



A resource for judges resolving water conflicts

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THE NATIONAL
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CA Judicial Council Moving Forward on Water/Climate

In her inaugural State of the Judiciary address, new CA Chief Justice Patricia Guerrero identified the Judicial Council's new water/climate program as an important step in helping judges adjudicate CA's most urgent water/climate conflicts.

Note: CA Judicial Council is building its bench of experts who can help judges on water cases. **If you have found a DTW speaker particularly helpful**, please [contact the editor](#).

CA: Legislature Pursues Water Rights Reform

After 3 years of intense drought and water conflict, members in both houses of the CA Legislature have introduced 20 bills related in some way to water rights. These bills respond to Gov Newsom's call for water rights reform in the wake of drought and resistance to curtailments. Last summer, farmers defied a State order to stop diverting and got only a \$50 penalty for 8 days of illegal diversion. The next month, an appellate court held that the State Water Board could not curtail rights dating before the 1914 water rights law.

Diversity of Bills. Several members introduced water bills, on a wide range of topics. The bills focus mostly on drought, but recent rain/snow has led to discussions of how to capture more floodwater. Authors did not coordinate their bills, so some bills address the same topic, but in different ways:

- **Groundwater Adjudication** (AB 560 & 779): Seek to ensure equity for small farmers and disadvantaged communities, and bring science into court adjudications.
- **Water Rights Enforcement Tools** (AB 460, AB 1272, AB 1337, SB 389, SB 756): Address several aspects of water rights enforcement, particularly during droughts – investigations, planning, curtailments, and fines.
- **Well Permits** (AB 429, AB 1563): Tie new well permits, issued by counties, to groundwater sustainability agencies that plan and manage reduced pumping.
- **Domestic Use Preference** (AB 676): Defines "domestic use" based on 20th Century case precedents.
- **Water Uses** (AB 1572, AB 1631, SB 753): Specify water right permitting/use/enforcement for nonfunctional turf, mining and cannabis cultivation.
- **Hunting in Navigable Water** (AB 859): Protects right to hunt in navigable water, but not on adjacent flooded land.
- **Groundwater Recharge Permitting** (AB 900, AB 1024, SB 23, SB 659): Promote diversion of floodwaters for recharging groundwater aquifers.
- **State Water Data/Stream Gauges** (SB 361): Continues expanding State water data and transparency program.

CO Justice Monica Márquez Joins DTW Conveners

CO Supreme Court Justice Monica Márquez accepted the Conveners' invitation to join them in leading *Dividing the Waters*. She recognized the key role that her predecessor, the late Greg Hobbs, played in *DTW* and she is excited to take up his mantle for CO leadership of water judges.

In Focus: Chief Justice Tani Cantil-Sakauye (Ret. CA)

Retired CA Chief Justice Tani Cantil-Sakauye did not move very far to reach the pinnacle of the CA Judicial Branch. She grew up in Sacramento, went to City College, UC Davis for college and law school, and joined the Bar at 25. When some employers considered her too young, future Judge Russell Hom hired her in his law firm in 1985. She later joined the DA's office. Five years later, Gov. George Deukmejian hired her as Deputy Legal Affairs Secretary, and her rise began.

CA governors appointed Cantil-Sakauye to the Municipal Court in 1990, to the Superior Court in 1997, and to the 3rd District Court of Appeal in 2005, where she served with *DTW* Convener Ron Robie. In 2010, Gov. Arnold Schwarzenegger appointed her Chief Justice, where she served until 12/31/22.

Cantil-Sakauye stepped in to lead a judiciary in crisis. The judicial branch had suffered budget cuts, its judges were divided, and others challenged its credibility. She stepped up, to restore the branch's credibility. She advocated for the judges' role in democracy and access to justice for all of CA's diverse people, which helped restore judicial funding.

Interest in water developed while Cantil-Sakauye served on the Court of Appeal in Sacramento. Water conflicts often arise in the 3rd District, where water takes more judicial attention. Much of CA's water comes from or through the 3rd District. As Chief in 2012, she told the *Sacramento Bee* that a key future challenge for the judiciary would be adjudicating CA groundwater, a sage answer. Since then, groundwater conflict and its resolution have become central to CA water.

Cantil-Sakauye laid the foundation for the CA judiciary to resolve water conflicts. She got \$1.1 million in continuing State Budget funding for judicial education on water and climate. She then joined other state justices in Santa Fe, to create an interstate program on water at NJC. Now, as CEO at the Public Policy Institute of CA and a board member at NJC, she will continue to support judges learning about water. She respects and admires NJC and *Dividing the Waters*, as they "provide invaluable, critically important expertise and education to all three branches of government."

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