Dividing the Waters Network Note

June 2013

Supreme Court Upholds Oklahoma Sovereignty on Water
The Supreme Court affirmed the State of Oklahoma’s sovereignty over waters within its borders, in Tarrant v. Herrman. Rejecting a challenge from a Texas water district, the Court interpreted the Texas-Oklahoma Red River Compact as preserving each state’s rights to control the water within its borders, upholding Oklahoma laws banning water exports.

Tarrant Regional Water District provides water to a growing region along the border in Texas. It simultaneously applied for an Oklahoma water right and filed suit in federal court, anticipating that Oklahoma would reject its application. Tarrant sought to divert water from a Red River tributary in Oklahoma, whose statutes bar out-of-state exports.

The Court’s opinion focused on interpreting a 1980 interstate compact. The Compact is silent on water crossing borders, so Tarrant argued that the silence allowed cross-border transfers. The Compact therefore pre-empted Oklahoma statutes and created a “borderless common” shared by the two states.

The Supreme Court, relying on long-standing water law principles, affirmed the 10th Circuit’s decision upholding the Oklahoma statutes. It reaffirmed the principle, dating to 1842, that each state has an “absolute right to all their navigable waters.” Applying contract principles to interpreting the Compact, the Court held that silence did not mean that the states had given up their rights to control their own waters. It also rejected Tarrant’s theory that the statutes violated the Interstate Commerce Clause. For the full summary, see the DTW Resources Page.

Transitions for DTW Members
In the coming months, several members of the Dividing the Waters network will make transitions to new stages of life. First, NJC President William F. Dressel will retire at the end of the year, capping a long, distinguished career as a judge and leader of the nation’s premier judicial education institution.

Long-time DTW member and Convener, Vickie Gabin, has decided to complete her service on the Taos adjudication and move on to new endeavors beyond the water world. She then chose to step down as a Dividing the Waters Convener. While she continues to serve as a special master for the Federal Court in New Mexico, however, she will participate in our programs. We look forward to her continued insights and perspectives on water adjudication during her transition.

After completing 6 terms and 23 years as Montana’s chief water judge, Bruce Loble retires from the Montana Water Court on June 30. From Judge Loble: “Future plans include completing his wife’s ‘honey do’ list and visiting their Los Angeles area children until their progeny’s level of annoyance rises above their level of tolerance. Thereafter, he hopes to establish a multi-disciplinary Bozeman-based enterprise as a market leader in the food, water, photography, and mechanical industrial fields, tentatively named Tacos, Flumes, Photography, and Small Engine Repair, LLC – surely destined to become another dot-com success story.” Good luck!

In Focus: Executive Director Alf W. Brandt
The Dividing the Waters network benefits from the services of the National Judicial College and two DTW staffers, Alf W. Brandt and Daniel Luecke. The two work as a team in developing the substance of DTW programs and publications. This month, the Network Note focuses on Brandt.

Brandt joined the Program two years ago, as the part-time Executive Director, after a long history in water. He grew up with a grandfather who had participated in California’s water wars since the 1940’s. While Brandt did not start out on the path toward water, water law and policy kept finding him. Starting at UCLA, he enjoyed learning from water policy leaders. In his second year at Boalt Hall, Professor Joe Sax moved from University of Michigan to Berkeley, where Brandt learned water law and wrote his note on water.

Starting out, water policy offered Brandt an outlet for his interest in public service. LA Mayor Tom Bradley appointed him to lead the City’s delegation on the Board of Directors of the Metropolitan Water District of Southern California, while Brandt practiced law for a major downtown law firm. After several years, he found much more fulfillment in his civic duties, so he decided to find a way to do water law full-time.

Nine years out of law school, Brandt started work at the Department of the Interior as a water lawyer focused on the Sacramento-San Joaquin Delta. He went on to do water law in both California and Nevada. In 2005, the State Assembly’s water committee chair recruited him to staff the committee. He has served as a senior consultant on water resources law and policy for the Assembly, in several positions, and continues to focus his attention on the Delta.

Have something to share? ALFIII@sbcglobal.net

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