Conveners Consider 2015 Workshop Topics
After this year’s successful land and water conference at the University of Oregon, the Dividing the Waters Conveners are now considering topics for the 2015 workshop. Workshops are shorter than full conferences and focus on a particular topic – often related to science – in more depth. Possible topics include further work on the science of the land-water nexus, the water-energy nexus, and enforcement of water rights during drought. The Conveners invite all members of the DTW network to offer their own workshop topic ideas.

CA: Court of Appeal Upholds SWRCB Authority
The California Court of Appeal, in Light v. SWRCB, affirmed the State Water Resources Control Board’s authority to regulate riparian and pre-1914 appropriative water rights, reversing a Mendocino County trial court.

The case arose out of a conflict over the 2008 stranding of salmon in the Russian River during a frost event, when vintners diverted water simultaneously for frost protection and suddenly and substantially depleted instream flow. The National Marine Fisheries Service urged SWRCB to take regulatory action to reduce the risk of frost protection-related salmon deaths. The operator of upstream dams investigated releases before frost events, but concluded that the water would not reach the affected reach in time.

After a series of public hearings and an environmental impact report (EIR), SWRCB issued a regulation deeming diversions for frost protections that violate the local agency “water demand management plan” (WDMP) as an “unreasonable” use of water, under the California Constitution’s Reasonable Use Doctrine. In 2011, a Mendocino County court overturned the regulation, due in part to its effect on riparian and pre-1914 senior water rights, (California established its administrative water rights system in 1914.)

In reversing the trial court, the Court of Appeal rejected the facial challenge to the regulation and upheld SWRCB actions. It held that SWRCB had broad authority to regulate “reasonable use,” even as to pre-1914 and riparian rights. The court also affirmed that SWRCB had: 1) properly delegated some authority to local agencies to develop WDMPs; 2) substantial evidence to show the necessity of the regulation (rejecting criticism of SWRCB science); and 3) properly considered the regulation’s environmental effects in the EIR. The appellate court applied a de novo review of the agency actions, limiting review of the trial court decision.

Adjudications in Idaho and Wyoming Wrapping Up
Some work of two DTW Conveners – Eric Wildman and Ramsey Kropf – will wrap up this year. The general stream adjudications for the Snake River and the Big Horn River now approach completion. Celebration to mark the close of these adjudications will take place during conferences on August 25-26 (Snake River) and September 10-12 (Big Horn River). DTW members are invited to participate.

In Focus: Cameron Wogan (Oregon)
Klamath County Circuit Judge Cameron Wogan had never practiced water law when he volunteered, in the 1990’s, to review the Klamath Basin Adjudication (KBA). But there were no other volunteers, with or without water law experience. At that point, the Oregon Water Resources Department (OWRD) expected to complete the adjudication process in the next year or two.

The KBA turned out to be a long-term assignment. OWRD did not complete the adjudication for another 15 years, 37 years after the first notice to water users. Wogan participated in Dividing the Waters in the early years, including helping to organize the Klamath Falls conference in 1999. When the Klamath Basin conflict exploded in 2001, he kept a low profile and the news media focused on other stories. He still was surrounded by the Klamath River conflict. “Everyone knew someone who had been touched by the conflict.”

After the KBA arrived in his court in 2013, Wogan returned to DTW to participate in the instream flow workshop. Tribal water rights to instream flow have been an issue in the KBA, and Endangered Species Act requirements have arisen in the Klamath conflict, as they have in other water conflicts across the West. Understanding the science of instream flow could therefore be helpful. As Wogan explains, “the Program’s conferences’ most enduring value – in the 1990’s and today – has been the opportunity to talk to other judges with similar cases but with greater experience.”

Before his election to the Klamath County court in 1992, Wogan had his own general civil practice in Klamath Falls, where he grew up. He graduated in agricultural economics from Oregon State and received his JD from the University of Oregon. Wogan remains proud of his family, including his “wonderful wife and two incredible sons,” as well as his instrumental part in design and construction of the Klamath County Courthouse after an earthquake destroyed the old one.