

# Water Law Review

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## EDITOR'S NOTE

We are proud to announce that this issue marks the tenth anniversary of the *Water Law Review*. We would like to express our heartfelt appreciation to all of the individuals that have contributed to the success of the journal. Our connection to the water law community is critical to our ability to create a current and relevant journal in terms of both article submissions and expert advice. That connection would not exist without the support of past and current advisory board members, Sturm College of Law faculty, and the many other practitioners that support the journal. The foundation of our journal is the students whose dedicated teamwork over the last ten years has consistently produced the quality product that sets our journal apart. Finally, it would all be for nothing without our subscribers, and it is my hope that this issue, like the ones that preceded it, reward you for your continued support.

Our lead article is a response by Lawrence J. MacDonnell to the Colorado Supreme Court decision in *High Plains A&M, LLC v. Southeastern Colorado Water Conservancy District*. Mr. MacDonnell draws a distinction between water that has been historically appropriated and consumed and water that remains in the public domain, arguing that privatization of consumed water and the resulting private market in water could improve water reallocation by removing substantial transaction costs.

We next turn to an article by Allan Ingelson analyzing Canadian statutory framework for regulation of coalbed methane gas produced water in light of the experiences in the western United States. The article begins with a thorough discussion of the experiences in the Western United States and the resulting Western Governor's Best Management Practices. The article then turns to a review of CBM produced water regulation in Alberta and British Columbia. The article concludes with a thoughtful comparison between the regulatory frameworks and recommendations for the improvement of the provincial regulations.

The third article in this issue is a discussion of the federal non-reserved rights doctrine written by James Cefalo. This piece first outlines the history behind the rise and fall of the doctrine. The article then discusses the future of the doctrine, pointing to the Great Sand Dunes National Park and Preserve Act as a potential modern reincarnation.

Following that is an article written by Joshua Mack bringing the reader up to date on the state of Colorado's law concerning Recreational In-Channel Diversions. This piece begins with a brief background on RICD's. Then the article turns to recent changes in the statutory framework and the resulting practical changes. The author



concludes by positing that some of the fundamental flaws in the original statutory framework remain despite the curative legislation.

The fifth article, authored by Melissa O'Connor, begins with a scientific argument that the use of national standards under the Clean Water Act does not reflect the ecological diversity found in a country with the geographical scope of the United States. Ms. O'Connor then reviews potential avenues through which individuals and interest groups can attempt to influence the standards to bring them in line with the ecological variability. The author concludes by suggesting that the limited recourse available to affect the national standards contributes to the lack of continuity between regulation and environmental reality.

Finally, we are pleased to feature an update, authored by Amy W. Beatie, to an article that appeared in Volume 7 of the *Water Law Review* entitled "The Devil in the Details: Water Rights and Title Insurance." In the update, Ms. Beatie analyses the effectiveness of water rights title insurance policies and discusses the extent to which these policies will reduce the necessary scope of due diligence in the conveyance of water rights.

We hope that you will enjoy the articles in this issue of the *Water Law Review*. Once again, we are grateful for the last decade and hope that you will continue to share your scholarly articles, opinions regarding our publication, and support.

Mark Terzaghi Howe