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Superconference

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included language that the U.S. will conduct such negotiations via the Department of State and International Boundary and Water Commission. Also, there are efforts to encourage trans-boundary programs to benefit the entire river basin, she said.

NEXT STEPS

As of the conference date, the states were collaborating on an annual operating plan for the year and were somewhat in a wait-and-see posture following the December agreement, Davenport said. Drought remains a critical issue on the minds of all stakeholders, according to the panelists. “We haven’t seen the droughts we really could see,” Kowalski said. Plus, five of the top 10 fastest-growing states are in the Colorado River basin. “You have that extra push and demand on our water supplies,” he said.

Given those two factors, states are increasingly cognizant of water storage. “Is the storage that we have in Colorado and other basin states the appropriate storage, built in the right places?” Kowalski asked.

Nicole Bonham Colby

COLORADO WATER LAW

SUPERCONFERENCE

Denver, Colorado

March 14, 2008

David W. Robbins, a partner at Hill & Robbins, P.C. in Denver, began the morning panel with a discussion on interstate river issues. He started with a detailed look at interstate water compacts by providing an overview, explaining their binding nature and identifying the nine compacts to which Colorado is a signatory. He further explained the “agony and ecstasy” of irrigation wells. According to Robbins, the growth in water wells has threatened compacts. He explained that without controls on the wells, the State’s obligation under these compacts will fail. The water consumption in upstream states, linked to increased well use and improved efficiency, has been a motivation for much litigation. Robbins further explained the current lack of water supply in the Arkansas, Republican and Rio Grande rivers to meet the required apportionments to the States. He touched on possible solutions to increase the flow in these rivers, such as directly adding water to the river just before crossing state boundaries or enacting conservation district statutes. Robbins ended by answering questions from attendees.

Peter Fleming, general counsel for the Colorado River Water Conservation District, Glenwood Springs, followed Robbins with a discussion of the West Slope’s perspective on Colorado river management.

Fleming began by detailing existing and proposed transmountain diversion projects, including those with and without compensatory mitigation. Fleming went on to explain the difficulty and problems with the proposed projects, such as all of the easy projects have already been constructed and the headwaters are currently tapped out. Fleming explained that when the 1922 Colorado River Compact allocated water to the upper and lower division states and Mexico, it did so using record high water levels and failed to account for climate change. Fleming also spoke in detail about the risk of compact curtailment and overdevelopment, and the uncertainty they cause. Fleming identified and questioned possible cooperative solutions for Colorado and the need to consider future water demands and administration of a compact curtailment. Fleming ended with the River District's view on compact curtailments, cooperative efforts, compact calls, and the need for a strategy.

Peter Binney, Director of Utilities, City of Aurora Water, ended the panel by focusing on the East Slope's view on Colorado river management. He began by explaining how imperative it is for the East and West Slopes to negotiate Colorado's water supply. The debate includes things such as the impact of compact curtailment and the Endangered Species Act. Binney also explained the East Slope's dependency on the West Slope. He discussed this situation in the context of water development in the United States, including river diversions, increase in tunnels, direct flows to reservoirs and integrated resources. Binney further estimated that between 2025 and 2030, water demand would exceed its supply in Colorado. In order to gain an understanding of the West Slope's position, Binney recognized and outlined the West Slope's water issues. He then spoke about solutions for the Front Range, including recapturing reusable return flows, phased development of transmountain water, and increasing water costs. He believes that a compact call is closer than 10 years, if history repeats itself. He mentioned the repeated droughts in the past several years and the projected change in precipitation to support his conclusion. Binney also spoke of reservoir operations and how the decrease in water levels will not be a problem so long as the water levels recover. Binney ended by focusing on the city of Aurora, Colorado's current water supply as an example, mentioning alternatives, water quality, and the cost of reliable water supply. He summarized the situation by quoting Mark Twain: "Whiskey is for drinking, water is for fighting over." The panel ended with brief questions and answers from the panel, both clarifying and lightly expanding on the presentation. Most questions regarded other possible solutions, which Binney deemed implausible.

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