to get a broad sense of the issues affecting Phoenix's water supply. As the panel's moderator, Rita Maguire, Founder of Maguire & Pearce, PLLC in Phoenix, stated in her introduction, the issues surrounding quality and quantity of water have been a concern throughout Arizona's statehood.

Each of the presentations had something of tiered theme. Joan Card, Director of the Water Quality Division in the Arizona Department of Water Quality, addressed the state and federal laws that Arizona municipalities must follow, including the Safe Water Drinking Act, the federal Clean Water Act, and Arizona's Aquifer Protection Program and Groundwater Management Act. Ms. Card's discussion of these overlapping programs mirrored Peter Culp's discussion of the quantity issues of phoenix's water supplies. Mr. Culp, an associate at Squire, Sanders & Dempsey LLP in Phoenix, addressed the advantages and limitations of the various Phoenix water sources, including surface water, groundwater, effluent, and Colorado River water. Each source has its strengths and weaknesses, and concerns that are necessarily drawn from the history of the state, such as contamination of water sources from silver and copper mining.

Paul Tigan

URBAN RIVER RESTORATION

Paul Kibel of Policy West in Alameda, California, moderated a session discussing urban river restoration projects across the United States. Mr. Kibel set the stage for the panel discussion by suggesting that there are really three core aspects to every urban river restoration project: economic, environmental and equity. In terms of economic considerations, such restoration projects must contemplate the acquisition of riverfront properties and the effect of departure of industry from these regions. Urban river restoration projects also implicate many of the environmental laws, including the ESA, NEPA, CERCLA, and the CWA to name a few. In terms of equity considerations, the impacts on minorities and low-income people must be contemplated. Such restoration project planners must take into consideration environmental justice concerns for the projects to be successful and integrated into the communities.

With these background concepts in mind, Uwe Brandes, at Brandes Partners LLP in Washington, D.C., Matt Clifford, with the Clark Fork Coalition in Missoula, Montana, and William H. Hyatt, Jr., Partner at

K&L Gates LLP in Newark, New Jersey, proceeded to discuss three case studies.

Mr. Clifford discussed the restoration project at Milltown, Montana, suggesting the key to success on that project was that a group of informal stakeholders worked together in a collaborative effort to create a new restoration at Milltown. Mr. Hyatt shared his experiences as common counsel for seventy-five companies involved in the cleanup of the Superfund Site on the Passaic River. The cleanup on the Passaic was one of the pilot programs under the Urban River Restoration Initiative. While a settlement has been reached with the EPA, Mr. Hyatt discussed some of the remaining questions going forward, including how to allocate costs from 200 years of contamination and how to effectively cleanup the water bodies. Mr. Brandes ended the panel with a discussion about the Anacostia Waterfront project in the Chesapeake Bay. Mr. Brandes explained how the river has slowly transitioned from a socio-economic barrier in the community to a mixed use redevelopment that is slowly unifying the community. According to Mr. Brandes, non-governmental organizations have accomplished this transition by working together and creating alliances.

Maria Hohn

MUNICIPAL WATER SUPPLIES: HOW DO WE SECURE THE FUTURE?

Charlotte Benson, City Attorney for Tempe, Arizona, moderated this session about municipal water supplies and if the “old rules” still apply. The session posed three issues: 1) how secure or reliable are municipal water supplies, 2) the tension between certainty and acquiring water for future use, and 3) potential solutions. Municipalities must attempt to balance growth with their water supply.

Steven E. Clyde, Director at Clyde Snow Sessions & Swenson, PC in Salt Lake City, Utah, led the discussion with a detailed look at Utah’s water supplies. Specifically, Mr. Clyde stated that municipalities hold too few water rights at the time of development and ask developers to bring in their own water supply. Utah surface water is fully allocated and the population is expected to double within the next 25 years. Mr. Clyde questions if municipalities are getting excessive rights in water, or more than would be reasonable, for the expected growth. Mr. Clyde discussed pending legislation that would eliminate the need for municipalities to file non-use applications so long as the water rights were held in the reasonable future needs of the community.

Tom McDonald, Partner at Cascadia Law Group in Olympia, Washington, compared these same issues with what is occurring in Washington. Mr. McDonald believes that municipalities hold too many future water rights. Washington has instream flow requirements on all rivers that tie into tribal claims for fisheries. However, Mr. McDonald queries if municipalities should be given preference and what that preference is subject to. For example, Washington state was issuing permits for