

The Network Note

June 2022

Upper Rio Grande Webinar Series, Part II

July 14, 10 AM PDT: The Decision Support System
Dividing the Waters convened a successful [webinar on water development in the Upper Rio Grande Basin](#). The next segment, on July 14, will examine the Basin's "Decision Support System." **To view a webinar or register for the entire series, visit the [DTW webinar page](#).**

- Aug. 18 (10 AM): *Groundwater Rules/Management*
- Sep. 15 (10 AM): *Roundtable on Lessons Learned*

CA: 1940 Decree Bars Change in Place of Use

The CA Court of Appeal reversed a decision on interpreting a 1940 decree from a trial judge who admitted, in open court, that he knew little about water law. In *Dow v. Lassen Irrigation Co.*, the 3rd District held that a 1940 water rights decree did not allow a water right holder to move its point of diversion and place of use downstream on the Susan River.

One party to the 1940 decree asked the watermaster to move his point of diversion and place of use downstream, to another ditch. He claimed the decree's savings clause allowed broad discretion for his water rights identified in a 1931 judgment. The watermaster denied his request and the party petitioned the decree court. The trial court approved the request, concluding that the petitioner's argument was "not ridiculously inconsistent with the objectives of the overall agreement," which is what the judge called the 1940 decree.

The appellate court noted the trial judge's "unfamiliarity" with water law and reversed. It described the practical effect of the trial judge's conclusions as granting the petitioner a senior water right to divert 740 acre-feet of water, superior to the water rights allotted in the 1940 decree. It quoted the trial judge directly in acknowledging his lack of understanding of water law: "I'm the first to admit that I'm sure that the Watermaster and everybody in the room knows a lot more about water than I do. All I do is fish in it."

The appellate court explained that the savings clause protected the points of diversion and use of ditches recognized in the 1931 judgment, not water rights duplicative to those rights recognized in the 1940 decree. The court also rejected the trial court's interpretation of the paragraph that allowed use of multiple ditches. It concluded that, in light of water law principles and the hydrographic report, moving the point of diversion downstream would harm other water right holders.

THE NEXT DTW CONFERENCE: Colorado River November 30-December 3 in Santa Fe, NM

With extreme drought bearing down on the Colorado River, this year's *Dividing the Waters* conference will use this Basin as a case study to provide judges the knowledge and tools that they can use in their own watershed. Panels will address the "Law of the River," its hydrology, history, and the conflicts in the Lower and Upper Colorado River Basin. For questions, [contact DTW Executive Director Steve Snyder](#).

Water Law Fundamentals Workshop – November 30

For judges new to *Dividing the Waters*, a fundamentals workshop followed by the welcome reception will kick off this year's conference, on Wednesday, November 30.

NJC Prioritizes Environmental/Water Law Education

With intense drought in the West and state courts prioritizing training in environmental law, NJC has dramatically increased educational offerings on the environment, climate, wildfire and water. NJC seeks funding to support a broader water law program, to address both fundamentals and complexities of water conflict adjudication, drawing on *Dividing the Waters* expertise. For information, [contact NJC Provost Joy Lyngar](#).

CA: Judicial Water Education Bill Advances

After the author and the CA Judicial Council resolved their differences, CA Senate Judiciary Committee approved AB 2313 (Bloom), to establish a judicial training program on water. The bill also authorizes the Judicial Council to identify experts on water science and law, to serve judges who need assistance with complex water cases.

Assignment of water-trained judges created the issue that required resolution between the author, who represents the Assembly on the Judicial Council, and the Judicial Council. Assembly committees amended the bill to allow parties to petition the presiding judge to assign a water-trained judge. After the Judicial Council opposed the bill based on this provision, the author offered alternatives. They agreed on setting a priority for the court to assign a trained judge.

The Legislature also approved an on-going \$1.1 million appropriation to establish the Judicial Council's climate change and water law training program. The State Budget provides for the Judicial Council to seek judges across the state for water law training and collaborate with courts in other states that share a river with California.

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