



A resource for judges resolving water conflicts

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### Focus on Kansas

#### NJC and DTW Partner on Transformative Online Water Program

*Dividing the Waters* and The National Judicial College have decided to collaborate on developing a new, comprehensive program to build the Judiciary Branch's proficiency to adjudicate growing conflicts over water, particularly in the West. The program will combine both *DTW's* water law expertise and NJC's judicial education expertise.

The program originated in a *DTW* proposal to foundations to create an online training program that would be available to all judges as their needs arise. *DTW* conferences/resources would still offer in-depth training on water law and science. As the Conveners discussed this larger program, they realized that they may need NJC's logistical resources and experience. At the same time, NJC was working with the Conference of Chief Justices on an environmental law conference, which included a water segment with assistance from *DTW*.

NJC and *DTW* recognized common interests, so they developed a plan for collaborating. *DTW* Conveners provide the subject-matter expertise and NJC provides program development and management. Stay tuned for more info!

#### Kansas: Executive Branch Water Agencies

Like many states, KS divides responsibility for water among several agencies, which work on different issues and missions:

- *Division of Water Resources, Department of Agriculture* administers 30 statutes, including the Kansas Water Appropriation Act (water rights). Led by the Chief Engineer, the Division also regulates construction of dams, levees and other changes to streams; administers the state's four interstate river compacts; and coordinates the national flood insurance program in Kansas.
- *Department of Health & Environment* regulates water quality and drinking water pursuant to federal statutes. It also works in watershed planning and monitoring.
- *Kansas Water Office* provides water planning, policy, coordination and marketing. It serves as the lead for working with federal water agencies.

#### Missouri River Pipeline/ "Aqueduct"??

Given the lack of natural Ogallala Aquifer recharge, irrigators in SW KS have proposed conveying water 300 miles from the Missouri River in NE KS, to recharge the western KS Aquifer.

#### Kansas: Water Quality Challenges

As a state with rivers originating in other states, Kansas suffers water quality challenges due to a wide range of pollution sources that developed in past years:

- *Missouri:* Has runoff from upstream agricultural states, which contribute fertilizers (nitrate) and pesticides.
- *Arkansas:* Runoff from CO concentrates heavy metals such as uranium/selenium as the River crosses into KS.
- *Federal Reservoirs:* Have siltation, which reduces their capacity to store water for dry years.
- *Lakes:* Have blue-green algae, which is bacteria, which leads to State public health advisories.

#### NW Kansas: Local Enhanced Management Act (LEMA)

Irrigated agriculture overlying the Ogallala Aquifer in NW KS relies largely on groundwater, so the Aquifer has dropped in the decades since WW II. To respond to dwindling water, the KS Chief Engineer has approved several LEMA plans in the last decade. While the Chief Engineer has had the authority since 1978 to reduce groundwater pumping in areas of groundwater decline, local groundwater management districts opposed that unilateral authority. The 2012 LEMA statute allows the local districts to propose their own plans, subject to the Chief Engineer's approval. LEMA plans allow the state and local agencies to limit groundwater extraction and impose civil penalties on violators. LEMA plan reviews in NW KS have shown significant reductions in groundwater depletion.

#### In Focus: Burke Griggs (Washburn University)

Washburn University water law professor Burke Griggs has history with *Dividing the Waters*. He joined his first *DTW* conference in St Louis in 2010, when he was the lawyer for the KS Chief Engineer and convened water right hearings.

Griggs grew up in CO, learning the value of water. After getting a BA from Stanford and a PhD in history from Yale, he taught history at Boston College, but water law and policy continued to intrigue him. He went to University of KS to study water law. After two years in private water practice, Griggs joined DWR and later the KS Attorney General's Office to serve as counsel for the Chief Engineer. In 8 years, he represented KS in interstate water litigation, held hearings, and drafted legislation, including the 2012 LEMA statute.

**Thanks to Burke Griggs for his assistance in crafting this month's edition on Kansas water.**

**Ideas for Network Note? Court Decision on Water? Contact [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)**