



A resource for judges resolving water conflicts

Stephen E. Snyder  
Executive Director



THE NATIONAL  
JUDICIAL COLLEGE

Hon. Benes Z. Aldana (Ret.)  
President

## *The Network Note* May 2018

### ***Adjudicating Groundwater Now Available***

After exhaustive peer review overseen by the U.S. Geological Survey, the new *Dividing the Waters* bench book on the science of groundwater is now available **for free to judges** in the Program. For their free copy, judges may contact Rebecca [Bluemer@judges.org](mailto:Bluemer@judges.org). Others who wish to get a copy may contact either the Water Foundation (Sacramento) or one of the five law firms that supported the project. For more information, go to the [Adjudicating Groundwater webpage](#).

### **SCOTUS: US Allowed in *Texas v. New Mexico***

The U.S. Supreme Court has allowed the United States to pursue its own claims under the Rio Grande Compact in *Texas v. New Mexico*, despite the fact that Federal Government is not a party to the Compact.

Colorado, New Mexico and Texas signed the Rio Grande Compact in 1938, to apportion water among the states. The U.S. had signed a treaty promising Mexico 60,000 acre-feet of Rio Grande water in 1906. It built Elephant Butte Reservoir in New Mexico to store water for Mexico and, later, to deliver water to water districts downstream. The Rio Grande Compact depended on the Reservoir for storage and measurement of New Mexico deliveries to Texas.

Texas filed the current Supreme Court litigation in 2013, alleging that New Mexico violated the Compact by allowing water users downstream from the Reservoir to siphon off water from the River that reduced flow into Texas. The US intervened in 2014. The Special Master recommended that the Court dismiss part of the U.S. claims because “the Compact does not confer on the United States the power to enforce its terms.” The Court agreed to hear Colorado’s exception objecting to US claims (other than those related to the 1906 treaty) and the US exception asserting its rights to pursue claims for violation of the Compact itself.

The Court sustained the US exception, allowing the Federal Government to pursue its claims under the Compact. It held that its unique authority to “regulate and mould the process it uses in” cases of original jurisdiction allowed the Federal Government to defend “distinctively federal interests.” The Court found three such interests: 1) the intertwining of the federal Rio Grande Project and its Downstream Contracts with the Compact; 2) New Mexico’s concession that the US plays a critical role in Compact operations; and 3) a breach of the Compact could “jeopardize” fulfillment of the Treaty.

### **Seeking Your Ideas for California: 2019 at Stanford**

In the coming months, *Dividing the Waters* will begin its process of developing the ideas for where to concentrate next year’s conference at Stanford. The new Executive Director, Steve Snyder, will convene the Board of Advisors and the Law School Network. With all of California’s work on implementing the Sustainable Groundwater Management Act, groundwater may once again receive attention. If you have ideas for the conference, please contact Steve Snyder at:

[sesnyder@q.com](mailto:sesnyder@q.com)

### **Need Information? DTW Offers Its Resources**

In addition to the new *Adjudicating Groundwater*, the Program has resources to offer you. For more information, contact DTW Executive Director [Steve Snyder](#).

### ***Dividing the Waters* Network Needs YOU!**

As the Program’s staff transition proceeds, the importance of your participation becomes more important. In the years ahead, *DTW* will continue to evolve, to respond to the evolving needs of water judges. Let us know how you and your colleagues could benefit most from *Dividing the Waters*.

### **Water Fundamentals Workshop: The Next Generation**

This month’s water fundamentals workshop at The National Judicial College welcomed the next generation of water judges into the *Dividing the Waters* network. It offered the “new” participants an opportunity to learn what *DTW* has offered for decades – the law, adjudication practice and the science.

This workshop also introduced a new topic for *DTW*, the relationships between water judges and other branches of government involved in water. The Nevada State Engineer spoke at Friday’s workshop lunch, to kick off the afternoon discussion about how state water judges have a unique relationship with the executive branch and the Federal Government. Justice Rehnquist wrote in his 1978 *CA v. US* decision about “the consistent thread of purposeful and continued deference to state water law by Congress.”

The participant reviews rated the workshop highly, with an average 6.8 out of 7. They told the Conveners that they appreciated the balance between the law, the science and the practical insights into water rights administration

**SAVE THE DATES: April 10-13, 2019**  
**Next Conference: Stanford Law School**

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

Judicial Education Building, MS 358 • Reno, NV 89557  
tel (775) 784-6747 • 800-25-JUDGE (800-255-8343) • fax (775) 784-4234 • [www.judges.org/dtw](http://www.judges.org/dtw)