



A resource for judges resolving water conflicts

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THE NATIONAL
JUDICIAL COLLEGE

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Great Salt Lake Conference: May 15-18, 2024

The Conveners have firmed up the agenda for the upcoming Salt Lake City conference, entitled *The Great Salt Lake: A Case Study of One of the West's Emerging Conflicts Over the Use of Water*. Focused on the challenge of water management upstream from terminal lakes, the conference will include a day visiting the Great Salt Lake. [View agenda and register.](#)

CA: Water Contracts Do Not Impact Environment

CA Third District Court of Appeal affirmed the Department of Water Resources (DWR) compliance with CA Environmental Quality Act (CEQA) in adopting amendments to the State Water Project (SWP) contracts. In *Planning & Conservation League v. DWR*, the Court of Appeal rejected all grounds for appeal of the DWR amendment decision based on the EIR.

Since 1967, DWR has operated the SWP, which stores and moves water from Northern California to serve water as far as the Mexican border. DWR built the SWP with state bonds, backed by contracts for local water agencies to pay the bonds and costs of SWP operations. Contracts, executed in the 1960's, were set to expire in 2035, although an "evergreen clause" allowed water agencies to receive continued service.

In 2013, in light of the approaching contract expiration and the Evergreen Clause, DWR began public negotiations to extend the contracts, to allow refinancing of 30-year bonds. DWR prepared an EIR, concluding that the proposed amendments would, in effect, not alter the environment. In 2018, DWR filed an action to validate the contract amendments, and other parties filed actions challenging the amendments. The trial court entered judgment for DWR. The parties timely appealed.

The Court of Appeal affirmed the trial court on all counts, rejecting the appellants' claims on CEQA, the 2009 Delta Reform Act, the Public Trust Doctrine, and validation claims. It rejected appellants' challenges, starting with CEQA impact analysis. In essence, the court agreed with DWR that the amendments did not cause environmental impacts. This analysis laid the foundation for rejecting arguments based on other statutes and legal doctrines, on:

- *Delta Reform Act*, as not requiring certification of consistency with Delta Stewardship Council's Delta Plan.
- *Public Trust Doctrine*, as not triggering the State's affirmative duty to consider the Public Trust.
- *Validation claims*, rejecting claims that the amendments violated statutory priorities, and not presented to the Legislature, were impossible to perform, and therefore unconscionable, or were beyond DWR's legal authority.

Webinar: Navajo Decision, March 14, 10 am PST

Dividing the Waters will offer a webinar discussion of last year's SCOTUS decision in *AZ v. Navajo Nation*. John Thorson, *DTW* Co-Founder, will interview U of WA Professor Monte Mills (Director, Native American Law Center). They will explore the implications of the Court rejecting the Navajo Nation's claim that the US has a trust responsibility to secure the Navajo Nation's water rights/supply system. [Register!](#)

IN FOCUS: Justice Shama Hakim Mesiwala (CA)

The life of CA Court of Appeal Justice Shama Hakim Mesiwala started in Silicon Valley when fruit orchards still grew there. Her earliest water memory was the CA drought in the mid-1980's. Her "dadiama" (father's mother) had come to live with the family. Her father tried to explain their brown lawn and short showers. Mesiwala says it didn't make much sense to her dadiama, who thought America was the land of plenty. That memory would come back to Mesiwala later, as a chambers attorney for *DTW* Convener Justice Ronald Robie.

Mesiwala's commitment to public service first emerged in law school at UC Davis. Her father had immigrated from India in the 1960's for educational opportunities and freedoms found only in America, so she wanted to fight, as an attorney, for those freedoms. She first served indigent defendants at the Federal Public Defender and Central CA Appellate Program. She then transitioned to serve the judiciary, in the 3rd District Court of Appeal, where she served as a chambers attorney for Justice Robie for 11 years.

Mesiwala's own judicial service started in 2017 as a court commissioner. Ten months later, she joined the Sacramento Superior Court, where she presided over criminal, civil, and juvenile cases. She created No. Cal's first Indian Child Welfare Act courtroom and served as the Americans with Disabilities Act judge. After six years on the trial court, Gov. Newsom nominated her to Court of Appeal. She stepped up on Valentines Day 2023, as a peer to Justice Robie.

PCL v. DWR gave her the opportunity to address water issues in one of her first published opinions. Her knowledge of the CA water system showed, with her quoting decisions that Robie had written when she was his chambers attorney.

Mesiwala has not attended *Dividing the Waters* yet, but she knows the program well. She joined Justice Robie's chambers the year he became a convener. She recalls fondly their talks about *DTW* and his decades of experience with water. She looks forward to Salt Lake City, and hopes to learn from Utah's experience with a terminal lake.

Ideas for Network Note? Court Decision on Water? Contact alfb@judges.org

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