

1-1-2008

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### Custom Citation

Allison Graboski, Conference Report, Summary and Status of Water Bills Introduced in the 2008 General Assembly, 11 U. Denv. Water L. Rev. 397 (2008).

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## Summary and Status of Water Bills Introduced in the 2008 General Assembly

### HOT TOPIC: INTERNATIONAL WATER LAW

Professor Stephen McCaffrey of the University of the Pacific McGeorge School of Law in Sacramento, California, hosted the final presentation of the conference, titled "International Water Law & Management in the 21st Century." Professor McCaffrey has extensive experience in this area, and his stories from across the world left some in the audience with the sense that he could have hosted his own conference on the topic. A statistical snapshot: there are 264 international drainage basins in the world; they cover forty-five percent of the world's land surface and sixty percent of the surface of Africa. Professor McCaffrey boiled his presentations down to a few truths - that most of the world's freshwater is shared between countries, population is increasing, development of water is increasing, water is a finite resource, and with climate change comes changes in water resources as well. Add these truths up, and the world is presented with either a great possibility for conflict or for cooperation.

In order to guide the countries that share water resources towards cooperation, Professor McCaffrey told the audience that "we have seen the future, and it is the Colorado River." Essentially, the well-known and well-negotiated history of the Colorado River (as well as the Nile River, which he also discussed) epitomizes many of the classic characteristics of other large international river systems. Most of the water comes from the Upper basin, and mostly used in the lower basin; power politics shift over the life of the river and what starts as a conflict has great potential to move to cooperation. To this end, Professor McCaffrey outlined some of the key aspects of the United Nations Convention on Non-Navigable Uses of International Watercourses and to what end they could play in encouraging cooperation instead of conflict.

*Paul Tigan*

### COLORADO WATER BAR

#### **SUMMARY AND STATUS OF WATER BILLS INTRODUCED IN THE 2008 GENERAL ASSEMBLY**

**Denver, Colorado**

**February 26, 2008**

Bret A. Fox and Steven O. Sims of Brownstein, Hyatt, Farber and Schreck gave a lunchtime presentation on the water bills introduced in the Colorado General Assembly's 2008 spring session. Mr. Sims began by giving a brief introduction of the Colorado Water Congress, an organization that monitors and sometimes gives public support or opposition to water bills in the assembly. During the meeting, Mr. Sims and Mr. Fox discussed eight of the bills in the General Assembly.

HB-1141, sponsored by Representative Curry of Gunnison, requires real estate developers to file a water demand report that demonstrates a "sufficient and sustainable" water supply for the proposed development with the local permitting agency. The bill allows for pre-approved water plans rather than requiring a report for every proposal. The bill passed the house local government on February 19 and moved on to the Committee on Appropriations. The Water Congress is monitoring this bill.

HB-1280 protects the historical use of water rights leased to the Colorado Water Conservation Board by ensuring that the lease period will not count as a period of non-use. "Parking," or buying shares without intending to use them while looking for a municipal buyer, is the main issue that the bill still needs to address. The bill passed the House Committee on Agriculture on February 20, with a second reading on February 22. The Water Congress is monitoring this bill.

HB-1148 responds to the 2007 adverse possession case in Boulder. The bill sought to make it harder to acquire land by adverse possession. The bill added a requirement to an adverse possession claim that the party seeking title must prove by clear and convincing evidence that they believed in good faith that they owned the land. The first draft of the bill potentially included all ditches based on prescriptive easements. However, because of amendments to the bill, it currently has no impact on water rights. The Bill passed the House on February 18 and moved to the Senate Judiciary on February 20. The Water Congress is currently monitoring this bill.

HB-1044, HB-1030, and SB-136 are "the central bills." HB-1044, sponsored by Representative Hodge, enables individuals or entities to loan excess water credits to another for use in decreed augmentation plans. This bill lost on second reading in the House on February 4, 2008. Fox and Sims characterized the bill as a solution in search of a problem since a trading market for credits already exists. The Water Congress is currently monitoring this bill.

HB-1030, sponsored by Senator Brophy, is a controversial bill that exempts certain augmentation plans from replacing pre-1974 well-pumping depletions in Water Division 1. Confusion exists as to whether the exemption should extend to plans applied for, amended in the future, or already adjudicated. This bill passed in the House on February 5 and moved to the Senate Committee on Agriculture on February 11. The Committee has not yet calendared it. The Water Congress is currently monitoring this bill.

SB-136 relates to HB-1030. SB-136 authorizes some individuals or entities to delay or cancel their replacement of well depletions during the non-irrigating season. Fox and Sims described this bill, calendared for the Senate Committee on Agriculture on February 28, 2008, as conceptually sound, but practically impossible. The Water Congress opposes this bill.

SB-28, also sponsored by Senator Brophy, appears to allow for the draining of Bonny Reservoir, eliminating evaporation and seepage losses allocated to Colorado as consumptive use under the Republican River Compact. Fox and Sims described the bill as too complex. The bill passed out of the Senate Committee on Agriculture on February 14 and had a second reading on February 22, 2008. The Water Congress is monitoring this bill.

SB-53, proposed by Senator Brophy, amends the statutory definition of designated groundwater to include 100-year wells. The Senate Committee on Agriculture postponed the controversial bill indefinitely on February 14, 2008. The Water Congress opposes this bill.

*Allison Graboski*

**UNIVERSITY OF DENVER  
WATER LAW REVIEW  
SYMPOSIUM**

**CUTTING EDGE ALTERNATIVES:  
CREATING, LEASING, REUSING**

**Denver, Colorado**

**March 5, 2008**

**INTRODUCTION**

Decreasing fresh water supplies is a growing problem throughout the world, not only in the United States. This day-long symposium discussed alternative methods of water creation and allocation. Participants had an opportunity to hear cutting-edge ideas and how they may fit into current riparian or prior appropriation systems.

The University of Denver *Water Law Review* hosted the Symposium. The *Water Law Review* is an internationally circulated, semi-annual publication that serves as a high-quality forum for the exchange of ideas, information, and legal and policy analyses concerning water law. In publication since 1997, and the only journal of its kind in the nation, the *Water Law Review* seeks to foster water law discussions, both nationally and worldwide, and find possible solutions to the water problems that affect us all.

**COALBED METHANE PRODUCED WATER**

Steve E. Marlin, Esq., of Davis, Graham, & Stubbs LLP, Denver, Colorado, and Kate M. Fox of Davis & Cannon, Cheyenne, Wyoming, examined Colorado and Wyoming's coalbed methane ("CBM") produced water issues.

Mr. Marlin started with an explanation of CBM-produced water. In water-saturated coal seams, water pressure keeps methane in the coal. Extraction of the CBM involves pumping the groundwater from the