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## Plenary Presentation #2: What is an Adequate Water Supply?

Julie M. Schmidt

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tion purchased the existing Pecos irrigation district and Mr. Hernandez compared the settlement agreement the parties reached to the bundle of sticks analogy Mr. Brandt had used. Mr. Hernandez also spoke about the Rio Grande River. He talked about the treaty between Mexico and the United States and the compact between Colorado and New Mexico.

Christopher Rich of the United States Department of the Interior's Office of the Field Solicitor, spoke as the third panelist. Mr. Rich challenged the title of the presentation by saying "who owns the water?" is the wrong question; the right question should be "who has rights and obligations?" Under the 1902 Reclamation Act, the federal policy of dam building and public works could be considered as the federal government acting as a proprietor of land. The underlying intention was for the projects to remain under federal control forever. There is no title transfer in facilities changes. Because the federal government has enumerated powers only, authorization matters. Users start with a conditional right, which is either a contract right or a water right.

Clifford Lee, of the California Department of Justice was the final panelist. Mr. Lee spoke about the recent Ivanhoe litigation before the California Supreme Court. The California court held the federal government holds legal title and the end user holds equitable title. The United States Supreme Court overturned the California decision and also held the federal reclamation statutory acreage limit trumped state law. On remand, the California Supreme Court admitted they were wrong about users holding equitable title. The court determined end users hold no federal title, and the creation of end user water rights should be avoided as a policy.

After all the panelists spoke, a series of hypothetical questions were presented and a question and answer period followed.

#### PLENARY PRESENTATION #2: WHAT IS AN ADEQUATE WATER SUPPLY?

Robert H. "Bo" Abrams, Professor of Law at Florida A&M, moderated this discussion. Mr. Abrams opened with three theses. His first thesis was that assured supply laws add value, but less than it might seem. His second thesis was that assured supply laws are worse than no such laws at all. His third thesis was that assured supply laws do more than he thought possible. Mr. Abrams concluded his third thesis was the correct one, on the basis that assured supply laws increased visibility, which lead to better decision making.

The first panelist was Melinda Kassen, Colorado Director of Trout Unlimited. Water supply contemplates a wider spectrum of uses today, such as kayaking and recreation, and supply for fish, in addition to traditional agricultural uses. For rivers, Trout Unlimited currently works under a "CPR" agenda – conserve, protect, restore. Ms. Kassen spoke about ten principles of smart water management, which she broke down into two main categories. The first category was proce-

dural principles, which include having all stakeholders at the discussion table in order to avoid environmental lawsuits later. The second category was substantive principles, which includes choosing the least adverse effects first, as well as working to create multi-benefit projects. Ms. Kassen gave an example from the 2002 Colorado drought. The city of Aurora was struggling with water supply from the South Platte project when they began reusing wastewater, which provided more supply as well as a more sustainable solution. Water courts in Colorado are not nimble. The Roaring Fork re-watering/transfer project did not happen, which led the new legislature to expedite the process. Ms. Kassen pointed out that there are few incentives for better system integration. She also spoke about following regulations as a sustainable measure. In conclusion, Ms. Kassen advocated a balanced approach.

William J. Hasencamp of the Metropolitan Water District of Southern California spoke as the second panelist. He described southern California's dry summers and semi-arid climate, as well as how Colorado River water supplies most of the water for southern California. He then presented a historical overview of the types of solutions California had tried over the past few decades to address its water needs. California used to be able to use other states' unused allocations from the Colorado River to address its water needs, but the growth of other states meant California could no longer rely on historically available water. Because agricultural uses had first priority, municipal users that had lower priorities were in danger of being cut off from the water supply. California negotiated with the other Colorado River Compact states to enable a soft landing and avoid cut-off of supply. However, unexpected and prolonged drought conditions brought a hard landing anyway. As a result, California needed to adopt a plan to reduce reliance on imported water. California's plan increased conservation measures, placed greater focus on efficiency, and identified more possibilities to increase available water through desalinization and groundwater recovery. The plan also features more storage and transfer projects for wet years. In addition to California's internal efforts, in February 2006, the seven states of the Colorado River Compact agreed to major changes, which include water storage on Lake Mead. These intrastate and interstate plans have addressed California's water needs for the present. Mr. Hasencamp concluded by saying southern California faces future issues in water quality, endangered species, levees, and climatic change, to name a few.

Finally, James G. Moose of Remy, Thomas, Moose and Manley, LLP gave a review of recent California water law cases and statutes. The most interesting development has been the California version of NEPA, called CEQA, which, in addition to the NEPA-like requirements, also requires agencies to mitigate development effects on water supply. Mr. Moose and many other California water law practitioners are waiting for the California Supreme Court to review this statute in a

case called *Vineyard Area Citizens for Responsible Growth, Inc., et al v. City of Rancho Cordova*. The court is expected to consider the extent to which agency environmental review for land use plans must also consider water supply aspects. After the three panelists spoke, they took questions from the audience.

*Julie M. Schmidt*

#### KEYNOTE ADDRESS

Keynote Speaker: John C. Cruden, U.S. Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice.

During lunch, Mr. Cruden gave the keynote conference address. Mr. Cruden gave a very captivating address, which included several personal stories from his career. Mr. Cruden concluded his address by suggesting that in this day of age, water law is increasingly intersecting with other areas of law such as environmental law. Because of this trend, water lawyers will have to address a wider variety of legal issues.

#### HOT TOPICS LUNCH

Panelists: Edwin Kneeder, Jeanne Zolezzi, Gregory Wilkinson, Paul Haik, and Jeff Kightlinger. Moderator: Rod Walston.

The panel began with a discussion of recent and current cases in front of the Supreme Court. Mr. Kneeder gave his views and a brief summary of the cases.

Mr. Haik spoke about a recent compact between the Great Lakes states and the Canadian provinces of Ottawa and Quebec. The compact is titled, "Great Lakes Resources Compact and Agreement," and it was signed in September 2005.

Mr. Wilkinson and Ms. Zolezzi discussed recent California Supreme Court decisions. Mr. Wilkinson had participated in the oral arguments in one of the cases.

Finally, Mr. Kightlinger discussed recent developments regarding the Colorado River. Mr. Kightlinger is the General Manager of the Metropolitan Water District of Southern California. He discussed the proposal and draft agreement between the Colorado River Basin states that was recently submitted to the Secretary of the Interior.

*Andrew Ellis*