

The Network Note February 2025

Indian Law Webinar: March 18 – Noon PT

NJC and *Dividing the Waters* will hold a webinar on “Indian law,” on behalf of WA AOC. Last year, the WA Legislature required AOC to train water judges/commissioners on 4 topics – water law, Indian law, water science, and cultural awareness of tribal history/relationships. U of WA Prof. Monte Mills and Colville Tribal Court of Appeal Justice Theresa Pouley will survey federal/state case and statutory law, as well as executive orders and agreements relating to WA Tribes. [Register HERE](#)

OR: Hydroelectric Right Converts to Instream Flow

The OR Supreme Court interpreted a statute to transfer an unused hydroelectric right to instream flow. In *Waterwatch of OR v. OR Water Resources Department (OWRD)*, the Court held that OR law required OWRD to convert a hydroelectric water right to an instream flow right after five years of non-use.

The case originated in Rock Creek in NW Baker County, where the County’s 1st electricity originated in 1905, lighting nearby Baker City and powering its streetcars. [NOTE: This Editor holds an 1889 water right on Rock Creek.] Ownership/operation of the hydroelectric plant passed through many owners, ultimately to OR Trail Electric Cooperative (OTEC), which shut down the plant and stopped diverting water for hydroelectricity production in 1995. In 1999, OR passed a law requiring conversion of a hydroelectric water right to an instream flow water right after 5 years of non-use.

In 2000, OTEC leased its water right to OWRD for instream use, as provided in a 1987 OR statute. OTEC successors continued leasing the right for instream use. Concerned about possible project restart, Waterwatch petitioned OWRD to reconsider its 2015 lease, which OWRD denied. Waterwatch petitioned for judicial review. The trial court and Court of Appeal upheld the OWRD denial, finding the instream-use leases as continued use.

The OR Supreme Court reversed, concluding that OTEC had not used its right for hydroelectric purposes since 1995 and the right was subject to conversion to instream flow in 2000. The Court rejected OWRD/OTEC arguments that instream flow continued use of the OTEC water right. It analyzed the conversion statute and the lease statute. Reviewing the legislative language and history, the Court focused on how the conversion statute specified a non-use of a “hydroelectric water right,” while the lease statute allowed “conversion to an in-stream water right.”

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

REGISTRATION OPEN for MT Conference

Dividing the Waters Conference – September 24-27

Registration has opened for this year’s *Dividing the Waters* conference. *DTW* invites all judges to register now, even if they defer payment. The states that contribute to *DTW* will receive 5 tuition waivers, selecting their judges for waivers this summer. Please plan to join us and check with your colleagues to make sure they join you. [REGISTER NOW!](#)

UT Approves Water Right Settlement with Navajo Nation

UT 7th District Court approved the State’s 2022 settlement with the Navajo Nation (and the US) on water rights in the Navajo Nation Subd. of the SE Colorado River General Adjudication. The court issued an interlocutory water rights decree, specifying water rights and attaching the settlement agreement.

This adjudication started in 1988, when the court ordered the UT State Engineer to “determine and adjudicate all rights to the use of water from the Colorado River in the San Juan, Grand, and Uintah Counties in Utah, exclusive of the Green River Drainage.” The State Engineer served summons and identified all claimants in the Navajo Nation area of SE UT. It convened a public meeting on the water adjudication process for water right claimants in March 2022. UT and the Navajo Nation settled their water right claims the following month. The court had previously closed the basin to further claims, and the State Engineer completed and served its notice of determination. The deadline for objections passed last August.

The court issued the decree after resolving 4 objections based on stipulations. The court retained jurisdiction to modify irrigation duty, domestic use allowance, stock water allowance, as well as the decree itself prior to the full basin’s Final Decree. Exhibits included water right descriptions (including forfeited and invalid claims), a map, priority schedule, and settlement agreements with Navajo Nation and the US (for monuments).

Online Water Science Course Now Available @NJC

NJC now offers the *Dividing the Waters* online water science course to judges in states that have contributed funding to its development. The course, presented by UC Davis Professor Thomas Harter, allows judges to choose the science topics that they want to understand better, or do the whole course. To gain access to the online course, please contact [Alf W. Brandt](#) at NJC.