

# Colorado's Commitment to Protecting Our Land, Air, and Water

*ABA Section of Environment, Energy, and Resources 52<sup>nd</sup> Spring Conference*

*Grand Hyatt Hotel, Denver, Colo.*

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Thanks, Howard, for the kind invitation to, once again, join the ABA Section of Environment, Energy, and Resources to share what we are up to at the Colorado Attorney General's Office.

It is worth noting at the outset that, in 1971, the ABA's Environment Section held its very first Spring Conference here in Denver. At that time, the major environmental statutes—the Clean Air Act, the Clean Water Act, and others—were in their early stages or yet to be enacted. And State Attorney General offices had, by and large, not developed Natural Resources and Environmental Sections. Indeed, Colorado's Natural Resources and Environment ("NRE") Section would not be established until after J.D. MacFarlane was elected Attorney General in 1974.

Reflecting on J.D.'s memory is a good place to start. In just over a month, we will hold a memorial service to honor J.D.'s life and impact on Colorado. His establishment of our NRE Section, and recruitment of lawyers like David Robbins, Greg Hobbs, and Howard Kenison to our office, made an extraordinary impact. And his approach to the work in our office established the concept of the People's Lawyer.<sup>1</sup> That concept remains alive and well in our Department.

Today, our Natural Resources & Environment Section has over 50 lawyers with eight specialized units and is one of our Department's largest sections. And the work of this section is more important than ever. Indeed, during my time as Attorney General, the General Assembly has continued adding new positions for our department to represent our state, particularly in the

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<sup>1</sup> For a reflection of our office's evolution as serving as the People's Lawyer, see Ema Schultz & Amy Ost diek, *Fifty Years of Service: The Evolution of the Colorado Attorney General's Office Working in Water*, 22 U. Denv. Water L. Rev. 453 (2019).

area of water law. One of those positions is an assistant deputy attorney general for water, formerly held by Scott Steinbrecher, who is now serving as the deputy attorney general for the Section. Unlike other states, we continue to manage our water law representation in-house, saving our state taxpayer resources and ensuring that we develop and maintain critical institutional knowledge.

## **I. Protecting Colorado's Water**

At the Colorado Capitol, it is inscribed on the walls: “Here is a land where life is written in water.” The lesson, from this poem from Thomas Ferril, is plain: water shapes our communities, for better or worse. In the Colorado Water Plan,<sup>2</sup> our state has made a commitment about how we manage our water—with the best interests of the whole state in mind. We have learned, for example, that the painful experience of Crowley County—a case study of how a buy-and-dry plan can undermine a community—is a lesson in how *not* to manage water.<sup>3</sup> Unfortunately, there are still plans afoot to follow this model, such as a plan to ship water from the San Luis Valley to the Front Range. I am committed to fighting such plans with every tool we have at the AG’s office.<sup>4</sup>

The unfortunate reality is that short-sighted plans for managing water during this time of scarcity will continue to emerge. Another such example is the suggestion by Nebraska that they would build a canal in northeastern Colorado, raising a series of legal issues and challenges that would be novel under our existing South Platte River Compact. As I have said publicly, the canal proposal—a major investment of many hundreds of millions of dollars that ultimately will provide little to no benefit for Nebraska—is both unwise and unlikely. Nonetheless, if Nebraska ultimately

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<sup>2</sup> Over the course of creating the 2023 update of the Water Plan, the Colorado Water Conservation Board collected over 2,000 public comments.

[https://dnrweblink.state.co.us/CWCB/0/edoc/219188/Colorado\\_WaterPlan\\_2023\\_Digital.pdf](https://dnrweblink.state.co.us/CWCB/0/edoc/219188/Colorado_WaterPlan_2023_Digital.pdf)

<sup>3</sup> <https://www.5280.com/high-dry/>

<sup>4</sup> <https://alamosanews.com/article/protecting-the-lifefood-of-the-valley>

decides to build this canal, we will ensure that the project is limited to exactly that which was negotiated in 1923 and nothing more.<sup>5</sup>

It is impossible to talk about water scarcity and not think about the challenges facing the Colorado River. As is widely reported, the Colorado River is experiencing its longest drought in recorded history and the driest period in 1,200 years.<sup>6</sup> As we deal with unprecedented water scarcity, we know that we will face challenges—and must meet them through collaborative problem solving. This will take hard work and it will require a “can do” spirit. But we in the West can and must make that effort; after all, it is impossible to be a pessimist in the West, Wallace Stegner once wrote, as this is the native land of hope.<sup>7</sup>

The recent action by the U.S. Department of the Interior makes plain a point I made previously: the era of the Lower Division States taking as much water as they wanted is over.<sup>8</sup> In recent years, the Lower Division States used up to 10 million acre-feet when they’re only entitled 7.5 million. As those states come together to develop solutions, we will be all in to support innovative problem solving. But to the extent they suggest actions that compromise our rights, we will not hesitate to defend our rights under the Law of the River.<sup>9</sup>

The challenges we face on water also involve protecting the quality of our water. One focus of our work is addressing the impact of what is known as “forever chemicals,” or more

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<sup>5</sup> <https://coag.gov/blog-post/prepared-remarks-attorney-general-phil-weiser-to-colorado-water-congress-convention-jan-25-2023/>

<sup>6</sup> [https://dnrweblink.state.co.us/CWCB/0/edoc/219188/Colorado\\_WaterPlan\\_2023\\_Digital.pdf](https://dnrweblink.state.co.us/CWCB/0/edoc/219188/Colorado_WaterPlan_2023_Digital.pdf)

<sup>7</sup> Stegner’s entire quote is as follows:

One cannot be pessimistic about the West. This is the native home of hope. When it fully learns that cooperation, not rugged individualism, is the quality that most characterizes and preserves it, then it will have achieved itself and outlived its origins. Then it has a chance to create a society to match its scenery.

<https://www.montana.edu/news/mountainsandminds/18847/wallace-stegner-s-geography-of-hope>

<sup>8</sup> <https://www.doi.gov/pressreleases/interior-department-announces-next-steps-protect-stability-and-sustainability-colorado>

<sup>9</sup> <https://www.denverpost.com/2023/01/17/colorado-river-water-rights-phil-weiser-lawsuits/>

accurately, as PFAS. To address their adverse impact, we sued 15 companies last year for the manufacturing, marketing, and distribution of these dangerous chemicals long after they knew it could be harmful to our residents and natural resources.<sup>10</sup> These forever chemicals are now found in our water supplies across Colorado, and it is incumbent upon those responsible to clean up and pay for the harm they caused to Colorado communities. In an important step forward, the U.S. Environmental Protection Agency (“EPA”) has adopted new rules to limit PFAS in drinking water. But considerable damage is already done and we face a long road as we work to hold those accountable who contributed to this public health challenge and work to remediate this damage.

## **II. Our Commitment to Protecting Air Quality and Addressing Climate Change**

In Colorado, the importance of protecting our air quality and addressing our climate challenges will remain top of mind. To that end, one of my first official acts as Attorney General was to remove our State from a lawsuit to stop the Clean Power Plan. In Colorado, we continue to take steps to address the impact of climate change—providing a model for a national approach to this challenge.

We have also set an example for what collaborative problem-solving looks like. When it came to developing standards for addressing methane emissions, Colorado brought both the industry and environmental groups to the table and developed a standard that became a national model. After the EPA adopted the Colorado model, we fought efforts to roll back this standard. We also defended Colorado’s authority to adopt vehicle emission standards stronger than those adopted by the federal government. This rule will not only reduce pollution and protect public health, but it will be an important step in addressing climate change.<sup>11</sup>

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<sup>10</sup> <https://coag.gov/press-releases/2-28-22/#:~:text=Feb.,public%20health%20and%20natural%20resources>.

<sup>11</sup> <https://coag.gov/press-releases/3-9-22/>

Not only are we defending Colorado's authority to regulate methane emissions and vehicle standards, but we're also taking action to enforce those regulations in our state. Take, for example, our office's collaboration with CDPHE, the EPA, and the DOJ to protect Colorado's air quality from leaking gas processing plants along the Front Range. In one case, we successfully negotiated settlements of claims against an oil and gas company, securing penalties and other remedies worth more than \$5 million as well as require the company to strengthen its leak detection practices and implement pollution reduction measures.<sup>12</sup>

For consumers, there are important steps they can take to advance our commitment to a greener future. Those steps, however, require that companies promising better environmental practices actually deliver on those promises. Consider, for example, when Fiat Chrysler misled consumers and undermined auto emission standards with unlawful defeat devices in diesel vehicles. As part of our effort to hold them accountable, we brought back \$5 million of civil penalties to Colorado and instituted important injunctive relief. This action serves to protect those responsible businesses that compete fairly. After all, if companies are not held accountable for deceptive behavior, we are placing responsible companies at an unfair disadvantage.

### **III. Protecting Our Land**

As Attorney General, I serve on and chair the Natural Resources Damages Trustees as well as oversee our lawyers who work for the Trustee Council to hold wrongful actors accountable. Recently, we took on Sunnyside Gold Corporation and held them liable for \$1.6 million damages at the Bonita Peak Mining District. Those monies, with consultation with regional stakeholders and local governments, will be allocated for environmental restoration and acquisition. And more

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<sup>12</sup> <https://www.justice.gov/opa/pr/justice-department-epa-and-state-colorado-settlement-dcp-operating-company-lp-resolves-clean>

recently, when nearly 2,000 gallons of gas spilled into North St. Vrain Creek in Lyons, Colorado, our Council took action and held that company responsible for nearly \$250,000.<sup>13</sup>

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Let me close with our commitment to the rule of law and good governance. A core principle of good governance must be including our communities who have far too often been left out of the conversation. That means our Tribal partners must be at the table. We cannot compromise on our commitments to the Tribal Nations, and we must recognize the historical mistreatment they have endured. As Attorney General, I am committed to a spirit of consultation with our tribal partners, honoring their sovereignty and respecting our obligations to them.

Another core commitment is that, as our climate goals call for changes to our communities, we must do our part to ensure a just transition. In the communities of Craig and Hayden, we must remain focused on how to protect those communities as existing coal operations will be phased out. As part of this commitment, we have looked for ways to work with the Colorado Northwestern Community College, including a \$500,000 investment in a cybersecurity program.<sup>14</sup> And in June, we will be one of the sponsors of a summit in Craig, examining how to support that community in a post-coal future.

With respect to engaging our fellow citizens, I would be remiss not to mention an initiative we have leaned into at the Attorney General's Office—the Ginsburg/Scalia Initiative.<sup>15</sup> This initiative, which I have partnered with former Colorado Secretary of State Wayne Williams on, focuses on the importance of respectful engagement. In short, we are living at a time of too much

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<sup>13</sup> <https://www.9news.com/article/tech/science/environment/north-st-vrain-creek-spill-settlement/73-c6cd3173-ea84-4901-a3b6-9faa188e9a0f>

<sup>14</sup> <https://coag.gov/press-releases/1-28-20>

<sup>15</sup> <https://coag.gov/ginsburgscalia/>

demonization and too little listening. By encouraging citizens to engage in respectful dialogue, such as through the Colorado Unify Challenge, we are doing our part to address this situation.

In closing, I'll leave you with the unofficial motto of the Natural Resources and Environment Section-- "*Recte Agite, Nolite Timere*," which loosely translates to, "Do right, fear not." Many of the notable attorneys I mentioned earlier, including the late former Colorado Supreme Court Justice Greg Hobbs, embodied that motto. To honor Justice Hobbs, we established a fellowship in his name, seeking to encourage younger attorneys to pursue careers in natural resources law. As you all know of aspiring lawyers, please send them our way.