

The Network Note

April 2019

DTW 2019 Conference – Drought & Conflict Management

This year's conference offered judges unique perspectives on how water law and judges are evolving in response to more severe droughts and conflicts. Hearing judicial officers from California and other states discussed how the law and their judicial practices have responded to droughts and conflicts. In one of the conference's highlights, three US Supreme Court special masters shared their experiences of appointment and adjudication of interstate water disputes.

NM: No Water for New Development; Permit Denied

District Judge Shannon Bacon rejected an application to appropriate groundwater for a new community development, in *Aquifer Science v. State Engineer*. Her 63-page decision emphasized the facts and the science in her *de novo* review of the developer's groundwater application to the State Engineer.

Aquifer Science sought to obtain water for the "Campbell Ranch Master Plan Project," in the Sandia Basin, east of Albuquerque and north of Edgemont. The proposed wells would draw water at 4000 feet below the surface, to support 4024 housing units. The proposal included innovations in water-use efficiency, land use, and use of recycled water to irrigate golf courses and recharge San Pedro Creek.

After a 2-week trial in March 2018, the January 2019 court decision offered a detailed review of groundwater science and modeling. Bacon had qualified numerous experts on a range of water science topics, including the effects of climate change on water availability. The decision compared and assessed the science presented at trial. The State Engineer had reversed its earlier denial of a permit, concluding that there was sufficient water for the development. Other appellees, including Bernalillo County, however, continued pursuing their objections to the development, leading to Bacon's decision.

The court held that the basin had sufficient unappropriated water, but concluded that Aquifer Science's proposal would still significantly impair others' water rights. While the parties agreed that the development would impair water rights, they disputed the magnitude of that impairment. The court held that Aquifer Science/State Engineer had misapplied the 2006 "Morrison Guidelines" for assessing effects on groundwater. Properly applied, the Guidelines showed that 100 wells would be impacted by Aquifer Science, not just the 11 wells that appellants conceded would be affected. The court denied Aquifer Science's application because the impairment would be "significant."

Next Convening: Data Workshop? New Mexico?

At Stanford, there was much discussion of the need and use of water data for adjudication. The Conveners and the Executive Director discussed the possibility of a focused workshop on judicial development and use of data. **If you have ideas for the next convening, please contact the [Executive Director](#).**

In Focus: District Judge Manuel Arrieta (NM)

District Judge Manuel Arrieta learned about the importance of water early in life, growing up in New Mexico's southern desert. Born in Deming, he grew up working on farms of the Mesilla Valley, where his father had worked as a *bracero* from Mexico. Arrieta learned how water for irrigation can make the difference between a farm's success and failure, which helps him to serve as Water Judge for a lower Rio Grande district.

That connection to southern NM continued into college, as Arrieta remained in Las Cruces, to go to NM State University. He worked his way through college as a radiological technician, and earned a BA in business. He moved to the University of Michigan for law school, but returned to NM, where he could raise his children in a better lifestyle, with "golden red sunsets each evening worthy of a postcard." He joined the bar and clerked for the NM Court of Appeals.

Arrieta's breadth of experience has made him the water judge he is today. His early work on farms gives him familiarity with groundwater, and the canals and ditches that serve local farms from the lower Rio Grande. He notes that "groundwater percolation is more than an abstraction for me." Arrieta's civil law practice – on contracts, administrative law, zoning and land use, and commercial transactions – gives him valuable perspective. He spent 23 years in private practice, while serving with a variety of civic and community organizations.

Today, Arrieta has the busiest water docket in New Mexico, and he recently became the Chief Judge in Las Cruces. Given these responsibilities and the pendency of *Texas v. New Mexico*, Arrieta decided that *Dividing the Waters* could help him prepare for the impacts of the Supreme Court decision. The conference confirmed his decision: "The DTW conference showed me the complexity in water law among western states. Water problems – and solutions – vary across states because of geography, climate, politics and funding. But, we all share the common problem of water scarcity. Shared knowledge gained from this conference will be invaluable as we move forward to seek more efficient and innovative ways to address water management and adjudicate water conflicts."

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