

The Network Note November 2016

2017 Texas Conference – Tentative Dates Set

Dividing the Waters currently is pursuing funding from Texas foundations to support a 2017 conference in Texas. While funding may not develop until next year, the Conveners decided to set tentative dates for next year's conference, to give members enough time to arrange their calendars to participate. *If funding develops*, the conference will occur at **Baylor University**, in Waco, on **October 25-28, 2017**.

CA Upholds Ban on Suction Dredge Mining in Rivers

The CA Supreme Court, in *People v. Rinehart*, upheld a state law imposing a moratorium on suction dredge mining in rivers, affirming the state's authority to regulate its rivers on federal land despite a federal mining claim in the river.

As the Court explained, California has a long history of regulating the effects of mining on its rivers. The water right doctrine of "appropriation" arose in 1849 Gold Rush mining camps. After the rush, mining companies used hydraulic mining, blasting hillsides with water and filling rivers with debris. In 1884, the CA Supreme Court stopped hydraulic mining with a ban on dumping of mining debris.

Suction dredge mining vacuums loose material from river bottoms, separates the gold in a floating sluice box, and discharges what's left back to the river. The State of California has regulated such mining for a half century. In 2009, the Legislature imposed a moratorium on suction dredge mining, and later eliminated a 2016 sunset date.

Defendant Brandon Rinehart was charged criminally in 2012, for suction dredge mining. He argued in his defense that he was working his own mining claim, pursuant to the 1872 federal mining law, using "the only commercially practicable method of extracting gold." He argued that the State's moratorium therefore was pre-empted by federal mining law.

The Court rejected Rinehart's pre-emption defense, holding that federal law allowed for state regulation of its rivers. The Court exhaustively reviewed both federal mining law and the State's river regulation history. It described the state's long water law history, including its 1983 decision on the Public Trust Doctrine, with origins in English common law. Applying the U.S. Supreme Court's 1987 *CA Coastal Comm. v. Granite Rock* decision allowing states to regulate mining for environmental reasons, the Court concluded that the federal law did not displace California's environmental regulation.

Do YOU Have Topic Ideas for 2017 Texas Conference???

Baylor's Justice Jan Patterson will take the lead in organizing Texas judges and academics to help the Conveners arrange next year's conference. The Program's Board of Advisors also will play a role. But if YOU have an idea for a topic that you would like on next year's agenda, please contact the Executive Director, [Alf W. Brandt](#), to discuss your ideas.

In Focus:

Michael Nelson (AZ-Ret.)

Michael Nelson, retired Presiding Judge in Apache County, Arizona, enjoys a deep understanding of conflicts over water. Early in his legal career, Nelson practiced in one of the driest regions in the nation, on the Navajo Reservation in Arizona. He well understood the centrality of water to the Navajo culture and economy.

Serving as Legal Counsel to the Tribal Chairman, Nelson learned about Indian water rights generally and the Navajo water rights in Arizona, Utah and New Mexico. The Navajo played an increasingly important role in the Little Colorado, San Juan and Colorado River discussions. Gov. Rose Mofford appointed him to the Apache County Superior Court in 1989.

When *Dividing the Waters* organized in 1993 under the auspices of the Arizona Supreme Court, Nelson was among its first members. At the time, he was the settlement judge on the Little Colorado River General Stream Adjudication. He most appreciated the Sun Valley, Idaho conference, where he first met the judges and special masters from throughout the West who were presiding over general stream adjudications. "When I first began attending *DTW* Conferences, there were only four judicial officers in all of Arizona dealing with the stream adjudications. Having an opportunity to talk to judges and special masters from other states about similar problems was, and is, invaluable."

While Nelson retired from the bench in 2003, he continues to practice in water rights, as a lawyer and a mediator on the Gila, Little Colorado and the Bill Williams rivers in Arizona, and in the San Juan, Lower Rio Grande and Aamodt adjudications in New Mexico. Indeed, Nelson was the first member to join *DTW*'s panel of 3rd-party neutrals, who the Program may refer to lawyers in water litigation.

Nelson received his BA from Stanford and his JD from the University of Arizona, and lives in Prescott, Arizona.

Recent court decision? Something to share? ALFIII@sbcglobal.net