

## *The Network Note* April 2017

### ***Dividing the Waters* Members = Authors**

Leading Program members continue to publish articles on western water issues, which may be helpful to other judges. These articles are available to *DTW* members:

- **Greg Hobbs** writes about the history of the Colorado Water Court's consultation process under the 1969 water act.
- **John Thorson** joins Matthew McKinney (U of Montana) in *Resolving Water Conflicts in the American West*.
- **Burke Griggs** writes *The Political Cultures of Irrigation and the Proxy Battles of Interstate Water Litigation*.

### **9<sup>th</sup> Cir: Fed. Law Authorized USBR Trinity River Release**

Recognizing broad Bureau of Reclamation (USBR) authority to protect fish, the 9<sup>th</sup> Circuit held, in *San Luis v. Haugrud*, that federal law authorized USBR's 2013 release of additional Trinity River water to protect salmon on the Klamath River.

On California's North Coast, the Trinity River flows into the Klamath River and out to the ocean, and historically supported a large salmon run on which two coastal Indian tribes relied. In 1964, USBR dammed the Trinity River so it could export water through a Coastal Range tunnel to the Central Valley Project to benefit farmers on the San Joaquin Valley's west side. Since the project's 1955 authorization, Congress has passed laws balancing the interests of fish and farmers.

In 2013, USBR decided to increase its Trinity River releases to 62,000 acre-feet of water, to combat salmon diseases made lethal by low Klamath River flows during the drought. The San Luis & Delta-Mendota Water Authority and Westlands Water District, which get Trinity River water, sued USBR to stop the releases. District Court Judge Lawrence O'Neill granted summary judgment to the Federal Defendants, although he held that the 1955 statute authorizing the Trinity River Division (1955 Act) did not authorize the release.

The 9<sup>th</sup> Circuit affirmed the district court's summary judgment but reversed its holding that the 1955 Act did not authorize the release. After an exhaustive water/legal history of the federal Central Valley Project (including the Trinity River Division), the Circuit closely examined the statutory text for the 1955 Act, Trinity River Basin Fish and Wildlife Management Act, Central Valley Project Improvement Act, and USBR state water rights. The Circuit concluded the 1955 Act's "broad language" directing Interior to "insure the preservation and propagation of fish and wildlife" authorized USBR to release Trinity River water for Klamath River salmon.

### **Join *Dividing the Waters* at Baylor (Texas) November 1-4, 2017**

Plan *now* to join the conference at the Baylor law school in Waco, Texas, which is less than 2 hours from either DFW or the Austin airport. Conference starts at 5:30 pm Wednesday.

#### **In Focus: Law Professor Burke Griggs (Kansas)**

Law Professor Burke Griggs discovered his passion for water while teaching European history at Boston College. A Denver native, he became "semi-obsessed" with water during the late 1990's, and soon decided that "the West's 'water wars' were more pressing than the 17th Century Wars of Religion." He earned a JD from the University of Kansas in 2006, and went to work for the State of Kansas, first as counsel to the Kansas Chief Engineer, and later as Assistant Attorney General.

Griggs's work for Kansas brought him into *Dividing the Waters*, as lead counsel advising the state's administrators-adjudicators on Kansas water rights. His favorite conference remains his first, in St. Louis in 2009, where he argued with Justice Hobbs over Colorado groundwater law. "*Dividing the Waters* introduced me to the community of judges and special masters adjudicating the West's most pressing water disputes. It is an invaluable program. I have learned a great deal about how to approach and resolve water conflicts, and I have made lasting friendships with legal and technical experts whose advice and perspective I seek on a regular basis."

His more illustrious service to Kansas came from his trial work in *Kansas v. Nebraska*, the state's original action in the U.S. Supreme Court to enforce the Republican River Compact. Kansas won disgorgement of Nebraska's ill-gotten gains – a first in Supreme Court history. Griggs represented Kansas in successful negotiation of the Kickapoo Tribe's reserved water rights claims. He also drafted the enabling statute to establish Local Enhanced Management Areas

In recent years, Griggs has returned to academia, at Stanford (his alma mater) as a Consulting Professor at the Bill Lane Center for the American West, and as a Fellow at the Woods Institute for the Environment. While teaching at Washburn University School of Law in Topeka, he continues his affiliation with Stanford's Water in the West program. Before law school, Griggs earned his Ph.D. in History from Yale. He lives in Lawrence, Kansas, with his wife, Emily Hill, and their three children.

**Recent court decision? Something to share? [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)**