



A resource for judges resolving water conflicts

Alf W. Brandt
Executive Director



THE NATIONAL
JUDICIAL COLLEGE

Hon. Benes Z. Aldana (Ret.)
President

The Network Note June 2017

DTW Registration Now Open!! **November 1-4, 2017**

Please Tell Us You Wish to Come to Texas Conference

The National Judicial College has now opened registration for this November's *Dividing the Waters* conference. The registration fee is \$249, which includes the conference and your lodging. This year, NJC will offer scholarships to cover the cost of travel and even, in some cases, the cost of your registration fee to pay for your lodging. Determining the total need for scholarships means we need to know about your interest and your need for funding. Register [here](#) today!

Colorado Justice Greg Hobbs Will Visit Texas in July

In order to introduce *Dividing the Waters* to the Texas water law community, Justice Greg Hobbs and DTW Executive Director Alf Brandt will visit Texas July 25-27.

Court of Federal Claims: Limits on Tribal Water Rights

The Court of Federal Claims, *Crow Creek Sioux Tribe v. U.S.*, held that tribal water rights under the *Winters* doctrine provide water sufficient to fulfill the tribe's needs, but no more.

The Crow Creek Sioux Tribe has lived on a South Dakota reservation since 1863. The Missouri River forms its western boundary. In 1944, Congress authorized construction of dams that caused inundation of reservation lands, for which the Tribe received \$4.4 million in 1962. The Federal Government diverted water from the Missouri River for flood protection and water supply.

The Tribe filed suit in the Court of Federal Claims in 2016, alleging that the United States had failed in its trust responsibility to preserve tribal water rights. It argued that the *Winters* doctrine grants the Tribe a "presently perfected possessory interest" in all the waters of the Missouri River on its reservation. The Government's diversion of water for non-tribal purposes therefore constituted a taking.

The Court granted the Government's motion to dismiss on the basis of standing and ripeness, because no injury to the Tribe had occurred. The court did not allow discovery on how much water had been diverted from the Missouri. It concluded that the amount and value of the diverted water "would not equate to damages suffered by the Tribe." In essence, tribes cannot claim a property right to all the River's water, only "the right to sufficient water for the needs of their reservations."

Article: Federal Reservoir Operations Difficult to Change

In drought or flood, disputes and litigation over operating dams often arise. In a [new article](#), University of New Mexico's Reed Benson explains the challenges for the federal Bureau of Reclamation and the U.S. Army Corps of Engineers to change dam operations, and the growing need for review and revision in light of changing water use and climate.

In Focus: New Mexico Professor Reed Benson

Unlike most *Dividing the Waters* judges, University of New Mexico Professor Reed Benson started in water law early . . . in high school. While growing up in Nebraska, he enjoyed fishing in a nearby ditch that flowed into the Elkhorn River. In 9th grade, he wrote his first paper on water policy, advocating that Nebraska adopt an instream flow law. So his joining the DTW Law School Network for water law professors came as no surprise to those who knew him.

He chose the University of Michigan law school, in part because a godfather of modern water law, Professor Joe Sax, taught at Michigan. Unfortunately, Benson only learned public lands law from Sax, who retired in Benson's second year and moved to UC Berkeley, where Sax taught water law to the DTW Executive Director. (The good news for Benson was that Bo Abrams, also a leading water law scholar, succeeded Sax.) Benson spent his summers in Colorado, where he started his water law career with a private firm.

Benson continued his career in water and the environment in the government and nonprofit sectors, in DC, Colorado, and Oregon. His water work took him to several other western states. His love for rivers took him to Oregon WaterWatch, a river conservation group that he led for five years. His academic career started at the University of Wyoming law school and, in 2008, he moved to the University of New Mexico, where he was elected as "coolest professor" for his work in water and natural resources law. What could be more "cool" than water law??!

Benson's most active period with *Dividing the Waters* came during his Wyoming years, when he presented at the 2005 DTW conference in Jackson. His work with water judges continues as he teaches at the State of New Mexico's annual judicial conference on water.

Though a long way from that Nebraska ditch, Benson still enjoys spending days on the water, especially in a kayak.

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