New Conveners from Nevada and Washington
The Dividing the Waters Conveners welcomed two network members to the Program’s leadership, as the Program’s newest Conveners. Susan Joseph Taylor, Deputy Administrator at the Nevada Division of Water Resources, is the first Convener from Nevada. The April Network Note profiled her experience as Nevada’s Chief Hearing Officer. Kathleen D, Mix, Director of Washington’s Environmental and Land Use Hearings Office, joins the Conveners, capping a long and successful career with Washington State Government, as profiled below. Welcome Susan and Kathy!

Fed Circuit: USBR Contractors Have Expectancy Claim
The Federal Circuit held, in Stockton East Water Dist. v. U.S., that Bureau of Reclamation (USBR) contractors can assert expectancy claims for water that USBR did not deliver.

Two water districts signed 1983 contracts to purchase water from USBR’s New Melones Reservoir in California. They completed a conveyance system to the reservoir in 1993, after Congress had passed the Central Valley Project Improvement Act requiring USBR to commit 800,000 acre-feet of Central Valley Project yield to fishery needs. That same year, USBR informed the districts that “this prescription [by CVPIA] would continue and in only the wettest years might [the Districts] see some water.” In the following years, USBR delivered some water but the districts did not request the minimum amount of water as required by the contracts.

The districts sued for breach of contract and a taking of property rights in district court. In 2004, the case moved to the Court of Federal Claims (CFC) and previously was appealed to the Federal Circuit. In its previous decisions, the Circuit reversed the CFC’s finding of non-liability for 1999-2004 and remanded for trial on damages. On remand, the CFC found USBR liable for $149,950 in cover damages, but denied claims for expectancy damages.

The Federal Circuit again reversed the CFC and held that contractors had valid claims for expectancy damages despite the fact that they did not submit requests for water. The Circuit concluded that, given USBR’s 1993 announcement that no water would be available, the contractors could not be expected to request the minimum contract amounts. The “failure to obtain the water needed from [the contractors] quite plausibly would have caused the farmers to look elsewhere, on their own, for water, or to resort to using ground water.” The Circuit left the damages calculation to the CFC.

Building Relationships with State Executive Branches
In July, Dividing the Waters Executive Director Alf W. Brandt spoke to the Western States Water Council Legal Committee, in Helena, Montana. Montana’s retired Chief Water Judge Bruce Loble joined Brandt in explaining the Program’s value to western state governments. The Program has begun to develop relationships with the states’ executive branches, given expanded water conflicts and the growing need for judicial training programs related to water. The DTW Board of Advisors has joined the effort to pursue state funding.

In Focus: Kathleen D. Mix (Washington)
Kathy Mix’s connection to water started early, as a child growing up in Wyoming. “I still remember watching my father’s blood pressure go up whenever someone ‘stole’ his water,” Mix recalls. She, however, did not restore her connection to water until many years later.

Mix went to college in Wyoming, but came further west to Washington for law school. Her legal career started when she joined the Attorney General’s Office in 1979. In her first assignments, she represented both the Department of Corrections and the Department of Ecology on environmental issues. Mix defended Corrections against environmental and land use challenges to siting new prisons, and headed the AG’s hazardous waste litigation section for Ecology. Her skill as a manager also emerged during her tenure in the AG’s office, where she received several management awards as Chief Deputy AG for Attorney General Christine Gregoire.

Mix restored her connection to water when Gregoire became Governor and appointed Mix to the State’s two statewide environmental boards in 2006. Today, she serves as the director of Washington’s Environmental and Land Use Hearings Office. She hears administrative appeals of water right decisions from the Department of Ecology as a member of the Pollution Control Hearings Board. She finds her water work “exceptionally complex, especially when urban growth runs headlong into the current needs for adequate instream flow and cool water for fish.”

Mix joined Dividing the Waters in 2013, after meeting with Justice Greg Hobbs. She finds the Program helpful as a “forum to bring together the collective expertise and knowledge of judges with many different kinds of water cases, to discuss the most critical water issues facing the West.” She sees some of those issues first-hand, as she enjoys – when not working – fly fishing on the rivers of the West.

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