



A resource for judges resolving water conflicts

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Groundwater Webinar – April 5 at 10 am PST

Don't miss the upcoming pre-conference webinar on groundwater law, presented by University of Montana Law Professor Michelle Bryan. **ALL judges are invited to participate.** Bryan will explore how groundwater and surface water laws have become more integrated, as scientific understanding of their connection has grown. *Save the date and stay tuned for more information!*

CO: Water Rights Require “Indicia of Enforceability”

The Colorado Supreme Court held, in *Yamasaki Ring v. Dill*, that judicial recognition and enforcement of water rights require “indicia of enforceability” in a court judgment. It affirmed the Water Court’s interpretation of 1905 and 1909 judgments related to water rights out of springs.

Yamasaki Ring LLC acquired water rights in the Campbell Ditch, which diverts water from Cherry Creek, in Fremont County, Colorado. The county court had adjudicated the ditch in 1905 and 1909. In addition to granting two surface water rights with all the required information, the 1909 decree stated only that the ditch owner was “entitled to receive and conduct water” from nine nearby springs. Yamasaki claimed water rights from the springs. The water court held that the decree’s unquantifiable entitlement could not be enforced or administered against decreed water rights.

The Colorado Supreme Court upheld the water court decision, holding that the 1909 decree failed to provide the required “indicia” to enforce the rights in the springs. The Court identified three required indicia – appropriation date, priority number and quantification information – and rejected Yamasaki’s argument that the springs were part of the Cherry Creek surface diversion rights. The Court concluded:

“Without indicia of enforceability, and in particular a priority number, an entitlement to receive and conduct water is not enforceable or administrable against adjudicated water rights. Therefore, it is not an adjudicated water right.” The Court also refused to consider Yamasaki’s extrinsic evidence because the decree was “clear and unambiguous.” The water court cannot enforce an entitlement to “conduct” water without more specific information.

SCOTUS Takes Groundwater Pollution Case

The US Supreme Court granted *certiorari* to hear the 9th Circuit’s *Maui* decision holding that injecting treated sewer water into groundwater that flows to the ocean is a point-source discharge, requiring a Clean Water Act permit.

2019 Conference: [REGISTER NOW!](#)

This year’s conference is coming up soon, on **April 10-13 at Stanford**. The lower conference hotel rate (at Creekside Inn) expires March 20, and the room block may fill up. Tuition is \$699 and scholarships are available, but *only so long as funding remains available*.

In Focus: Nicole Kuenzi (CA SWRCB)

Nicole Kuenzi, Senior Counsel for water rights at California’s State Water Resources Control Board, has her feet firmly planted in water. Indeed, she may even admit that she has immersed herself in the Colorado River. But her immersion took a more physical course. Long before she started practicing water law, Kuenzi guided whitewater trips on rivers across the West, in Colorado, Arizona and California.

Kuenzi’s love of rivers led her to pursue water law, despite her moving east for law school at Yale. “My professors encouraged me to think about water law in the context of the history of the American West. As a westerner and a river-runner, I was hooked.” She published an article, in the *Yale Journal on Regulation*, proposing use of privately held instream water rights to enhance stream flows. After Yale, Kuenzi returned west to clerk for the 10th Circuit in Salt Lake City and practice water law in Denver. She moved back to California in 2011, and joined SWRCB in 2012.

Kuenzi first participated in the 2015 DTW conference, in Spokane. She found it inspiring. “*Dividing the Waters* gave me the opportunity to meet and exchange experiences with people who do what I do, and who tackle the same types of substantive and procedural challenges, which really are unique to water cases.” Last year, Kuenzi traveled to Reno to teach CA water law at the DTW water law/science fundamentals workshop, and she will participate in the upcoming conference at Stanford. The conference will engage her again on CA’s Sustainable Groundwater Management Act, about which she has spoken several times across the state.

Kuenzi grew up in the San Francisco Bay Area, where she observed first-hand the effects of the drought of the late 1980s. After high school she started leading whitewater trips during the summer, and got her undergraduate degree in philosophy from Tulane University in New Orleans, where flood waters can transform the city. (She left the year before Hurricane Katrina.) Today she lives with her husband and two sons near Sacramento, another city where water plays a central role, in wet and dry years.

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