



A resource for judges resolving water conflicts

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THE NATIONAL
JUDICIAL COLLEGE

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Invite a Colleague to Fundamentals Course May 17-18, 2018 at The National Judicial College

In light of the next generation of judges encountering water litigation, *Dividing the Waters* has set the dates for a workshop on the fundamentals of water law, science and adjudication. This workshop will serve the needs of the many judges who seek a better grounding in the fundamentals. If you have come to a *DTW* conference, you may not need this one, but one of your colleagues may benefit. Invite them to join us!

CA: Groundwater Charges Must Be “Fair or Reasonable”

The California Supreme Court has held that charges for groundwater replenishment are not property-related charges under the California Constitution and must have a “fair or reasonable” relationship to the benefit conferred or burden imposed on government action.

A CA statute establishing a groundwater conservation district required that charge for non-agricultural groundwater use be at least three times the charge to agricultural water users. The City of Ventura, which is adjacent to an agricultural area and in the United Water Conservation District, draws on the same aquifer and pays the higher rate. It sued the district, arguing that the rate violated the CA Constitution. The trial court ruled for the City, and the Court of Appeal reversed.

The CA Constitution establishes standards for local agency fees and charges that are exempt from voter-approval requirements for local taxes. Property-related fees, which water rates are generally considered, may not “exceed the *proportional cost*” of the service that is “attributable to the parcel” on which the charge is imposed. Other exempt charges are limited to the reasonable costs of providing a special benefit or service and that bear a “*fair or reasonable*” relationship to the benefit to the payor of, or the payor’s burden on, the government activity.

The Supreme Court agreed with the Court of Appeal that the extraction fee was not property-related, but reversed because the lower court had not reviewed whether the fee was “fair or reasonable” to the City. The Court distinguished this fee from a regular water service rate, because the amount of extracted groundwater was a voluntary decision, not dependent on the size of the property that it watered. The rate therefore was required to bear a fair or reasonable relationship to the payor’s benefit or the payor’s burden on the government. The Court remanded the case to the lower courts to address this issue.

***Dividing the Waters* Resources Available to All Judges**

After each conference, *Dividing the Waters* posts many of its resources to its [resources](#) or [Board of Advisors](#) webpages. You can find webinars on fundamentals, conference papers and other [publications](#). Some resources are available only on request, to Rebecca Bluemer@judges.org. More is coming!

In Focus: Texas ALJ William Newchurch

Texas Administrative Law Judge William Newchurch thinks water adjudication is best played as a team sport. He considers himself fortunate to lead a team of great ALJs who draw on each other’s experience and expertise in developing environmental decisions. As the leader of the State Office of Administrative Hearings (SOAH) Natural Resources team, he recognizes the value of collaboration for improving his team’s proposed decisions for state agencies on water rights, discharges and other environmental cases.

Newchurch has more than 30 years of experience in water and environmental law to offer his colleagues. He received both a BA and JD from Louisiana State University. Straight out of his clerkship with the Louisiana Supreme Court, Newchurch went to work for the Louisiana Legislature as the Natural Resources Committee Counsel in 1980. He commented that, in Louisiana, “it’s all about how do we get rid of the water.”

Newchurch’s experience shifted to allocating limited water supplies when he moved to Texas in 1984, to join the Texas Water Commission as a hearings examiner. At the time, Texas was adjudicating its surface water rights, an issue that he considered. His career later continued in private practice and at the Texas Public Utilities Commission. He has led the Natural Resources Team since 1997.

When Newchurch heard about *Dividing the Waters* coming to Texas, he made a point of participating in the Program’s recent conference at Baylor University law school. He most appreciated the groundwater science segment, but he was “extraordinarily impressed by the quality of attendees, especially the state supreme court justices.” The conference helped him understand the differences in law as well as the common problems judges in other states encounter. “It was interesting to me that we were all encountering similar problems but dealing with them differently.” He noted how many judges face these water issues in isolation, which increased his appreciation for his agency’s team approach. He works with his team and lives in Austin.

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