



A resource for judges resolving water conflicts

Stephen E. Snyder
Executive Director



THE NATIONAL
JUDICIAL COLLEGE

Hon. Benes Z. Aldana (Ret.)
President

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Conveners Plan for 2019 Conference

The Conveners have now set the general topics for next year's conference, including each taking the lead for specific topics:

Drought Response: Robie

Measurement, Monitoring and Modeling: Wildman

Conjunctive Water Management: Hobbs/Wildman/Reynolds

California Groundwater Law: Robie/Hobbs

Protecting Environmental Flows: Stephens/Toomey

If you have ideas for a topic, please contact the [Executive Director](#), who can put you in touch with the Convener.

Circuit Courts: CWA Discharge Through Groundwater

The 9th Circuit held, in *Hawaii Wildlife Fund v. County of Maui*, that the Clean Water Act (CWA) regulates discharges of water that is conveyed through groundwater to the ocean. A few months later, the 4th Circuit applied the Ninth Circuit decision, to rule that an underground pipeline leak is a CWA discharge when it traveled via groundwater. Parties in both cases have petitioned the Supreme Court for *certiorari*.

In the *Maui* case, the County injected treated sewage into groundwater wells where the groundwater flowed into the nearby ocean. Federal and state agencies proved the connection between the wells and the ocean with a "tracer dye study," where dye put into the wells showed up at a specific site at a beach a half mile away. The County conceded the link, but argued that injection in wells was not a point-source discharge to the ocean, as it traveled through groundwater.

The trial court held that the County's injection of sewage required a CWA point-source discharge permit, holding that the groundwater was a point-source and a navigable water. The 9th Circuit affirmed the trial court, on different grounds.

While the parties agreed that the wells were point-sources, the County argued that the wells did not convey the sewage *directly* into the ocean. Its passage through non-navigable groundwater therefore made the ocean discharges "non-point" discharges, like unpermitted stormwater runoff from roads.

The Circuit rejected the County's arguments. It concluded that the wells were "discrete" point-sources, rejecting the analogy to dispersed stormwater. It compared the County's actions to CWA cases where the discharge goes into a discrete source that is then dispersed and eventually flows to a navigable water. "The County could not under the CWA build an ocean outfall to dispose of pollutants directly into the Pacific Ocean without an NPDES permit. It cannot do so indirectly either to avoid CWA liability."

2019 Conference: Registration/Scholarships Available

[Registration for the April 10-13 conference at Stanford](#) has opened. This year's conference fee is \$699 and judges will find a link on the [conference page](#) to apply for a scholarship. The National Judicial College's Water Justice Fund will make scholarships available for judges whose courts cannot pay the conference costs. *Dividing the Waters* particularly encourages California judges to participate as the conference returns to California for the first time since 2012.

Tribute to Gary Weatherford By John Thorson, DTW Founder

Gary Weatherford, a prominent western water attorney, author, and administrative law judge, recently died at his home in Sausalito, CA. He had worked hard to overcome the effects of a stroke five years ago; and, in recent weeks, had completed a controversial decision at the California Public Utilities Committee (CPUC) concerning the Monterey Peninsula Water Supply Project--and reacquired his driver's license.

A graduate of the Yale law school and member of the California Bar, Gary served as Special Assistant to the Solicitor of U.S. Department of the Interior and to the U.S. Attorney General. He was also the California Deputy Secretary for Resources, Director of the John Muir Institute, and a partner with the San Francisco law firm of Weatherford & Taaffe LLP. Gary was appointed to a CPUC judge in 2009 where he was a respected friend and mentor.

In the western water community, Gary is best known for his Colorado River leadership and expertise. He and his good friend Lee Brown (UNM) organized the ground-breaking 1983 Santa Fe symposium (followed by a book), *New Courses for the Colorado River*, the first comprehensive look at the adequacy of the seven-state Colorado River Compact since its adoption. He worked and published in many other areas of water law including interregional diversions, water planning, the leasing of Indian water rights, irrigation efficiency, the water-energy nexus, urban conservation rate structures, Colorado River salinity, and others.

Gary is also remembered for his water law courses at several law schools and his generous volunteer service to such organizations as the Water Education Foundation, the Water Science and Technology Board of the National Research Council, the Utton Transboundary Resources Center, and the California Water Archives. Gary is survived by his wife Suzanne Gassner and son Ted Weatherford.

Recent court decision? Something to share? Contact the *Network Note* Editor at ALFIII@sbcglobal.net