

## *The Network Note* May 2016

### **June: Decision Time for *Dividing the Waters***

After several Program visits to water communities across the West, the Conveners will decide, in June, how *Dividing the Waters* will proceed in the year ahead. They will decide whether to offer the fundamentals course at NJC in Reno, a half-day seminar for the Utah Judiciary Conference, and a general conference in Texas next year. Recent Program visits to western water communities, such as Boise and Seattle, revealed interest in the Program from judges and lawyers.

### **CA: Desert Groundwater Extraction OK**

Relying on California's "Reasonable Use" Doctrine, the CA Court of Appeal upheld a desert groundwater extraction and conveyance project against challenges under the California Environmental Quality Act (CEQA) and local county groundwater management ordinances.

The Cadiz project will extract groundwater from a desert basin in San Bernardino County, where excess groundwater flows toward salt ponds and evaporates, creating salt for Delaware Tetra Tech, one of the plaintiffs. The project will move the water 43 miles, to the Colorado River Aqueduct, which will take the water to cities, via the Metropolitan Water District of So Cal. Santa Margarita Water District, the public agency partner and lead agency, will construct the project and distribute some of the water to other water agencies.

In a set of decisions, in cases entitled *Ctr. for Bio. Diversity v. Co. of San Bernardino* and *Delaware Tetra Tech v. Co of San Bernardino*, the Court of Appeal affirmed the trial court in rejecting appellants' CEQA claims regarding the lead agency and need for environmental review before signing an MOU.

On water-related issues, the court approved taking more water than is naturally recharged. Its interpretation of CA water law cited both the CA constitution's "reasonable use" doctrine and a CA Department of Water Resources bulletin. The court also rejected the claim that CA water law did not allow overdraft. It concluded that the County had exempted the project from its groundwater ordinance limiting overdraft.

In quoting the Constitution, the court noted that "the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable." Before quoting the DWR bulletin, the court explained: "State agencies have consistently concluded that flexibility is necessary in managing groundwater supplies."

## **Save the Date: Fundamentals Course November 14-15, 2016 (Still Tentative)**

### **In Focus: Justice Roger Burdick (ID)**

On a recent *DTW* visit to Boise, Idaho Supreme Court Justice Roger Burdick responded with enthusiasm to questions and ideas as to how *Dividing the Waters* might better serve the needs of Idaho judges.

Burdick was surprised to hear that a recent water case had been heard in a Boise court and not the Snake River Basin Adjudication (SRBA) court of Judge Eric Wildman in Twin Falls. His immediate response to the possibility that new judges would hear water cases was to ask how *Dividing the Waters* might help Idaho prepare new judges to hear water cases. Burdick has a long history with the Program.

Burdick's *Dividing the Waters* experience goes back to when he served for two years as the SRBA judge at the turn of the century (2001-03). He most vividly recalls the conference at Scripps Institution in La Jolla, California, where he was most "impressed by the timeliness and excellence of the subject matter offered." Burdick considers the Program's greatest value as "the information and the diverse issues concerning water from other states throughout the nation." He continues to read his *Network Note* every month, to see how other states and judges resolve water conflicts. That's why his first response was to ask how other Idaho judges might benefit.

Having grown up in Idaho, Burdick understands how critical water can be to Idaho's future. But he did not start out in water. Instead, with a finance degree from the University of Colorado, he started out as a bank examiner. After a law degree from the University of Idaho, he practiced civil litigation in Twin Falls and later served as a deputy DA in Boise. He returned to the Twin Falls area, to a general practice including service as a public defender.

Less than a year after winning election as Jerome County Prosecuting Attorney, Burdick was appointed Magistrate Judge in 1981. He went on to serve as an Idaho district court judge, until Governor Kempthorne appointed him to the Supreme Court in 2003. He completed a 4-year term as Chief Justice last summer. He lives in Boise with his wife.

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