



A resource for judges resolving water conflicts

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## The Network Note July 2020

### **DTW Webinar: Megadrought, August 13, 11 am PDT**

The National Judicial College and *Dividing the Waters* will offer another free webinar on water conflicts. In the August 13 webinar, *The Emerging Megadrought: A Tale of Two River Basins*, water scientists will share recent drought experiences in two rivers – the Colorado and the Missouri.

Recent scientific studies have gained national attention in showing that some droughts have been the worst in hundreds of years, developing the label “megadrought.” Moderated by DTW founder John Thorson, speakers include:

- Benjamin I. Cook, NASA Goddard Institute
- Connie Woodhouse, University of Arizona;
- Bradley Udall, Colorado State University

To register, visit the [webinar’s NJC webpage](#).

**CA: SWRCB “Reasonable Use” Authority Affirmed**  
California’s 3<sup>rd</sup> District Court of Appeal (Sacramento) again issued a landmark water decision. In *Stanford Vina Ranch Irr. Co. vs. CA*, the court reaffirmed the broad authority of the State Water Resources Control Board (SWRCB) to regulate unreasonable use of water under the CA Constitution’s Article X mandate that all water use must be reasonable.

Stanford Vina Ranch Irrigation Company holds water rights to 2/3 of the flow of Sacramento Valley’s Deer Creek, based on a 1923 decree. In early 2014, Governor Brown issued a drought emergency decree and signed legislation authorizing SWRCB to take emergency action during California’s worst drought. In May, SWRCB issued an emergency regulation, based on the Reasonable Use Doctrine, setting minimum instream flows for fish in Deer Creek and 2 other nearby creeks. In June, it began issuing curtailment orders to all Deer Creek diverters to cease or reduce diversions to ensure minimum flows.

Stanford Vina sued in October 2014, challenging both the regulations and the curtailment orders, alleging a taking of vested water rights without compensation, a violation of due process rights, and other illegalities. The trial court upheld the SWRCB regulation and the curtailment orders.

The appellate court affirmed both. It held that SWRCB had properly issued the regulation within the scope of SWRCB regulatory/legislative authority. The court also rejected claims that the curtailment orders violated the rule of priority, as plaintiff had no vested right to unreasonable water use and SWRCB had substantial evidence for its curtailment order.

### **NJC Launches Conversation on Racial Justice in Courts**

The National Judicial College’s President Benes Aldana has reaffirmed NJC’s long-standing commitment and convened a national conversation on racial justice. In a [June 22 statement](#), Aldana called on judges: “*We must do more than just say, ‘No more.’ We must work for meaningful and enduring change.*”

Aldana’s statement reflects a national judicial movement. Since the killing of George Floyd by Minneapolis police in May, courts across the nation have called for greater racial justice. [The National Center for State Courts reports](#) that courts and chief justices in 24 states have made such calls.

These calls reflect judges’ growing awareness of systemic racism in the justice system. [NJC surveyed judges](#) in its network and found that 65% believe racism is systemic in the United States’ criminal justice system. In CA, the Judicial Council is working with the Legislature on [AB 3070 \(Weber\)](#), to reform the process for judging *Batson* objections to peremptory challenges based on race.

NJC has long offered a course addressing how injustice can pose a threat to judicial independence. The course, *When Justice Fails: Threats to the Independence of the Judiciary*, convened last December in the birthplace of the civil rights movement, Montgomery, Alabama, and this year in Honolulu, to address incarceration of Japanese Americans during WW II.

### **Increased Conflict Over Groundwater**

In light of climate change’s megadroughts and growing water demands, water managers increasingly rely on groundwater to fulfill the nation’s needs. Courts have seen more groundwater cases on their dockets, relating to both supply and quality.

*Dividing the Waters’* June groundwater webinar reflected the developing issue of judicial versus administrative regulation. The water law professors discussed court decisions from three states – AZ, NV and OR – and each addressed a decision arising from the state’s administrative water adjudicator. The courts exercised the final authority on the water decision.

Setting judicial and administrative authority for groundwater remains with state legislatures. Some have acted and others have not. CO gave its courts responsibility for plan approval in 1969. CA has started its process of local Groundwater Sustainability Agency plans/regulation, with state oversight.

***Dividing the Waters* Groundwater Resources Available**  
[Groundwater Webinar](#) or [Groundwater Bench Book](#)

Recent court decision? Something to share? Contact the *Network Note* Editor at [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)