



A resource for judges resolving water conflicts

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### **October Webinar: WOTUS/Sackett v. EPA**

*Dividing the Waters* will convene a webinar on **October 26 at 10 AM PDT** on the implications of this year's SCOTUS decision narrowing "Waters of the US" in *Sackett v. US EPA*. University of Utah Professor Robert Adler will lead a discussion on how federal courts protect wetlands and how state laws may fill in gaps. [Register Now!](#)

### **CA: Federal Water Contract Denied State Validation**

A CA appellate court refused to validate a contract between the US Bureau of Reclamation and Westlands Water District. In *Westlands Water District v. All Persons Interested*, the Court of Appeal concluded that the Westlands "repayment contract" was not enforceable because it did not specify the amount that Westlands would "repay" Reclamation.

Westlands is the largest irrigation district in the world, delivering federal Central Valley Project water to over 600,000 acres of farmland in western San Joaquin Valley. After a 1960 authorization, Reclamation developed the San Luis Unit to deliver water from Northern California and the San Joaquin-Sacramento Delta to westside farmers. For decades, Westlands had a "water service" contract.

In 2016, Congress passed the Water Infrastructure Improvements for the Nation (WIIN) Act, which allowed Reclamation contractors with water service contracts to get "repayment contracts," which allows water districts to pay off the cost of building the system, so they have more control over the water. In October 2019, the Westlands board approved a repayment contract to pay off the construction debt. The repayment amount, however, was still being calculated.

Westlands filed and moved for state court contract validation, as required by the contract. The trial court denied the motion, finding the contract uncertain, and dismissed the action. It also denied later Westlands motions for validation in 2020-21.

The Court of Appeal affirmed the dismissal, finding the contract uncertain and Westlands' arguments "unavailing." It acknowledged that the contract was in existence, but could not find it "in all respects valid under applicable California law and binding upon the respective parties," because the amount of repayment had not been determined when the board approved the contract. It rejected Westlands arguments that setting the repayment amount was "ministerial," noting that the number fluctuated by millions of dollars.

### **Joining the Interstate Consortium on Water Law?**

If you would like to know your state's status in joining NJC's new Western Judicial Consortium on Water Law, please contact [Alf W. Brandt](#) for more information.

### **In Focus: Judge Angela Fonnesbeck (UT)**

Last year's Santa Fe conference provided both a start and a culmination for a new water judge. UT First District Judge Angela Fonnesbeck grew up surrounded by agricultural water use, but her career did not include environmental or water law. She focused on a wide range of real-people problems, from family law to criminal/juvenile law, for Logan, UT. Santa Fe confirmed her decision to volunteer as one of UT's first water judges and started her water law training.

Fonnesbeck grew up in Logan, but left town for college and law school. She went to Whitman College, alma mater of Justice William Douglas, in Walla Walla, WA. But law school drew her to East Coast urban centers, first Rutgers (NJ) and then American University in DC. She had interned for Sen. Hatch at the Judiciary Committee. Her time in DC gave her the opportunity to serve at the Int'l Human Rights Clinic and for a securities law professor. After law school, however, Fonnesbeck returned to UT for law practice, and life.

Fonnesbeck started her legal career in civil law at a private firm, but moved to criminal law as a public defender. For a decade, she served defendants in small towns across northern UT. She had her own firm doing both civil and criminal law, before Gov. Gary Herbert appointed her to the Juvenile Court in 2015, as the first woman judge in the First District, and then to the First District Court in Logan, in 2019.

After her appointment, Fonnesbeck learned that she had inherited the Bear River adjudication, which had started in 1955. As the UT Judicial Council created the volunteer water judge program in 2022, she got an invitation to join, as her case was among the oldest. She accepted because water is "incredibly interesting. It's part of everything we do in life."

The *Dividing the Waters* conference in Santa Fe confirmed that Fonnesbeck made the right choice. She loved the support she got from the larger water community. She felt "connected." The diversity of the participants – judges and speakers – impressed her. "We may not agree on everything, but we want to do the best job we can for our communities. I'm proud to be part of the water community." She now has a network of people to call when she needs help.

***Ideas for Network Note? Court Decision on Water? Contact [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)***