

## The Network Note October 2024

### Webinar: CA Sustainable Groundwater Law Tuesday, November 12 @ 12:15 PM PDT

CA will share its state-specific webinar on its Sustainable Groundwater Management Act (SGMA) with the *Dividing the Waters* network. Since SGMA's passage a decade ago, CA has made progress on improving groundwater management:

- Created "Groundwater Sustainability Agencies" (GSAs).
- GSAs created "groundwater sustainability plans" (GSPs).
- State agencies reviewed and assessed those GSPs.

Join the webinar to hear the 10-year update from UC Davis [Professor Thomas Harter](#) and CA Department of Water Resources [Director Karla Nemeth](#). **Register [here!](#)**

**WOTUS: Army Corps Applies Different Rules in States**  
In continuing to respond to the 2023 SCOTUS *Sackett* decision, the [Army Corps of Engineers announced](#) that it and the EPA would apply the "Pre-2015 Regulatory Regime" for interpreting "Waters of the United States" (WOTUS) in the Clean Water Act, but only to 27 states. It would apply the 2023 rule, which took effect 2 months before *Sackett*, to the other states.

This differing application reflects continuing litigation over the 2023 rule. The agencies revised the 2023 rule to conform to *Sackett* but litigation over the rule continues. The agencies therefore apply WOTUS rules by state, based on that state's litigation. In September, the 6<sup>th</sup> Circuit lifted a stay on the 2023 rule for KY. Litigation in other states, however, has stayed the 2023 rule, restoring the "pre-2015 regulatory regime." EPA will keep the rule-application map updated as litigation evolves.

The announcement quoted *Sackett* as concluding "'waters' encompasses 'only those relatively permanent, standing or continuously flowing bodies of water "forming geographic[al] features" that are described in ordinary parlance as "streams, oceans, rivers, and lakes.'" It added: "The Court concluded that the significant nexus standard is inconsistent with the Clean Water Act." The agencies are implementing *Sackett* but continuing litigation makes differing rules necessary.

### Online Water Courses – Do You Have Ideas?

NJC and Southern Utah University have agreed to proceed with developing new online water course modules. The next one will teach the Prior Appropriation Doctrine in water law. Is there a topic you would like to see? Contact [Alf W. Brandt](#).

### PLAN YOUR CALENDAR NOW! 2025 DTW Conference: September 3-6, 2025 University of Montana (Missoula)

Ideas for MT water issues? Contact [Alf W. Brandt](#).

**In Focus: Judge David E. Freeman (WA)**  
In 2021, the State of Washington started a planning process for general stream adjudications. When Whatcom County Superior Court Judge David E. Freeman heard that an adjudication might be coming to his county, he signed up to attend the 2022 *Dividing the Waters* conference in Santa Fe.

The Santa Fe conference showed Freeman that he had much to learn from *Dividing the Waters* and its network of water judges. The scope of water adjudication practice surprised him: "It was much bigger than I thought. I met judges who knew more about Washington water right adjudications than I did." The other water judges' knowledge and passion for water and public serviced impressed him. He has gained knowledge of both substance and process from the Program and its network.

Freeman's entire life has links to WA public service. He grew up in Olympia, where his father was a chief administrative review judge and his mother served in human resources for the State of Washington. For college, he moved to Bellingham for Western WA University and fell in love with the region. He got his JD at Willamette University and returned to Whatcom County to join the Prosecutor's Office.

Five years ago, Freeman would not have imagined he would become a water judge. At Willamette, he took one day of water law but switched to insurance law. He spent 9 years as a review judge at the WA State Employee Security Department. Before his appointment in 2020, he had served as a *pro tem* judge, but water was not on his radar.

When the Nooksack River adjudication emerged, Freeman realized that water touches everyone, including the Tribes, in his county and he wanted his court to serve their needs. His experience as a review judge for 1000's of unemployment claims may assist him in managing adjudication of 1000's of water right claims. Since WA Department of Ecology filed the Nooksack adjudication on May 1, Freeman has laid a foundation to get started and looks forward to engaging the watershed and its water right claimants in adjudicating water rights.

Court Decision on Water? Profile on You? **Email [alfb@judges.org](mailto:alfb@judges.org)**

