The Network Note
January 2016

Growing Support for Dividing the Waters
Getting off to a good start in the campaign to draw financial support from a diverse set of contributors, the ABA Section of the Environment, Energy and Resources Council has voted to contribute $10,000 to Dividing the Waters. In February, the Board of Advisors will convene and the Executive Director will visit Salt Lake City and Denver to advocate for DTW.

AZ: County May Not Object to Water Transfer
The Arizona Supreme Court held, in AZ Dept of Water Resources (ADWR) v. McClennan, that the Arizona water transfer statute does not allow the Department of Water Resources to deny an application to transfer water based on a county’s objection that the transfer would harm water supply and increase taxes on County residents.

A mining company applied to ADWR to sever and transfer its water rights on Planet Ranch, in Mohave County, to a mine in Yavapai County and to other places of use on Planet Ranch for the Lower Colorado River Multi-Species Conservation Plan. No actual water, however, would physically move. Mohave County filed an objection, asserting that the transfer “might negatively affect ‘an already strained water supply’ and increase tax burdens on County residents.” It also argued that the transfer “would be against the public interest.”

ADWR rejected Mohave County’s objections, and an ALJ affirmed ADWR’s decision on administrative appeal. A trial court, however, vacated ADWR’s decision as “contrary to law, arbitrary and capricious, and an abuse of discretion,” with no further explanation. The Arizona Supreme Court granted expedited review.

The Supreme Court examined the County’s claims and AZ statutes and concluded that ADWR did not have the authority to deny the transfer under the water transfer statute. A.R.S. § 45-172. The County had not asserted objections based on any of the specified statutory “limitations and conditions.” The other statutes the County cited did not apply to water transfers.

The Court again focused on the water transfer statute in concluding that the County did not qualify as “any interested party.” The County made several arguments for why it had an interest that deserved protection under the transfer statute. While acknowledging the term’s ambiguity, the court tied the term to objections based on the statute’s “limitations and conditions.” The County had not asserted such objections.

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In Focus: Judge Jim C. Shirley (NV)
Like many Dividing the Waters members, Nevada Judge Jim C. Shirley had a long career in criminal law. Before his 2014 election to the bench, Shirley served 12 years as the Pershing County District Attorney. He focused on crime, not water. Still, one of the first cases filed on his docket was a conflict over surface and groundwater in the Humboldt River basin. While Shirley’s predecessors had had water cases, the complexity of his first water case surprised him.

Shirley’s first water case may sound familiar. Downstream water users, who hold senior water rights, sued junior upstream groundwater pumpers for interfering with their surface water rights. Shirley heard lawyers on both sides introduce the facts and the law of water in the Humboldt River basin. When the Dividing the Waters Executive Director invited him to participate in the 2015 conference in Spokane, Shirley readily accepted.

The October conference offered Shirley the opportunity to connect with other judges with water cases. He found he was not alone in finding water law “daunting, yet extremely interesting.” He appreciated the speakers, who put difficult issues into context. “The distinguished attendees and speakers were the most valuable part of the conference. They allowed me to network and find other judges willing to provide guidance and assistance in future cases.”

Shirley started his legal career in private practice in Salt Lake City. He joined the Pershing County DA office in 2000. Three years later, voters elected him District Attorney, where he served for 12 years before running for an open judgeship in 2014. He succeeded Hon. Richard A. Wagner, who had numerous law water cases and appeals from the State Engineer. In 2015, Judge Shirley became the single judge of the newly created 11th Judicial District, in Pershing, Lander and Mineral Counties.

Shirley received his undergraduate degree from BYU and his law degree from Creighton University. He lives with his wife and children in Lovelock, Nevada.

Idea for Conference Location? Recent court decision? Something to share? ALFIII@sbcglobal.net
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