9th Cir: USBR Contracts Trump Area of Origin Law
In Tehama Colusa Canal Authority v. Dept. of the Interior, the 9th Circuit rejected a claim that California law requires the Bureau of Reclamation to make full deliveries to an “area of origin” (i.e. where rain/snow fall) before exporting any water from the watershed. The 9th Circuit held that plaintiffs’ water service contracts with Reclamation “temper plaintiffs’ rights to a full complement of contracted water and any claims to priority delivery of water.”

Farmers in the Sacramento Valley who receive water, pursuant to federal contracts, from the Central Valley Project argued that state area-of-origin law did not allow Reclamation to deliver any water to the San Joaquin Valley until it fulfilled Sacramento Valley needs. They asserted that state law gave them a priority among federal contractors.

In reaching its conclusion, the 9th Circuit, by Judge Rawlinson, reviewed Reclamation contracts, water right permits, and the farmer actions in executing and obtaining state court validation of the federal contracts. The court concluded that the farmers had agreed to abide by the federal contracts’ shortage provisions, and the area-of-origin statutes applied to state water rights, not federal contracts. For the full summary, see the DTW Resources Page.

Instream Flow Workshop: October 18-19 (Reno)
Work on this fall’s workshop on setting instream flows nears completion. Several scientists have agreed to participate. Judges with experience on instream flows also have signed up for the limited number of spots available. If you are interested in participating, please contact NJC/DTW Registrar Rebecca Bluemer at: Bluemer@judges.org.

Supreme Court: Possible Taking in Wetland Case
In a case arising out of wetland permit process in Florida, the Supreme Court held that judicial review of a denial of wetland permit required application of the Nollan/Dolan standards to the conditions of approval. In Koontz v. St Johns River Water Management District, a water district had conditioned approval of a wetland development permit on the landowner either giving up more property or paying for wetland restoration elsewhere in the District. The Court rejected the argument that paying money for the wetland restoration elsewhere in the watershed was not a taking of property.

Webinar: Water Quality and Fracking (9/25)
As an extra benefit from last year’s Fracking and Water workshop (Pittsburgh), Dividing the Waters will offer a brief water quality law webinar on September 25. Widener University Law School (Delaware) Professor Jim May will update his 2012 presentation on the fundamentals of water quality law and the developing law of fracking.

In Focus: Arizona Special Master George A Schade
George A. Schade, Jr. has served as the Special Master for the Arizona General Stream Adjudication since March 2001, when he started participating in Dividing the Waters. But his career in water law began more than 20 years earlier, when he became a Hearing Officer for the Arizona Department of Water Resources (“ADWR”), in 1980.

As Hearing Officer, Schade heard the matter that resulted in Arizona’s first instream flow water right. He managed the statewide Surface Water Program before moving to the Adjudications Division in 1986. In 1996, he joined the first independent panel of Arizona Administrative Law Judges.

Schade has served on just about all fronts of the Arizona Adjudication. He supervised the service of over one million summonses and processing of nearly 80,000 claims. He participated in creation of computer data bases, GIS systems, records retention rules, and technical investigation standards. His section provided litigation support to the Water Court.

In recent years, the Arizona Adjudication has faced significant challenges of insufficient funding and staff. Schade is proudest of implementing changes and obtaining funds that have enabled the Adjudication to progress in an era of diminished resources. Arizona has approved more Indian water rights settlements than any other Western state and has emphasized resolving federal reserved rights.

Schade appreciates Dividing the Waters because it “allows me to meet my judicial peers in other states, learn from their experiences, implement some excellent ideas, and enjoy interacting with them. The longer I work in a judicial position focusing on water issues, the more I appreciate the importance of this program.”

Have something to share? ALFIII@sbcglobal.net