Big Horn Adjudication Information Now Available
The University of Wyoming now offers the papers from its 2014 Symposium. One comes from DTW’s own John Thorson. See http://repository.uwyo.edu/wlr/vol15/iss2/

Growing Support from ABA and Western States
In recent months, Dividing the Waters has succeeded in building public support for its work with water judges. The ABA’s Section of the Environment, Energy and Resources endorsed the Program’s work and has started building a relationship. (ABA was one of NJC’s founders.) The CA Department of Water Resources also recognized the value of DTW’s work in helping the growing number of CA judges assigned water cases, and contributed to the Water Justice Fund at a level to make it the first “Watermaster.” The Program will continue building a support base among states, with the endorsement of the Western States Water Council

9th Circuit: Channelizing Stream Is Not CWA Discharge
Reviewing history of the Klamath River Basin, the 9th Circuit held that the Bureau of Reclamation’s channelizing an historic stream did not constitute a discharge to the Klamath River under the Clean Water Act, in ONRC Action v. Reclamation.

The Klamath Straits Drain (KSD) generally follows the path of a stream that historically connected Lower Klamath Lake back to the Klamath River through the Klamath Straits. In 1917, federal law closed head gates to Klamath Straits to keep water in the larger Klamath Lake Basin. In the 1940’s, Reclamation re-established the Lake-River connection by constructing the KSD.

ONRC Action sued Reclamation for failing to obtain a CWA discharge permit for the KSD. The district court granted summary judgment to Reclamation based on the EPA’s water transfer exemption to Clean Water Act permit requirements.

The 9th Circuit affirmed the district court, but on different grounds. The Circuit described the KSD’s history and found that “the waters of the KSD are not meaningfully distinct from those of the Klamath River.” The Circuit relied on the 2013 Supreme Court decision in L.A. County v. NRDC, which held that “pumping polluted water from one part of a water body into another part of the same body is not a discharge of pollutants under the CWA.” Applying that holding, the Circuit concluded that the KSD did not discharge to the Klamath River. The Clean Water Act therefore did not require Reclamation to obtain a discharge permit.

Dividing the Waters to Endure with State/Private Funding
After reviewing October conference evaluations showing high marks from participants, the Conveners recommitted to build the Dividing the Waters Program, despite the conclusion of foundation funding. The recent California contribution gave hope that other states also will help fund the Program, with additional assistance from the Board of Advisors.

Next Conference Location??  Send Us Your Ideas!!
In Focus: Judge Jim Wechsler (NM)
After more than two decades on the bench in New Mexico, Judge Jim Wechsler has had his share of water cases. He first worked on water cases representing water utilities in private practice. After joining the NM Court of Appeals in 1994, Wechsler continued his water work and participated in Dividing the Waters because of his interest in water law.

In 2009, the New Mexico Supreme Court decided to appoint a single judge to preside over New Mexico water adjudications. It designated Wechsler, who immediately went to Reno for the Dividing the Waters conference as a way to connect with water judges from other states. At this year’s conference, he particularly appreciated seeing the size and operation of the Spokane Valley-Rathdrum Prairie aquifer, observing “I wish that we had similar issues in New Mexico.”

Perhaps Wechsler’s most significant water decision arose out of the conflict connected to the Navajo Nation Reservation in New Mexico’s San Juan Basin. In 2013, Judge Wechsler approved the Navajo Nation’s settlement and entered a partial final decree for those rights. As reported in the Network Note, Wechsler offered an “exhaustive factual and legal analysis.” He decided that “the Settling Parties had met their burden of proof that the settlement agreement was fair, adequate and reasonable, and consistent with the public interest and applicable law. The court denied the Non-Settling Parties motions and approved the settlement.”

Judge Wechsler started out in New York, gaining both his B.S. (accounting) and his J.D. from New York University. He moved to New Mexico not long afterward to become a legal services attorney. He served in the NM Attorney General’s Office, 1976-83, and then worked as a natural resource and commercial litigator in one of New Mexico’s large law firms. Today, he is the most senior judge in service on the NM Court of Appeals. He lives in Santa Fe, where he and his wife have four children and six grandchildren.

Idea for Conference Location? Recent court decision? Something to share? AFI3I@sbclglobal.net
Judicial Education Building, MS 358 • Reno, NV 89557
tel (775) 784-6747 • 800-25-JUDGE (800-255-8343) • fax (775) 784-4234 • www.judges.org/dividingthewaters