

The Network Note **August 2025**

A Few Places Left for 2025 DTW Conference Missoula, MT – September 24-27, 2025

Registration for this year's *Water Law at the Quarter Century* conference shows record numbers, but a few places are still left. Join your colleagues and register today. This will be a water-judge conference that cannot be missed! [Register Now!](#)

CA: Mandatory Maintenance for Dam Fishway

The CA Court of Appeal held that the CA Water Code requires dam owners to maintain a fish passage facility. In *Water Audit CA vs. Merced Irrigation Dist. (MID)*, the court reversed the trial court's dismissal for failure to join indispensable parties, holding that issues of fact required the trial court's resolution.

MID owns a dam, built in 1910, on the Merced River, that has a fish ladder, which had been closed since 1972. Plaintiff sued MID in 2022 for violating CA statutes requiring dam owners to maintain fishways connected to their dam. MID opened the fishway for a short time in 2023, but it now remains closed.

The trial court dismissed the case based on MID's demurrer, for failure to join federal agencies as indispensable parties and statute of limitations. Both parties had litigated on the pleadings and had submitted exhibits for the court to take judicial notice. The 3rd Amended Complaint had not attached the exhibits from previous versions, so Court of Appeal found few pleaded facts.

The Court of Appeal reversed dismissal, except as to the public nuisance claim because plaintiff lacked standing. It used briefs and exhibits below to examine long-standing disputes about the fishway's necessity. It also explained federal law on federal-state agency coordination on fishery regulation. The court held that plaintiff had public interest standing, before moving to the mandatory duties of CA statutory fishway statutes.

The court held that statutes requiring maintenance of a fishway were mandatory and ministerial, rejecting MID's factual excuses as premature. It also rejected its statute of limitations argument, finding that Water Code§ 5901 *et seq.* imposed "a continuous duty" to maintain the fishway and ongoing violations were recurring violations. Finally, the court rejected arguments on federal agencies as indispensable, federal pre-emption, judicial abstention, and exhaustion of administrative remedies. It noted that the CA Dept. of Fish & Wildlife was pled as a real party in interest and had submitted an *amicus* brief.

Conference Headliner: Author John N. Maclean
9/23/25 Reception: All Are Welcome
Register for Reception at alfb@judges.org.

IN FOCUS: Judge Lisa Malpass (WA)

For more than 40 years, Superior Court Judge Lisa Malpass has lived in river towns surrounded by diverse geology, natural resources, agriculture, and indigenous communities in eastern WA. She understood the challenges of water in the arid West and how communities managed water through reservoirs and irrigation districts. While water was not central to her legal career, she considers water to be the bond and lifeline for communities, culture, and commerce in Eastern WA.

After high school, Malpass joined the Air Force, stationed at Fairchild Airforce Base in Spokane County. Since then, she earned a BA (Gov't) and MA (Pub Admin) from Eastern WA University, and then a JD from Gonzaga law school. She practiced law in Spokane, from administrative law, elder law to probate litigation, while giving back to her community. In 2022, WA State Bar Association named her the "Local Hero" for her public service, in guardian ad litem and elder estate programs.

In 2024, Malpass won the vote of Ferry, Pend Oreille and Stevens Counties to the Tri-County Superior Court. In January 2025, she replaced Judge Pat Monasmith, one of the region's water law leaders. This year, the Superior Court Judges Association appointed her as a regional Trustee.

Immediately upon taking the bench in 2025, she heard discussion of an Upper Columbia River adjudication in light of the Colville Tribe's 2019 request for a state-court adjudication. She jumped at the opportunity to join WA's new judicial education program on water and Tribes. In March, she participated in the NJC-DTW water science program at WSU and then the WA Tribal-Judicial Summit in western WA in June. She now attends every water training that comes her way.

This year's *Dividing the Waters* conference will offer her the first opportunity to meet water judges from other states. The WA program's immersive, collaborative nature has enriched her grasp of water law's complexities, preparing her for MT. "Engaging with collective expertise has been invigorating, offering fresh insight and confidence. Networking with water judges from other states will illuminate our Columbia Basin."

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