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Developments in Western Water Policy
An Overview of an Initiative in Colorado
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Introduction
Much of water policy in the West has evolved from lengthy and costly litigation over water rights, water use and misuse. Conflict seems to be inherent in the issue due to tight supplies and growing demand. Indeed, as detailed by the U.S. Department of Interior with its Water 2025 campaign, rivers and basins in the Intermountain West are anticipated to be the sites of increased conflict by the quarter-century mark.

However, Western states also have a reputation for innovative cooperation on water issues as well. The Colorado River Compact was the first attempt to regulate water usage among states in a “fair” way based on population and amount of land in agricultural production. As issues have arisen, new policy solutions have been attempted to the point that aspects of “the law of the river” are used around the world to address similar problems.

This occasional series will report on interesting developments in water policy, focusing on the Intermountain West but will include findings from as far away as China and Australia. This article is focused on a relatively new initiative in Colorado—the Colorado Water for the 21st Century Act and the subsequent interbasin compact process. Click here for more on the initiative and process.

As explained by the Colorado Office of Interbasin Compact Negotiations, the reasons for the 21st Century Act and the new administrative bodies that were created are as follows:

"Historical water use patterns have caught up with our choices of where we live and work. Increasingly communities have outgrown available water supplies. This predicament was created over time and will become more dramatic as Colorado’s population grows and its water uses and needs change. To correct this problem by moving water from place to place without regard for the communities, economies, and the environment does not recognize the value and importance of water in all parts of Colorado. Water is moved from basin to basin and sub-basin to sub-basin in every corner of the state. In the past, and far too often, the movement of water has been viewed as creating winners and losers. This need not be the case. There is absolutely no question that compromise will be necessary to accommodate the many competing water uses in Colorado—but it does not mean that we are dealing with a zero sum proposition."

Like Colorado, water is moved between and among basins in Utah and most other Western states, and the statutory provisions governing this movement are spotty. For example, Utah currently has no state law governing interbasin water transfers, while Nevada’s state engineer uses their transfer law quite frequently. Water policy analysts and policymakers are watching closely the outcome of the efforts in Colorado and whether or not the framework can be transplanted to address local needs throughout the Intermountain West.

Overview of the Act and Basin Roundtables
As the framers of the Colorado Water for the 21st Century Act were careful to write into the law, nothing in the Act supersedes existing water rights law in the state nor does it nullify current agreements between water providers. The Act is solely focused on future development and the “best use” of any unappropriated waters within the basins.
The Act creates a new office as well as an Interbasin Compact Committee and Basin Roundtables. The Basin Roundtables are the center of the framework. These groups are meant to bring together the governmental (such as counties, municipalities, conservation districts), business, agricultural and environmental interests at a local level. There are nine roundtables around the state. The purpose of these groups is to encourage discussion on water management issues that involve the whole basin and to draft solutions that emphasize collaboration among all the water users within the basin. To ensure that the roundtables are not “co-opted” by outside interests and truly represent local water needs, only the non-voting members can reside outside each basin’s boundaries.

To jump start this collaboration process, the roundtables were given a mandate by the state legislature—they are to develop a basin-wide needs assessment which must include three key elements:

- Both consumptive and non-consumptive needs must be accounted for. Non-consumptive waters are those needed for sustaining wildlife and aquatic habitat; waters that are used for recreation and all other waters that are not for municipal, industrial or agricultural uses.
- Analyze the availability of water supplies within the basin (compared to need) and include any waters that are not appropriated.
- Propose projects or non-structural methods for meeting current and anticipated future water needs, utilizing unappropriated waters as the roundtable deems necessary. Non-structural methods include such things as water banking, conservation pricing and other mechanisms that do not involve creating a physical water delivery system.

At this point, it’s important to keep in mind that the second element, analyzing available water supplies, is a huge task in and of itself. So much so that, for example, while there has been a call in Utah for a number of years for a similar type of water census, the task has been left undone. The reason for this is because it would take a tremendous amount of time, money, expertise and political capital to achieve. The Colorado solution of having local roundtables tackle a census within their own basin may make it less resource intensive to achieve and may be something Utah policymakers want to consider.

One of the interesting components of this process is that once a basin roundtable drafts its solutions to unmet needs, those solutions are forwarded to the statewide Interbasin Compact Committee (IBCC) for approval. If the IBCC does approve the solution and some type of water compact is needed, the IBCC is responsible for submitting the compact to all the basins impacted by the compacted solution. This “stamp of approval” is an attempt to keep two basins from negotiating a solution at the expense of other basins. In Colorado, this is a highly charged issue as growing urban areas buy water from surrounding rural counties and disrupt the flow of water downstream to other rural users.

**Interbasin Compact Committee**
The purpose of the IBCC is to oversee the tasks of the basins and to facilitate negotiations among them. It also has the higher purpose of addressing statewide water issues. One of its first acts was to adopt a charter to govern how negotiations between basins would be performed. That Charter includes:

- The development of a “common vision” for statewide negotiations as well as a common technical platform (a how-to guide) to facilitate negotiations.
- A framework to guide negotiations between roundtables. This includes policies to safeguard against individual compacts conflicting with one another.
- As mentioned above, procedures for ratification of compacts that require all affected roundtables to approve a draft compact.
• Authorities and procedures to ensure that approved compacts are legally binding and enforceable.
• Procedures for integrating the Interbasin Compact processes with other water planning and development processes. As mentioned in the preamble to the Act, these Interbasin Compact processes cannot impair or supersede the authority of other water entities to perform their functions.

Conclusion
So what does all this mean for Colorado as well as other Western states? First, that while collaboration among users has always been part of the process, collaboration has not usually been a formalized forum. Without that formalization, those with opposing views have often been excluded at the beginning of water negotiations. This leaves those opponents with little recourse other than litigation which is costly, both in time and resources. By including all voices in an open, formalized quasi-governmental process, policymakers hope to reduce the contention around water issues.

Second, by charging a statewide body to oversee compact negotiations between basins in a standardized manner, states may be able to defuse tensions between urban and rural users.

Lastly, by trying to create solutions at a local level that harmonize with an overall vision of water development, this initiative is encouraging accountability and responsible use while allowing localities the flexibility to adapt to local needs.