

The Network Note December 2024

Webinar: Climate & Drought January 30, 2025 – 12 Noon PST

Join NJC and the Environmental Law Institute in a webinar on the effects on climate change on water supply and droughts. Dr. Benjamin I. Cook, from NASA's Goddard Institute for Space Studies and Columbia University, will share his expertise on challenges that climate change poses for water availability. *Dividing the Waters'* own UT Water Judge Jennifer Valencia will moderate. **Register [here](#).**

UT: Mutual Reasonableness on Water Pipeline Easement

The UT Court of Appeals reaffirmed the state's "mutual reasonableness" rule on interference with an underground water pipeline easement. In *Metropolitan Water District of Salt Lake & Sandy v Sorf*, the Court rejected MWD's invitation to adopt a "bright-line" exception to the state's rule that would have made permanent structures on the surface *per se* unreasonable.

MWD acquired an easement to build its large underground pipeline in 1946 and completed the pipeline between reservoirs in 1951. Sorf bought the land in 1988 and started improving it in 2009. He installed, within the easement, a hot tub in a covered deck, two sheds on a concrete slab or blocks, walls, and a pond/water feature. MWD objected that the improvements would interfere with pipeline maintenance/replacement.

MWD filed suit for unreasonable interference in its easement, taking Sorf's default. Later, the Court of Appeals remanded for a jury trial, rejecting the judge's finding of no unreasonable interference. The jury found no unreasonable interference, responding to 10 specific questions, and MWD again appealed. Its appeal challenged the jury instructions, arguing for a bright-line exception to the UT rule requiring mutual reasonableness, making permanent structures on the surface above a water pipeline easement *per se* unreasonable.

The Court of Appeals affirmed the trial court and jury decision in favor of the surface landowner. It reviewed ID's exception and concluded that it did not apply to underground pipelines. The conclusion explicitly declined the "District's invitation, in this case, to apply a bright-line exception—one that would be applicable only to permanent structures built inside negotiated easements of definite dimension—to the rule of mutual reasonableness that has long been applied to easement disputes in Utah." It rejected MWD's objections to the court's refusal to use their jury instructions, as not an abuse of discretion.

In Focus:

Judge Linda Lee (WA)

Growing up in Hawaii, Washington Court of Appeals Judge Linda Lee could not ignore the importance of water. Surrounded by the Pacific Ocean, tropical rainfall watered the Islands' luscious lands. When Lee was 14, Hawaii amended its Constitution to protect water resources, imposing a duty on the State to "protect, control and regulate the use of Hawaii's water resources for the benefit of its people."

After graduating from the University of Hawaii with a JD, Lee moved to Tacoma, WA in 1991, and began a legal career in private practice. She started in litigation, focusing on insurance coverage for environmentally damaged sites and health insurance practices, and pursuing class actions for discrimination and environmental remediation. WA Gov Gary Locke appointed Lee to the Pierce County Superior Court in 2004, and Gov Jay Inslee elevated her to the Court of Appeals a decade later.

From the beginning of her legal career, Lee has committed her time and talent to three priorities – the bar, the community, and legal ethics. Lee's commitment continues, and has expanded, on the bench. She has served on the Board of Judicial Administration, as well as the Boards of multiple bar associations, locally and nationally; arts organizations; and community foundations. Lee also has chaired the Judicial Ethics Advisory Committee since 2014.

Lee's passion, however, goes to the next generation, "our youth." She mentors law students/young lawyers and participates in moot court programs at WA law schools, national competitions, and the YMCA. Lee speaks with local middle/high school students, encouraging them to pursue a career in law and justice. She also speaks with Hawaii high school students, encouraging them to think globally, connecting to the world beyond their land surrounded by water.

When WA State began building a water rights adjudication program, Lee joined *Dividing the Waters* and participated in the 2024 Great Salt Lake Conference. She most enjoyed the field day out on the Lake, seeing first-hand the impact of development on a treasured natural resource and taking heart in efforts to preserve and revive what remains. "*Dividing the Waters* offers an expansive resource of people with experience, who have a deep understanding of the complex balance between the science, the law, and practicality. Water is essential to our existence. *Dividing the Waters* gets that."

Court Decision on Water? Profile on *You?* Email alfb@judges.org