



A resource for judges resolving water conflicts

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THE NATIONAL
JUDICIAL COLLEGE

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2019 Conference: Registration/Scholarships Available
[Registration for the April 10-13 conference](#) has opened. While the conference fee is \$699, judges can apply for a scholarship [here](#). The National Judicial College's Water Justice Fund will make scholarships available.

Supreme Court Asks Solicitor General in *Maui* Case
Since last month's report on the 9th Circuit's *Maui* decision on the Clean Water Act and contaminants conveyed through groundwater, the Supreme Court invited the Solicitor General to express the views of the United States.

CA: State Water Board Adopts Delta Water Quality Plan
After 9 years of analysis and debate, California's State Water Resources Control Board adopted a Bay-Delta Water Quality Control Plan update for the Lower San Joaquin River and Southern Delta. The final resolution reflected settlements on the instream flow contributions from some tributary streams, which the current/incoming governors had negotiated since the day after election day, when the Board postponed its decision.

Colorado River: Progress Toward Sharing Shortage
At the annual Colorado River conference, the states heard the Commissioner for the U.S. Bureau of Reclamation warn that the Secretary of the Interior would impose drastic restrictions on water diversions if the states did not come to an agreement on sharing future shortages. The states are reportedly close to agreement, but Arizona continues work on an internal agreement for sharing water among cities, farmers and tribes.

USEPA/Corps of Engineers: New WOTUS Rule Proposed
The Trump Administration has proposed replacing the Obama Administration's 2015 definition for "Waters of the United States" under the Clean Water Act (CWA) with one that focuses on a **surface water connection** to navigable waters, instead of a "significant nexus." This new definition would significantly reduce areas that would receive CWA protection.

The difference between "significant nexus" and a surface water connection arises out of the different opinions in the Supreme Court's 2007 *Rapanos v. United States* decision, which received a 4-1-4 vote. Justice Kennedy wrote the concurring opinion that created the majority and used "significant nexus," which could come through groundwater. Kennedy defined that nexus as situations when the wetlands "significantly affect the chemical, physical, and biological integrity of other covered waters." The new definition instead relies on the court's opinion by the late Justice Scalia.

California Judges Invited to Stanford in April

Dividing the Waters particularly encourages California judges to participate, as the conference returns to California for the first time since 2012.

In Focus: District Court Judge Shannon Bacon (NM)
When the water judge in New Mexico's 2nd Judicial District in Albuquerque retired, Judge Shannon Bacon raised her hand to volunteer. In private practice, she had had a brief foray into water law, representing the State Engineer in defending the Active Water Resources Management regulations in separation-of-powers litigation. She had found water law history fascinating, so she volunteered to adjudicate water.

Earlier this year, Bacon finished a trial on groundwater appropriation on the eastern slope of the Sandia Mountains, east of Albuquerque. The case reflects a classic conflict between long-time residents and a developer who proposes a 4000-home resort community. The developer argues – and the neighbors dispute – that the deep aquifer will provide 114 million gallons of water each year for the new community. The *Santa Fe New Mexican* describes the conflict as how regulators can set "the appropriate balance between protecting existing water rights and promoting development. And what role, if any, should out-of-state speculators play in New Mexico's water market?"

Bacon looks forward to attending her first *Dividing the Waters* conference at Stanford in April, to learn more about water science, particularly groundwater. While she does not consider water law "terribly complicated," the science and the battle of geohydrologists give water judges the "biggest challenge" in reaching a fair and just decision. She cites her current case as a great example of that challenge, although that case has not yet been decided.

After growing up in Albuquerque, Bacon chose Creighton University in Nebraska, which had strong academics and a focus on Jesuit social justice. Judge Bacon stayed at Creighton for law school, and returned to New Mexico to practice. Gov. Bill Richardson appointed her to the 2nd District bench in 2000, and she won re-election in 2014. Bacon's commitment to social justice has continued throughout her career as a lawyer and a judge. Today, she works with homeless youth organizations, chairs the court's pro-bono committee, and serves on the Supreme Court's Access to Justice Commission. With only the brief hiatus in Nebraska, Bacon has lived in Bernalillo County all her life.

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