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Media News Release



Mountain Counties director moderates water rights panel

On July 17, Mountain Counties Water Resources Association Executive Director John Kingsbury moderated a panel of four legal experts in California water rights at the Sierra Water Workgroup Summit at King's Beach, North Lake Tahoe.

Kingsbury framed the issues: A lot of people think they have water rights, but do they really? What exactly are water rights: area of origin, senior, junior, pre- and post-1914, riparian? The State is working to solve the crisis in the Delta and seriously looking to take more water from upstream and to further regulate the upstream flows. Do we need to protect area of origin and senior water rights in the mountain counties for a sustainable future? How vulnerable are they? How concerned should we be when we hear from state representatives in Sacramento that water rights are old, outdated and need to be re-written?

Janet Goldsmith, with the Sacramento law firm Kronick, Moskovitz, Tiedemann & Girard, opened the discussion, setting the scene for the discussions to follow. She provided background on water rights and pointed to the responses and arguments that may be encountered when Delta flow requirements are imposed on mountain counties water districts.

Antonio "Tony" Rossmann began practicing land use and natural resources law in San Francisco in 1976. He is the founder of the law firm Rossmann and Moore.

Rossmann based his remarks on the doctrines of "watershed of origin," or "area of origin," and public trust, on an article he wrote called "Bring Us Law to Match Our Rivers." It is available on the firm website: www.landwater.com.

Rossmann advocates that both doctrines be included in the California Constitution.

The public trust doctrine has its origins in Spain and England. Originally, it applied to tidelands and navigable waterways. No one individual or entity could own submerged lands or navigable waterways, but the sovereign held it as trustee of a public trust for the benefit of the people for uses such as commerce, navigation and fishing.

In the United States, the public trust doctrine has been broadly accepted as an integral part of our legal heritage and water-resource administration. Rossmann said that elevating the doctrine to Constitutional protection will strengthen the State's ability to defend its public trust decisions when challenged on federal grounds.

Regarding the watershed of origin doctrine, Rossmann said it was designed to protect each tributary watershed in the state from excessive appropriation out of that watershed. "It also deserves adoption into the Constitution." He said Constitutional adoption would validate the 1955 Attorney General opinions on which the State Water Project was approved in 1960.

Those opinions stated that no appropriation should deprive an upstream tributary watershed of the entirety of its only natural supply. "In addition to benefitting the watershed of origin, this doctrine serves the entire state by discouraging appropriation to the edge of sustainability."

Ryan Bezerra is a partner with the law firm Bartkiewicz, Kronick and Shanahan, in Sacramento. In 2010 he received the Water Statesperson Award from the Regional Water Authority for his efforts to help shape the 2009 Bay Delta Reform Act. He worked to craft alternative language and helped build coalitions of northern California water users with common interests to increase the effectiveness of regional efforts with the Legislature. One of the goals of the Delta Reform Act is to reduce reliance on the water that flows through the Delta. One of the methods to accomplish this is through conservation, reducing the gallons per capita per day consumed. The target is 20 percent reduction statewide by 2020. There are different conservation methods being used in different areas, such as recycling water and reducing outdoor use, but the one that is most important to the areas of origin is Water Code 1011.

If a jurisdiction passes a resolution saying that efficiency measures it undertakes are conservation measures under Water Code 1011, the supplier retains its rights to the conserved water. That conserved water can be used to meet future needs or it can be transferred.

Dave Eggerton, El Dorado County Water Agency General Manager, said the most significant new source of water for the county's future is the Supplemental Water Rights Project. The El Dorado Water and Power Authority is the lead agency in charge of the project, which exercises the county's senior water rights to 40,000 acre feet from the Upper American River Project.

Eggerton said that local water purveyors have a continuing obligation to exert reasonable effort to augment their available water supplies in order to meet the demands in their service areas under the County's adopted general plan.

The project builds on agreements that were made in 1957 and 1961 with respect to the Upper American River Project, a hydroelectric system in El Dorado County operated by Sacramento Municipal Utility District.

A draft Environmental Impact Report has been filed, and protests received. "We are working on a regional partnership approach that will provide mutual benefits," said Eggerton.

The project includes 15,000 acre feet of carryover storage. "It gives us drought protection. This is priceless," he said.

"One of the areas we have to protect is our agriculture," he said. "This water will help our farmers and vineyard owners long-term."

Mountain Counties directors Don Stump and Lowell Jarvis attended the summit. Stump, a Calaveras County Water District director, said, "It was the best water rights panel I've ever heard. The attorneys worked together as a panel. The setting was casual and the panelists were relaxed and very informative."

Jarvis, Placer County Water Agency director said, "The 'a ha' moment for me was when Rossman talked about protecting our area-of-origin water rights by including them in our California Constitution. That would do a lot to resolve the north-south issues and we could move forward."

Moderator John Kingsbury said, "The 2009 legislation woke us up in the Mountain Counties. Area of Origin water rights continue to be in jeopardy. We've discussed some of the actions that are being taken to protect our water rights now and in the future. We will continue to

work together for the protection of our regional water supply for our economic and environmental well-being.”

For more information, visit www.mountaincountieswater.com
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Mountain Counties Water Resources Association was formed in the 1950s. The current membership consists of 56 districts, agencies, counties, professional consultants and regional agricultural interests in 15 counties stretching from southern Lassen to northern Fresno.



Tony Rossmann



Jan Goldsmith



Ryan Bezerra



Dave Eggerton