

Are water wars coming?

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Water is essential to life. Nations already go to war over oil even though there are alternative sources of energy. There is no substitute for water. Without water a city cannot exist. When water supplies are limited and are of poor quality, a city cannot grow. Water scarcity is a serious issue for the real estate community.

The 11th Kratovil Conference on Real Estate Law & Practice, "WATER as a Resource: Implications for Real Estate Ownership, Development and Land Use Planning" presented Nov. 20 by the Center for Real Estate Law at The John Marshall Law School was organized to educate the real estate community and its attorneys about the coming water crisis. A listing of all presenters and their topics and panel members can be found at www.jmls.edu/kratovil.

The Kratovil Conferences are interdisciplinary because real estate issues cannot be resolved by lawyers alone. Because most people do not understand the basics of water supply, the Center invited Professor Praveen Kumar, a hydrologist from the University of Illinois to begin the conference with a lecture on water supplies to provide a context for the remainder of the conference.

Protecting a supply of water is nothing new. The Great Lakes Compact, which became effective in December 2008, is the latest effort to prevent diversions of Great Lakes water to lands outside of the Great Lakes basin whose groundwater supplies are insufficient or for new developments in desert areas. Since the Great Lakes contain 18 percent of the world's supply of fresh water, the eight states and two Canadian provinces which surround the Great Lakes found it in their best interest to prevent their waters from being shipped to water starved areas. These states and provinces recognize that the great supply of lake water provides them with a huge competitive advantage for attracting businesses that require lots of fresh water.

The state of Georgia, which faces a shortage for its growing communities such as Atlanta, as Professor Julian Juergensmeyer (Georgia State University College of Law) noted in his Kratovil presentation, is actively fighting in the courts – not with the Georgia militia – to gain control of the Tennessee River and waters in Lake Lanier.

The Kratovil Conference may be the first time that a Chicago law school has presented a conference addressing water issues from the perspective of the real estate community in non-desert areas. While many local conferences have addressed the issue of water quality, water quality is something that can be corrected – it is a problem that money can solve. An insufficient quantity of water is a more serious and often insurmountable problem.

Ten years ago the late Sen. Paul Simon published "Tapped Out: The Coming World Crisis in Water and What We Can Do About It" to sound the alarm about what the world will soon face: "A water crisis of catastrophic proportions will explode on us ... the world's population ... will double in the next 40 to 90 years, ... Our water supply, however, is constant. ... per capita world water consumption is rising twice as fast the world's population. we [are] headed toward a potential calamity."

Real estate owners and developers in Arizona, California, Colorado, Nevada and other western states already understand the challenges of living and developing in areas with limited quantities of water. In his Kratovil presentation, Professor Lincoln Davies (University of Utah's law school) described Water Supply/Assurance laws, which western states have addressed to force developers to consider the sufficiency of water for their proposed developments.

Residents in other parts of the country are slowly starting to recognize the validity of Sen. Simon's warning. For instance, droughts followed by periods of flooding have made residents of the southeast and the state of Georgia, in particular, aware that they too face a water crisis.

The water crisis is a multi-faceted one. Does the municipality or region have sufficient quantities of water to meet its current and expected future needs? Is the available water fit to drink? Which users have priority in the use of water? Should limited supplies of water be allocated to agricultural users or to urban/ residential users? Should water systems be publicly owned or should they be privatized? Is water a commodity to be sold on open markets or is availability of water a fundamental human right? Does 'growing green' assist in conservation of water or threaten the supply and lead to scarcity? What impact does increased agricultural use of water for irrigation have? To underscore the complexity of the water crisis, the Kratovil conference ended with a panel of attorneys, non-profit executives, government leaders and educators discussing the water quantity crisis from multiple perspectives.

Just as watersheds do not respect geographical boundaries, possible solutions to water issues frequently overlap and have outcomes that help to solve one issue while making it more difficult to solve others.

While Chicago and other cities that obtain their water from the Great Lakes have sufficient supplies of water, is the same true for the rest of the state which obtains its water from aquifers, rivers and other lakes? According to the Illinois State Water Survey's website, at the University of Illinois at Urbana-Champaign: "Illinois is a water-rich state with resources adequate to meet most existing and future demands for water. However, in areas with high population growth future demands may well exceed existing available water resources. In areas of rapid growth there is a competition for water to meet demands. ... [D]rought can temporarily reduce water supplies in any area, causing competition for a limited resource."

The Great Lakes Compact will not end wars over the Great Lakes water. As Professor Sarah Gosman (University of Michigan Law School) noted in her Kratovil presentation, the first battle in the war for Great Lakes water will begin when the city of Waukesha, Wis. submits an application to become the first out-of-basin community to obtain a diversion of water from Lake Michigan under the Great Lakes Compact. The victor in this first battle has yet to be determined.

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