

The Network Note May 2021

Focus on Utah

Race, Federal Indian Policy, and Access to Water **Parts III – The Lower Klamath River**

Dividing the Waters will convene its 3rd webinar on racial justice and water in August. It will address tribal water interests in the Lower Klamath River conflict, where the conflict has focused on four power dams' impact on the salmon fishery, which is central to the River's tribal interests. For more than a decade, the tribes and state and federal governments have worked to remove the dams. A recent settlement of issues before the Federal Energy Regulatory Commission suggests dam removal is on the horizon.

UT: Salt Lake City Adjudication Moving Forward

After decades of scant activity, the Jordan River/Utah Lake water rights general adjudication in Salt Lake City has new life. It started as a private dispute in 1936 between irrigation companies, converted to a general adjudication in the 1940's, and, in the 1970's, expanded to include the entire watershed. Claims were accepted, and then the case languished for decades for want of funding and an outdated statute.

In 2012, the Governor's water plan included reinvigoration of the adjudication. Four years later, the Legislature modernized and streamlined the general adjudication statute, to put more burden on claimants, allow the court to appoint a special master, and provide additional funding for attorneys and staff for the State Engineer, pushing adjudications to conclusion.

Like many states, Utah's State Engineer lays the groundwork for judicial adjudications. Utah State Engineer Teresa Wilhelmsen has responsibility to ask the court to initiate these specialized civil actions, call for claims, investigate those claims, and propose a determination, which leads to filing of objections which must then be resolved in the litigation.

DTW Convener Judge Kate Appleby first encountered *Dividing the Waters* after she got the assignment as the trial judge for the adjudication. When she moved up to the Court of Appeals, Judge Laura Scott got the assignment.

After the statutory reform, Scott appointed water lawyer Rick Knuth as her special master. With Rules of Civil Procedure insufficient for general adjudications, they adopted specialized procedures to ensure that appropriators who had now decades-old claims received full due process. They have increased the rate of claims objection resolutions by seven-fold.

In Focus: Judge Laura Scott (Utah District Court/SLC)
District Judge Laura Scott got the Jordan River adjudication assignment when her predecessor was elevated.

Scott grew up in Salt Lake City and got her BA from the University of Utah and JD from Arizona State University. After graduating, she returned to Utah to serve as a counsel for the University of Utah until 1997, when she joined one of Salt Lake City's largest law firms, where she maintained a commercial/real estate litigation practice for 17 years.

Governor Herbert appointed Scott to the bench in 2014. She serves as her district's Associate PJ, and handles a civil calendar and felony drug court. After she got the adjudication, *Dividing the Waters* Convener Eric Wildman led a Utah judicial training seminar on water and advised Scott by phone. She has enjoyed learning about water and working with Rick Knuth to develop specialized procedures for Utah. As she proceeds, she looks forward to participating in *DTW*.

UT: State Water Agencies

The State of Utah has a mix of agencies involved in water. The Department of Natural Resources includes:

- **Division of Water Rights**, led by the State Engineer, which administers the water rights appropriation system.
- **Division of Water Resources**, as the "steward" of Utah's water, has responsibility for planning, conserving, developing and protecting the resource. The Division also includes the **Board of Water Resources**, which plans Utah's water future with river basin representatives. The Department of Environmental Quality has a **Division of Water Quality** that has responsibility for implementing the Clean Water Act and the Safe Drinking Water Act, and addresses watershed management and wastewater issues.

UT: Water Conflicts Across Utah

As the 2nd driest state in the US (after Nevada), water is critical to Utah – its history, economy and future.

- **Lake Powell Pipeline:** This controversial project would build a pipeline from Lake Powell, to serve communities 140 miles north, around St. George in southern Utah.
- **Southwest Groundwater:** Is over-appropriated in the Beryl Basin, with regional conflicts among irrigators.
- **Great Salt Lake:** As its region grows, less water reaches the shrinking lake and dusty playas emerge, raising air quality issues for the people of its namesake city.

Ideas for Network Note? Court Decision on Water? Contact ALFIII@sbcglobal.net