



A resource for judges resolving water conflicts

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## *The Network Note* August-September 2020 *Focus on California*

### **First “Focus” Edition: *Focus on California***

This month’s *Network Note* focuses on water policy and conflicts in CA. Future editions will shift the focus to another state each month. This state focus originated out of a request from Judge William Highberger (Los Angeles Superior Court) for an article on CA Governor Newsom’s “water resilience portfolio.” The article below describes the portfolio and California’s continuing water conflicts. *Is your state next?*

**CA: Imperial Irrigation District Holds Water Rights**  
In *Abatti v. Imperial Irrigation District*, CA 4<sup>th</sup> District Court of Appeal reaffirmed that irrigation districts, not the farmers they serve, hold the water rights for their systems.

Imperial Irrigation District delivers water from the Colorado River to farmers in the Imperial Valley, on the Mexican border. Its water rights date back more than a century. In 2003, Imperial accepted limits on its Colorado River supply when the CA “Quantification Settlement Agreement” set internal allocations for CA’s share of the River. In 2013, it adopted an “equitable distribution plan” (EDP) for its customers for all years. The EDP gave a priority for drinking water and certain industrial uses, which would lead to bigger cuts for farmers during droughts.

Michael Abatti, whose family had farmed in the Imperial Valley for a century, challenged the EDP. He filed claims for mandamus, unconstitutional taking of water rights, and breach of fiduciary duty by Imperial. The trial court concluded that farmers “own the equitable and beneficial interest” in Imperial’s water rights. It found that Imperial abused its discretion by adopting the EDP in transferring those rights to other users. It barred use of EDP in apportioning water.

The Court of Appeal affirmed the trial court’s finding of an abuse of discretion in prioritizing other water users, but it reversed on other points. It held that the court erred by granting relief that usurps Imperial’s authority. Farmers have an “equitable and beneficial interest” in the district’s water rights, but only to water service.

### **Seeking Ideas/Contributions for Future *Focus* Editions**

We seek ideas from you on the water policies and conflicts in your state, to help build understanding of judges from other states, who may learn a lesson from your state’s experience. Please contact the editor with your ideas, at the address below.

### **Now Available: *DTW Webinar on Megadrought***

Did you miss the August 13 webinar on *The Emerging Megadrought: A Tale of Two River Basins?* Moderated by *Dividing the Waters* founder John Thorson, scientists engaged in discussion on the emerging science drawing on historical droughts to see what changing climate may suggest for future drought conflicts in the Colorado and Missouri river basins. If you wish to watch the webinar, [click here](#).

### **CA: Newsom Water Resilience Portfolio**

In his first State of the State address, CA Governor Gavin Newsom urged the state to get past CA’s long-standing water conflicts: “We have to get past the old binaries, like farmers versus environmentalists, or North versus South. Our approach can’t be either/or. It must be yes/and.” Three months later, he issued an executive order for a “Water Resilience Portfolio.”

In July 2020, the Governor issued a final “[Water Resilience Portfolio](#),” outlining his approach to addressing the many water challenges facing California. The Water Resilience Portfolio principles seek to:

- Prioritize multi-benefit approaches.
- Utilize natural infrastructure (forests, floodplains).
- Embrace innovation and new technologies.
- Encourage regional approaches in watersheds.
- Incorporate successful approaches from other nations.
- Integrate investments, policies and programs across state government agencies, in water and agriculture.
- Strengthen partnerships with local, federal and tribal governments, water agencies and irrigation districts.

### **CA Water Conflicts Continue**

While the Water Resilience Portfolio seeks to overcome water conflicts, CA’s long history of water conflicts persist, in:

- *The Delta*: While Newsom rejected Gov Brown’s two-tunnel proposal for moving water across the Delta, his one-tunnel idea continues to draw opposition.
- *San Joaquin River*: Water agencies upstream from the Delta continue to fight regulatory requirements for contributions of water flows for Delta water quality.
- *Groundwater*: Groundwater agencies proposed plans, but struggles over how to reduce overdraft continue.
- *Safe Drinking Water*: Small communities still suffer polluted groundwater for drinking, but who’s responsible?
- *LA Stormwater*: Storm runoff pollutes So Cal beaches, as cities dispute responsibility for stormwater pollution.

**Recent court decision? *Focus* edition ideas? Contact the *Network Note* Editor at [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)**