The Network Note
September 2015

What Do YOU Need From Dividing the Waters?
After 22 years of evolving to meet the changing needs of water judges, Dividing the Waters has begun a significant transition, arising out of both internal and external forces. Internally, the Program’s funding is transitioning from foundations to state governments. Externally, the Conveners have noticed a generational change in the Program’s members. They therefore will lead a discussion at this year’s conference about how the Program can best serve the needs of judicial officers with water cases. The Conveners ask that you reflect on that question and share your thoughts, either at the conference or via e-mail to the Executive Director.

Nevada: Mitigation Plan Required Before Water Right
The Nevada Supreme Court, in Eureka County v State Engineer, held that the State Engineer cannot issue a water right that conflicts with senior rights until the applicant obtains approval of a mitigation plan for those senior rights.

A mining company, General Moly and its subsidiary Kobeh Valley Ranch (KVR), sought to develop a mine in the Kobeh Valley in Central Nevada. KVR applied for rights to pump 11,300 acre-feet of groundwater, acknowledging that it would affect springs and neighbors holding senior water rights. The State Engineer granted the water rights on the condition that KVR work with Eureka County to submit and obtain approval for a plan to mitigate impacts on senior water rights.

Eureka County and senior water rights holders petitioned for review of the State Engineer’s decision. The district court denied the petition, finding that substantial evidence supported the State Engineer’s decision that KVR would be able to mitigate impacts on senior water rights.

The Supreme Court reversed the trial court and held that granting water rights before reviewing the mitigation plan denied due process to appellants. Nevada law requires the State Engineer to “reject the application and refuse to issue the permit” where the proposed water use “conflicts with existing rights.” The Court noted the State Engineer’s and the KVR expert’s acknowledgement that the pumping would deplete the source for senior water rights. It rejected the State Engineer’s argument that KVR could provide water from other sources. The Court concluded that protestors have a right to challenge all evidence supporting a decision, including mitigation plans. The court held that State Engineer decisions to grant a water right also “must be sufficiently explained and supported” to allow judicial review. This decision failed that test.

Share Water 101 Webinar with Your Colleagues
In preparation for the upcoming conference, University of Idaho Professor Barbara Cosens taught a webinar on water law fundamentals. You can now find and share that webinar, and the Layperson’s Guide to Water Rights Law, with your colleagues, at the Dividing the Waters resources webpage: http://www.judges.org/dtw/resources/. If a new water case shows up in your courthouse, please tell your colleague about the Program and send a note to the Executive Director, so he may welcome your colleague to Dividing the Waters.

In Focus: New Convener Justice Allison Eid (CO)
The Dividing the Waters Conveners have selected Colorado Supreme Court Justice Allison Eid to join them in leading the Program as a Convener. In her first Convener assignment, at the upcoming Spokane conference, Justice Eid will lead a small group to decide on the groundwater hydrology exercise.

Completing her first Convener assignment brings Justice Eid full circle, as she grew up in Spokane. She left Washington to go to Stanford University for college and then to University of Chicago for law school. She graduated from both schools with high honors (Phi Beta Kappa and Order of the Coif). Following clerkships at the Fifth Circuit and for Supreme Court Justice Clarence Thomas, Eid moved to Denver to work at Arnold & Porter as an appellate attorney.

In 1998, Eid joined the faculty at the University of Colorado law school, where she earned tenure. She taught constitutional law, legislative interpretation, and torts. In 2005, the Attorney General appointed Eid Solicitor General and then, the next year, Governor Owen appointed her to the Supreme Court.

Working closely with Justice Gregory Hobbs on the Supreme Court, Eid gained an appreciation for Colorado’s rich history in water law. “Water remains central to Colorado’s history and modern identity.” She participated in her first Dividing the Waters conference in 2014, at the urging of Justice Hobbs. When Hobbs retired this month, Eid assumed responsibility as the Supreme Court’s liaison to the Colorado water courts. The Conveners heartily accepted Hobbs suggestion to invite Eid to join them, as an opportunity to ensure continuity in engaging Colorado water courts in the Program’s work.

Eid lives in Morrison, Colorado with her husband, former United States Attorney for Colorado Troy Eid, and her daughter. When Justice Hobbs extended the invitation to join the Conveners, Eid was taking her older son to college.

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