



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 December 2020

### Focus on Colorado

#### Race, Federal Indian Policy, and Access to Water 1<sup>st</sup> Webinar Now Available

*Dividing the Waters* convened its first webinar on racial justice and water on November 20, focusing on federal Indian policy on land and water. You can access the webinar recording on [the DTW-NJC webinar webpage](#).

**Next Up:** Closer examination of tribal history and water rights on the Klamath River in Oregon and California.

#### CO: Limits to Water Court Jurisdiction

In 2019, the Colorado Supreme Court clarified, in *Allen v. Colorado*, that the state's water court jurisdiction excludes ownership of water rights, contrasted with *use* of water rights.

Sam Allen bought land, water rights and mutual ditch company shares from the Farmers Home Administration (FHA). Previously, FHA had granted Mesa County Land Conservancy a conservation easement requiring that all water rights "remain with the land." After Allen sold the land and water rights without the ditch company shares, the Conservancy sued and got a court order requiring Allen to transfer his ditch company shares with the land and water.

Allen brought an inverse condemnation case, in Water Court Division 5, against the State of Colorado and its courts for a judicial taking. The Water Court dismissed the case for lack of subject-matter jurisdiction. It distinguished between *use* and ownership of water rights in defining its "water matters" jurisdiction. Allen appealed to the state supreme court.

Relying on long-standing precedent distinguishing between "use" and "ownership" of water rights, the Colorado Supreme Court affirmed the dismissal. Allen argued that the court order deprived him of use of his water, but the Court rejected his arguments. It compared his situation to a quiet title action, which state district courts hear. It held that ownership of ditch company shares was not in the "water matter" jurisdiction.

#### Water Courts Play Central Role

Since their creation in 1969, Colorado's water courts have played a leading role in how the state manages water use. Colorado's Chief Justice appoints the water judge in the 7 water court divisions based on river watersheds. The judges, active in *Dividing the Waters*, adjudicate all "water matters."

#### CO: Front Range Water Demands = Enduring Conflict

While much of Colorado's water arrives in the Rockies west of Denver, its demand centers east of the Rockies, particularly in the "Front Range" region (Ft. Collins to Pueblo). The state has built pipelines to bring water east, where cities get up to 50% of their water from the "western slope."

#### Colorado Water Conservation Board

The [Colorado Water Conservation Board](#), created in 1937, plays a leading role in CO water management. The Board:

- Appropriates water for instream flows
  - Plans/funds state and watershed management/restoration.
- The Board led the collaboration to create the [2015 Colorado Water Plan](#), to make the state's water supply and demand more sustainable and foster east-west collaboration.

#### Headwaters: Interstate Water Compacts & Conflicts

With the Rockies providing the headwaters for several rivers, Colorado has worked with other states to develop 10 interstate river compacts: Colorado, Republican, Arkansas, Rio Grande, Platte, Costilla, Costilla Creek, La Plata, La Plata-Animas and San Juan. Those compacts often have led to interstate conflicts, as the headwaters state protects its own interests in water use. Some conflicts draw national attention:

- *Colorado River:* The 7 basin states created "the mother of all interstate river compacts" in 1922, and Congress approved it 1929. It has provided a forum for conflict, with SCOTUS' 1963 *AZ v. CA* decision affirming federal authority and tribal water rights.
- *Republican River:* In 2018, CO reached settlements with KS and NB for its use of Republican River water.
- *Arkansas River:* CO and KS have litigated this river before SCOTUS seven times since 1902.
- *Rio Grande River:* Recent Rio Grande litigation has focused on the NM-TX dispute, but CO is involved.

#### CO Groundwater:

Water courts administer "tributary" groundwater with surface water under the 1969 Act. The Ground Water Commission, with the State Engineer, administers 5 eastern "designated" groundwater basins, managing withdrawal of water from the deep aquifers, such as the Denver Aquifer.

*Thanks to Judge John Kuenhold (CO, Ret.) for his assistance.*

**Can YOU Help on the Focus Edition for Your State?  
Please contact the Network Note Editor at [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)**