**Dividing the Waters Network Note**

**October 2013**

**Save the Date:** May 14-17, 2014 – University of Oregon

In preparation for next year’s general conference, Conveners have started work on Pacific Northwest issues, including land use and water. In the months ahead, you will hear more about next year’s theme and topics. If you have ideas or interests in particular topics, please contact the Executive Director. The conference will convene at 5 pm at the University of Oregon School of Law in Eugene (2 hours south of Portland).

**Fracking-Water Quality Webinar Reset for December 12**

*Dividing the Waters* has set the date for the follow-up webinar on fracking and water quality law – December 12. Professor James May (Widener) will offer an on-line presentation on water quality law, before the live webinar on fracking and water quality. This webinar follows up on the Program’s *Fracking and Water* workshop in November 2012.

**WA Supreme Court Upholds Instream Flow Priority**

In *Swinomish Indian Tribal Community v. WA Dept. of Ecology*, the Washington Supreme Court, on a 6-3 decision, struck down the state’s water rights administrator’s decision to reserve water for future uses that would interfere with minimum instream flows it had previously set.

In 2001, the Department of Ecology set minimum instream flows for the Skagit River, over objections from Skagit County. The County sued, and Ecology later settled by agreeing to revise its instream flow rule to reserve water for future economic development. Ecology based its amendment on an exception in the instream flow statute for when clear “overriding considerations of the public interest will be served.” The Swinomish Indian Tribe challenged Ecology’s amended rule.

The Supreme Court overturned the trial court’s dismissal of the Tribe’s suit. It held that the statutory exception did not give Ecology authority to “reassess the relative merits of uses and reallocate water that is needed to maintain the instream flows through reservations of water for future beneficial uses.”

**Instream Flow Workshop Materials Now Available**

The evaluations of participants in this month’s instream flow workshop suggest that they gained from workshop science and judicial practice panels. Now all members can find the workshop materials on the NJC Cloud. Please contact Rebecca Bluemer@judges.org for a password.

**Water Science in the Courtroom Report Now Available**

In its first convocation earlier this year, the new *Dividing the Waters* Board of Advisors developed recommendations for the best use of *Water Science in the Courtroom*. The report addresses judicial management of water case science, use of scientific tools, and application of scientific uncertainty in judgments. The report is available to DTW members and the general public on its own DTW Webpage.

The Board of Advisors advocates for the Program’s mission to serve judges with water cases and provides public recommendations to the Program at the request of the Conveners. For more information on the Board, please contact the Executive Director.

**In Focus:** J. Steven Patrick (Colorado)

Like many other *Dividing the Waters* members, water is just one part of Chief Judge J. Steven Patrick’s docket. In Colorado’s 7th Judicial District ( Gunnison), Patrick adjudicates a wide range of issues – 40% civil, 10% domestic relations, 40% criminal and 10% juvenile. While he serves as the District’s water judge, his water cases provide only 10% of his caseload (within the 40% of his civil docket).

Judge Patrick nevertheless enjoys adjudicating water litigation. Perhaps it’s the complexity or the importance to his community that makes water cases fulfilling. *Dividing the Waters* offers him the resources that help him work through the many complex issues inherent to adjudicating water cases. He has participated in five DTW programs. “The Program’s conferences and workshops give me the most value, as I gain as much from my colleagues as from the presenters,” commented Patrick.

The diversity of Patrick’s docket reflects the diversity of his experience. He graduated from Simpson College, and received his law degree from Yale University. When he joined the bar in Colorado in 1977, he started out in Denver in private practice at Davis, Graham & Stubbs. Patrick spent two years as a Deputy District Attorney, and then had a private practice for 12 years, where he specialized in civil litigation and real estate law. Before his appointment as District Court Judge in July 1993, he served as County Court Judge and a Municipal Judge in Gunnison, Crested Butte and Mt. Crested Butte between 1991 and 1993. He lives in Gunnison, where his son and grandchildren live as well.

**Profile on you? Recent court decision? Something to share? ALFIII@shcglobal.net**

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