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Advisory Committee Recommendations - The Utton Center Model Interstate Water Compact

State Bar Center, State Bar of New Mexico

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Advisory Committee Recommendations

The Utton Center Model Interstate Water Compact

State Bar Center, State Bar of New Mexico

Albuquerque, New Mexico

7 June 2007

The Advisory Committee Conference

Date: 8-11 March 2005

Location: Bishop's Lodge, Santa Fe, New Mexico

Members: Representatives of stakeholder groups:

- Department of the Interior - Bureau of Reclamation
- Dividing the Waters
- Energy Trust of Oregon
- Environmental Defense
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- Idaho National Laboratory

The Advisory Committee Conference

Members: Representatives (continued) :

- National Hydropower Association
- National Association of Attorneys General
- National Conference of State Legislatures
- National Water Resources Association
- Native American Rights Fund
- Office of State Engineer, State of Colorado
- U.S. Army Corps of Engineers
- Western States Water Council
- World Bank

The Advisory Committee Conference

Members: Experts in multiple areas:

- Law
- Hydrology
- Economics
- Ecology
- Social Science
- Political Science
- Geography
- Fish and Wildlife

The Advisory Committee Conference

Four Workgroups:

- Allocation and Management Approaches
- Membership and Decision-Making Process
- Interstate and Federal-State Coordination, Staffing and Funding
- Compact Agency Powers

The “Top Ten” Concepts

1. An Expansive Preamble:

- Define goals and governance principles.
- Stress sustainable use of surface flows and hydrologically connected groundwater in an entire river basin.
- Recognize the impacts of water use on water quality and water-related values.
- Provide for equitable sharing of benefits and shortages.
- Be transparent and inclusive in planning and operation.
- Stress the importance of mutual trust.

The “Top Ten” Concepts

2. Adaptive Management:

- Necessary flexibility (within limits) to address:
 - Changing hydrologic conditions.
 - New values
 - Sovereign interests.
 - Public and private use rights.

The “Top Ten” Concepts

3. Good Science:

- Need agreed upon, common set of relevant scientific data and monitoring procedures.

The “Top Ten” Concepts

4. Fit the Region:

- Compact structure, goals and powers should be keyed to the unique hydrologic, social, political and environmental aspects of the region.

The “Top Ten” Concepts

5. Compact Agency Powers:

- Should have powers adequate to accomplish compact objectives.
- Should rely primarily on existing state powers but should confer broader or alternative powers on the compact agency to accomplish jointly what states can't do individually.
- The exercise of joint powers with significant political or other consequences might be made subject to certain conditions.

The “Top Ten” Concepts

6. Compact Structure:

- All sovereigns (state, federal and tribal) should be represented on the compact agency.
- Pyramid-like organization based on technical capacity, serving overlying policy capacity, which in turn serves top decision-making group of highest sovereignty representatives.
- Voting at technical and policy level could be by majority vote, but top sovereign decisions should probably require unanimity.
- Each sovereign should speak with one voice in discussions, negotiations and voting.

The “Top Ten” Concepts

7. Dispute Resolution:

- The compact must have a dispute resolution mechanism to promote consensus decision making and to avoid litigation, which should be a principal compact objective.

The “Top Ten” Concepts

8. Good Faith Commitment to Compact Approach:

- Sovereign members should commit to good faith efforts to make compact work through:
 - Caliber of representatives.
 - Adequate funding.
 - Seeking broad input from all interest groups.
 - Compliance with compact decisions.

The “Top Ten” Concepts

9. Compact Duration:

- Compact term should have reasonable sunset provision with procedures for extension without change, amendment or termination.
 - Needed to protect vested use rights and environmental protection obligations.
- Sovereigns should be able to withdraw unilaterally upon reasonable notice.
 - Needed to encourage negotiations on disputed issues in order to forestall withdrawal and to make states more amenable to majority vote.

The “Top Ten” Concepts

10. Federal Role

- Need a mechanism in either the compact or the Congressional consent legislation to require federal agencies to conform their water-related programs to compact programs not in direct conflict with non-discretionary mandates of federal statutes.
- Need a procedure for federal agencies to specify and support objections to compact actions on programs as violating federal law.