



A resource for judges resolving water conflicts

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### **CA Water Board Seeks *First Administrative Law Judge* APPLICATION DEADLINE: JUNE 7.**

The CA State Water Resources Control now seeks applicants to lead its new administrative hearings office. Water Code Section 1110 (passed last year) created this new office “to provide qualified, impartial hearing officers, to ensure that water rights matters, including water-related cannabis enforcement matters, are resolved in a timely manner.” The position is a “career executive assignment,” but is open to both state employees and those “in the process of obtaining list eligibility.” For more information and to apply, go [here](#).

### **CA Creates ALJ Hearing Office for Water Rights**

In the final days of last year’s legislative session, the Legislature passed a law to create an administrative hearing office in the State Water Resources Control Board (Board). After vetoing an ALJ bill in 2017, Governor Brown accepted and recommended that the Legislature approve an alternative proposal from legislators in the Central Valley. AB 747 (Caballero) created an administrative hearing office within the Board. The vetoed bill, AB 313 (Gray/2017), would have set up an ALJ office independent of the Board.

Discussion of some kind of CA water court has occurred for many years. Water rights lawyers have argued that CA water rights law is too complicated for an ordinary judge. The CA Judicial Council generally opposes special-purpose courts. Despite water lawyer arguments, prior bills proposing a CA water court have died or not even gotten a hearing.

The enduring debate over the San Joaquin River’s contribution to protecting the health of the Sacramento-San Joaquin Delta created controversy and criticism of Board decisions and process. Assemblyman Adam Gray (D-Merced) [has framed the Board’s decisions as a “war” on his district](#). He got his ALJ bill to the Governor’s desk, which would have created an *independent* ALJ office. Governor Brown vetoed Gray’s bill, but acknowledged the author’s intent to increase “fairness and transparency.” He also recognized that ALJs can be “effective in complex adjudicative matters.” He directed his CalEPA secretary to evaluate ALJs at the Board and recommend improvements in the Board’s hearing process.

In 2018, advocates and the Administration developed an ALJ proposal for an office *within* the Board. That summer, the Administration proposed the idea in budget discussions on safe drinking water. Assemblymember Anna Caballero amended her AB 747 on August 20 and both houses passed the bill on August 31, the final day of the 2017-18 session.

### **Trends on Water Cases in the Courtroom?**

In looking ahead, *Dividing the Waters* seeks to learn more about emerging trends in water cases and adjudication. Hearing from the DTW judicial network will help prepare for the next conference. If you have noticed a trend in the cases you are hearing, **please contact the [Executive Director](#)**.

### **In Focus: Judge Mary Ellen Coster Williams (DC)**

At the recent *Dividing the Waters* conference, United States Court of Federal Claims Judge Mary Ellen Coster Williams introduced herself as a judge from “Washington.” In a later conversation, she suggested that her court in the nation’s capital is no stranger to issues involving western water law. The Court of Federal Claims (CFC), known as the people’s court, has heard claims for takings of water involving the California Delta, the Klamath River, and the Ventura River, as well as claims involving water management decisions driven by the Endangered Species Act or other federal laws or programs in diverse areas of the country.

Williams has a long history of lawyering and judging, just not on takings cases. Her life developed in the East, and her career, in complex civil litigation and public contract law. Born and raised in Flushing, New York, she attended Catholic University in DC and then Duke for law school. In 1977, Williams joined Fulbright and Jaworski in DC, and later litigated civil matters in the U.S. Attorney’s Office in DC and at private law firms. Williams served as an Administrative Judge on a federal Board of Contract Appeals for 13 years. President Bush appointed her, in 2003, to the Court of Federal Claims, where her work expanded to include a variety of monetary suits against the federal government. Williams handles takings suits against the federal government alleging government appropriation or interference with water rights.

Throughout her career, Williams has served in bar association leadership and taught law. She has served on the ABA Board of Governors and led the ABA Section of Public Contract law. She has taught law at Catholic University, American University and Johns Hopkins.

The recent *Dividing the Waters* conference at Stanford was Williams’ first. She found that the conference offered the greatest value in its opportunities for interaction with other jurists who adjudicate water rights cases in a variety of federal, state and local arenas, as well as with scientists and law professors who explained technical and legal aspects of groundwater issues and hydrology.

**Recent court decision? Something to share? Contact the *Network Note* Editor at [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)**