

The Network Note June 2024

This Summer's Hot Topic Webinar: Settlement of Navajo Water Rights

Dividing the Waters will offer a webinar on the Navajo Nation's recent settlement of its water rights claims, which may provide insight into how the Colorado River conflict may continue to evolve. *DTW* is honored to have Bidtah Becker, Chief Counsel to the Navajo Nation President, join Convener John Thorson and an AZ speaker for a conversation about the settlement and its implications for the Colorado River. Stay tuned!!

9th Cir: No ESA/APA Violation in H2O Contract Renewals

The 9th Circuit affirmed Bureau of Reclamation's water contract renewals in CA's Central Valley Project (CVP). It held, in *Natural Resources Defense Council (NRDC) v. Haaland*, that neither Reclamation nor the Fish & Wildlife Service (FWS) violated the Endangered Species Act or the Administrative Procedures Act.

In the 1960's, Reclamation executed "Settlement Contracts" with senior water right holders in the Sacramento Valley, upstream from the Sacramento-San Joaquin River Delta. It also executed water service contracts with water districts taking water from the CVP Delta Mendota Canal. When these contracts began to expire 40 years later, Reclamation began the process to renew them, including ESA consultation with FWS for the ESA-listed delta smelt.

NRDC filed suit in February 2005, alleging violation of the ESA and APA. The litigation proceeded through invalidation of the 2005 operations opinion, and the 2014 9th Circuit decision in *NRDC v. Jewell*, which required further ESA consultation. FWS sign-off – and amended complaints – followed. The district court dismissed some claims and granted summary judgment to defendants. NRDC appealed.

The 9th Circuit affirmed the lower court and upheld the contract renewals, analyzing each of NRDC's claims. The 9th Circuit rejected all of NRDC's arguments, finding that:

- 1) The FWS conducted an adequate ESA consultation.
- 2) Reclamation properly relied on the FWS opinion/letters.
- 3) ESA did not require re-initiation of consultation after signing the contracts because they did not give sufficient discretion for Reclamation to protect delta smelt.

The dissent asserted that FWS should have modeled effects on delta smelt through 2045, and concluded that Reclamation had sufficient discretion to protect delta smelt.

Water Court Decision? Profile on You? Email alfb@judges.org

DTW Resources Limited to Contributing States & Judges

Starting July 1, *Dividing the Waters* online courses, webinars and publications will gain password protection, limiting access to judges in states that contribute to build and operate the Program. Individual judges may gain access with an annual membership, which includes tuition/fees for the next *DTW* conference. The *Network Note*, however, will remain available to all judges and the entire water community.

IN FOCUS: Judge Michael Gonzales (CO)

Growing up in Cortez in western CO, 12th District Judge Michael Gonzales did not plan to be a judge in Alamosa, much less the Water Judge. In college and law school, he drove through Alamosa on his way to Creighton U (NE) and then U of Colorado. At high elevation, Alamosa was colder than he preferred, but Alamosa's 12th District DA offered him his first job out of law school and he moved there to start public service.

From the beginning, Gonzales sought public service. He enjoyed his work as a DA, becoming Chief Assistant DA. He planned to run for DA, when the DA recommended that he seek to fill a vacancy for county judge. He took the bench in 2007 and Gov Hickenlooper elevated him to the District Court in 2011. Voters retained him in 2014, and the Chief Justice appointed him Chief Judge of the 12th District in 2019.

As Chief Judge, Gonzales assumed duty as the Water Judge, succeeding *DTW* Judge Pattie Swift. While he had little experience in water, he had learned its importance to his community. Given his public interest focus, he took the duty with enthusiasm. When he passed the Chief Judge gavel in 2023, he retained the Water Judge responsibility. He's proud to serve as the Water Judge, with a strong water community using water in a positive way while protecting water rights.

His first *Dividing the Waters* conference in Santa Fe impressed Gonzales. The scope of other states' water challenges, in New Mexico and this year in Utah, suggested to him that CO cases are a mere "ripple in the water." The intellect, experience and ability of his water judge colleagues gave him confidence that the West will find a way to resolve water conflicts. He also noted his colleagues' collaborative spirit, and lack of ego, in the conference's deliberations. He looks forward to future engagement with *Dividing the Waters* judges, and appreciates his Supreme Court's contribution to its success.