



A resource for judges resolving water conflicts

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## The Network Note April 2024

### Great Salt Lake Conference: May 15-18, 2024 *Time to Join the Conference! Invite a Colleague!*

The SLC conference is just around the corner, but you can still join us, and invite a state or federal colleague to come too! Don't miss the insight and experience from your judicial water network. With a pre-conference workshop on general stream adjudications and a Great Salt Lake field trip, it is an event not to be missed. [View agenda and register!](#)

**ID: DWR May Curtail Groundwater on Its Own**  
The Director of ID Department of Water Resources (IDWR) may curtail junior groundwater rights to protect senior surface water rights, even in the absence of a complaint from seniors. In *South Valley Ground Water Dist. v. IDWR*, the ID Supreme Court held that the IDWR Director had authority under the Ground Water Act, ID Code §42-237, to curtail groundwater pumping to protect senior surface water rights.

In 2021, facing "unprecedented drought and water scarcity," the IDWR Director set a June hearing to consider curtailing groundwater pumping to protect the senior surface water rights in the Wood River Valley. He gave notice and asked his staff to prepare analyses to present at the hearing. On June 28, the Director curtailed 300 groundwater rights, which lasted 8 days, until he agreed to an amended mitigation plan.

The groundwater districts petitioned for judicial review and it was assigned to the Snake River Basin Adjudication district court judge. The district court affirmed the Director's authority but held the order did not comply with the Prior Appropriation Doctrine. It concluded that the Director had failed to designate an "area of common groundwater supply" and "conjunctively administer to material injury" as required by IDWR conjunctive management (CM) rules.

The ID Supreme Court affirmed the district court on the Director's authority but reversed on failing to comply with the Prior Appropriation Doctrine. It affirmed the Director's authority and Final Order, based on the ID Ground Water Law, not the CM rules. The CM rules usually involve a delivery call and a groundwater district, but the Director had acted on his own legal authority. The Court held that the CM rules do not apply under the Ground Water Law, whose "plain language unambiguously grants the Director discretionary power to regulate the withdrawal of water from 'any well' that affects senior rights, regardless of whether the well is located inside or outside an organized water district." The Court also rejected the districts' due process and attorney fee claims.

### Online Course: First Water Science, Next Water Law

The "next generation" *Dividing the Waters* created its first online, on-demand course on water science, now available to judges in states that contributed. The Conveners now plan to work on an online course on the Prior Appropriation Doctrine. **To gain access to online course, contact [Alf Brandt at NJC](#).**

### NJC Takes *Dividing the Waters* Into Its Curriculum

The National Judicial College accepted the *DTW* Conveners' proposal to bring the Program fully into the NJC curriculum. The Conveners will continue to lead the Program, assisted by NJC staffer [Alf W. Brandt](#), who previously served as *DTW* Executive Director. The Conveners will select one of its members as "Executive Chair."

*Dividing the Waters* will shift its focus, to serve what state judicial systems identify as their judges' needs. In recent years, states have recognized the growing need for judicial education on water. UT and NV created water judge programs, requiring water judges to learn water issues. Judges will gain access to *DTW* programs and resources based on their state's contribution to the Program's operations. (A single judge may still pay tuition for access.) NJC also will continue to seek other foundation funding for *DTW* programs.

More than 30 years ago, *Dividing the Waters* started as a small forum for the limited number of judges overseeing the large general stream adjudications. Its founders, from AZ and ID, found common cause in the challenges of managing thousands of water right claims. Foundations funded the small group. Over the decades, it evolved to address other water law issues. *DTW* affiliated with NJC in 2007, retaining its independence and foundation funding. The next generation of *Dividing the Waters* will expand its reach to the next generation of judges.

### NJC Broadens Consortium: Water and The Environment

The *DTW* Conveners also proposed creation of a consortium to promote interstate collaboration on increasing judicial capacity to adjudicate complex water cases. NJC affirmed their idea and expanded the collaboration concept, to focus on water *and* allow states to advise NJC on other environmental law issues. Since 2018, when the Conference of Chief Justices sought more training on the environment, NJC has worked with *DTW* and others to create new environmental programs. The Consortium on Water and the Environment **invites all chief justices** to participate, or nominate another justice to participate, in a Council to discuss their courts' water and environmental training needs and advise NJC/*DTW*.

***Ideas for Network Note? Court Decision on Water? Contact [alfb@judges.org](mailto:alfb@judges.org)***