



A resource for judges resolving water conflicts

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Webinar: Klamath River, Tribes & Dam Removal

Dividing the Waters convened its third webinar on water, race and tribal justice, focused on the Lower Klamath River. While the previous Upper River webinar looked at water rights conflicts, this webinar reflected the Lower River's fight over hydropower dams and fish passage. Salmon are central to the Lower River tribes' culture and economy, so the dams impair the tribes' access to salmon. [WATCH HERE.](#)

The *DTW* webinar included speakers from the Yurok Tribe, CA Fish & Wildlife, UC Berkeley, and Klamath River Renewal Corp. The discussion revealed the underlying complex, multi-dimensional conflicts between values and cultures. Federal, tribal, state and local governments all have a stake in, and have litigated, this River's conflict. One takeaway for judges came from UC Berkeley Professor Holly Doremus, who observed that judges may help move conflicts forward by recognizing tribal rights to rivers, so that tribes have a strong, independent voice in resolving the conflicts.

States Consider Judicial Role in Water Conflicts

In the wake of a severe West-wide drought, state governments have started examining how their judicial systems can best address water conflicts. Each state has pursued different options, reflecting their unique conditions.

CA, in its recent State Budget, provided funding to its Judicial Council for judicial education on water conflicts. Convener Ron Robie is working with CA water law professors to develop statutes for the Chief Justice to assign water cases to judges with education and experience in water conflicts, and provide court experts on water law and science.

NV: The Supreme Court has convened a [Commission to Study the Adjudication of Water Law Cases](#). It includes judges, water lawyers and representatives of those who litigate NV water cases, including mining, agriculture, water agencies, and rural interests. Under the Chairmanship of Chief Justice James W. Hardesty, the Commission "will work to improve education, training, specialization, timeliness, and efficiency of Nevada's district courts in water law cases."

UT: *DTW* Convener Kate Appleby has proposed to the Judicial Council that it apply the model of its tax judges rule, to appoint and develop the expertise of judges who do water cases. It would not be a separate water court, but identified water judges would commit to learning about water conflicts and accepting water case assignments.

Dividing the Waters Considers Expanding Online Program

After success of recent webinars during COVID, the *DTW* Conveners are discussing the possibility of expanding online programs. An online program could be offered on a range of water law and science topics, and made available to judges at their convenience. The key to success will be funding partners.

Recent *DTW* webinars have attracted a broader audience of judges from across the nation, who have responded positively to these new programs. Offering an online program could expand judicial participation in *DTW*, although it could never replace the in-person conferences that offer judges so much. As Convener Ron Robie observed, "webcasts can never replace that informal interaction on water between judges at our conferences . . . in class, on breaks, and at dinner."

Welcome Nevada Judge John Schlegelmilch!

DTW Conveners welcomed a new Convener, District Judge John Schlegelmilch from Lyon County, NV. He comes from NV Chief Justice Hardesty's water adjudication commission, where Executive Director Steve Snyder made a presentation on *DTW* recently and engaged with Schlegelmilch.

Practicing law his entire career in Lyon County provided a solid foundation for contributing to the NV commission and *Dividing the Waters*. His county has three rivers that flow from CA to provide water for its communities and neighboring Indian tribes. The rivers generate some of NV's most difficult water conflicts and important federal/state legal precedents.

Schlegelmilch moved to Lyon County after getting his JD from Willamette University. He had gone to college nearby, at University of Nevada Reno. Although he started his career as a prosecutor, he practiced law for 13 years in Yerington, where he served agriculture and other water right holders. His understanding of the administrative complexities of the State Engineer's office and water litigation experience made him a good candidate to contribute to the NV commission's work.

The Texas *DTW* conference at the Baylor Law School gave Schlegelmilch his first exposure to the Program. His peers' judicial experience in water law impressed him. He has found *Dividing the Waters* "invaluable in keeping me up to date on the science and law relating to water throughout the west." It "has given me significant insight in addressing Nevada's unique issues as the nation's most arid state."

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