

# THE UTTON CENTER MODEL INTERSTATE WATER COMPACT:

Why This Model is Useful Whether or Not Your River Has a Compact –  
Advanced Management Principles for Interstate Rivers



9.7 General, 1.0 Ethics, and 1.0 Professionalism CLE Credits

Co-Sponsors:

The Utton Transboundary Resources Center, UNM School of Law,  
State Bar of New Mexico Natural Resources, Energy & Environmental Section



**STATE BAR**  
of **NEW MEXICO**  
Center for Legal Education

THURSDAY, JUNE 7 AND FRIDAY, JUNE 8, 2007  
STATE BAR CENTER  
STATE BAR OF NEW MEXICO, ALBUQUERQUE

The  
**Utton**  
Center   
TRANSBOUNDARY RESOURCES

# THE UTTON CENTER MODEL INTERSTATE WATER COMPACT: Why This Model is Useful Whether or Not Your River Has a Compact – Advanced Management Principles for Interstate Rivers

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## THURSDAY, JUNE 7

8:30 a.m.

### **Introductory Remarks**

*Marilyn O'Leary, Director (outgoing),  
The Utton Transboundary Resources Center, UNM School of Law  
Sanford E. Gaines, Director (incoming),  
The Utton Transboundary Resources Center, UNM School of Law*

9:00 a.m.

### **The Model Compact**

#### **Development of Model; Advisory Committee Involvement**

*Marilyn C. O'Leary*

#### **Legal and Practical Foundations for Key Provisions**

*Jerome C. Muys, Attorney at Law, Washington, DC  
George William Sherk, Colorado School of Mines, Golden, Colorado*

10:00 a.m.

Break

10:15 a.m.

#### **Legal and Practical Foundations for Key Provisions (continued)**

12:00 p.m.

### **Questions and Discussion**

12:30 p.m.

Lunch (provided at the State Bar Center)

1:30 p.m.

### **Principles of the Model Compact Applied**

#### **Case Study: The Spokane, An Uncompact River**

#### **Facts and Overview**

*Rachael Paschal Osborn, Columbia Institute for Water Policy, Spokane, Washington*

#### **Discussion: Issues of Concern and Applicability of Model Compact by representatives of the two states, Washington and Idaho, and two tribes, Spokane Tribe of Indians and Coeur d'Alene Tribe, that comprise the basin.**

*David R. Tuthill, Jr., Interim Director, Idaho Department of Water Resources, Boise, Idaho  
Ken Slattery, Water Resources Program Manager, Washington Department of Ecology, Olympia, Washington  
Shannon Work, Attorney at Law, Coeur d'Alene, Idaho  
Brian Cleary, Attorney at Law, Cleary Law Group, Hayden, Idaho*

3:30 p.m.

Break

3:45 p.m.

#### **Principles of the Model Compact Applied to a River Already Subject to a Compact: Discussion of a recent experience on the Colorado River in the context of the 1922 Colorado River Compact, subsequent federal legislation, and the Supreme Court's decisions and decrees in *Arizona v. California***

*Jerome C. Muys, Moderator*



### **A Lower Basin State Perspective**

*James H. Davenport, Colorado River Commission of Nevada, Las Vegas, Nevada*

### **An Upper Basin State Perspective**

*James S. Lochhead, Attorney at Law, Brownstein, Hyatt, Farber and Schreck, PC, Glenwood Springs, Colorado*

### **The Federal Perspective**

*Robert Snow, Office of the Solicitor, U.S. Department of Interior, Washington, DC*

5:30 p.m. Adjourn

## FRIDAY, JUNE 8

8:30 a.m. **The Ethical Role of Politics in Compact Negotiations (1.0 E)**  
Do attorneys have an ethical obligation to avoid politicizing compact negotiations? Should demonstrated failure to negotiate in good faith on issues under approved compacts preclude litigation in the Supreme Court or justify imposing sanctions?

9:30 a.m. **The Professionalism Role of Politics in Compact Negotiations (1.0 P)**  
Should there be a higher standard of professional behavior required of attorneys in compact negotiations and administration? The professionalism role of politics will be explored in the context of compact negotiations.  
*George William Sherk, Moderator*  
*Peter Sly, Mellon Fellow on Environmental Affairs, Colby College, Waterville, Maine*  
*Steve Leitman, Senior Policy Analyst, Florida State University, Tallahassee, Florida*  
*Ron Kaiser, Professor and Chair of Water Program, Texas A&M University, College Station, Texas*

10:30 a.m. Break

10:45 a.m. **Applying the Model Compact to Existing Compacts: How Flexible Is the Compact Clause?**

**Discussion of: (1) the extent to which states signatory to an interstate water compact may lawfully take actions not expressly authorized by the compact if such actions are in furtherance of the compact purposes and not in conflict with provisions of the compact, e.g., adjust compact water allocations or make new allocations of surplus water, engage in interstate water marketing or banking, exercise project approval and coordinate project operations, establish an advisory committee, establish and enforce water quality standards, and require compliance with mandatory mechanisms for conflict management and preclude litigation until such procedures are exhausted; (2) recent Supreme Court developments; and (3) who might have standing to challenge the validity of such actions.**

*Jerome C. Muys and George William Sherk*

*Panelists: Douglas Grant, Cord Foundation Professor of Law, University of Nevada, Las Vegas, Nevada*

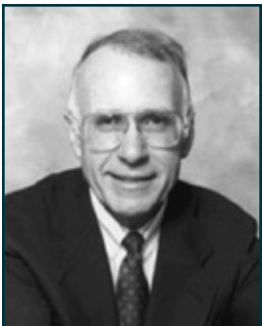
*Kenneth Knox, Chief Deputy State Engineer, State of Colorado, Denver, Colorado*

*Maria O'Brien, Attorney at Law, Modrall Sperling, Albuquerque*

*Larry Morandi, Director of State Policy Research, National Conference of State Legislatures, Denver, Colorado*

1:00 p.m. Adjourn

## ABOUT THE UTTON CENTER



As the stresses on all natural resource uses increase, The Utton Transboundary Resources Center remains committed to promoting equitable and sustainable management and utilization of transboundary resources through impartial expertise, multi-disciplinary scholarship, and preventive diplomacy. By bringing together lawyers and scientists to support fact-based decision making for sustainable resource management, the center carries on in the tradition of Professor Albert E. Utton, a native New Mexican and Rhodes scholar, who established an international reputation by using multidisciplinary scholarship to address complex resource issues. The Utton Center, the natural resources center for the UNM School of Law in Albuquerque, New Mexico, works closely with the UNM Water Resources Program as well as with scholars and practitioners from across the U.S. and Mexico.



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