



A resource for judges resolving water conflicts

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THE NATIONAL
JUDICIAL COLLEGE

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2019 Conference Planning Started

The *Dividing the Waters* Conveners have started planning for next April's general conference at Stanford University. They started this month to identify possible topics that arise in California but remain applicable to judges across the West. If you have topics you would like discussed, please contact the Executive Director, Steve Snyder at [sesnyder@q.com](mailto:sesnnyder@q.com).

9th Circuit Asks NV Supreme Court About Public Trust

In an adjudication with origins dating back a century, the Ninth Circuit has posed a question to the Nevada Supreme Court as to how the Public Trust Doctrine applies to adjudicated water rights.

The Walker River has its headwaters on the eastern side of California's Sierra Nevada, but most of its water rights are exercised downstream in Nevada. The River terminates at Walker Lake, on the Walker River Paiute Tribe (Paiute Tribe) reservation, in Mineral County, Nevada. Upstream water diversions have reduced the lake size and increased its salinity, damaging the lake's fishery and ecology.

Walker River water rights litigation started in 1902, and it proceeded in federal and state court. The U.S. Supreme Court ruled, in 1910, that the federal district court had "prior, exclusive jurisdiction" over the River's adjudication. The District Court issued a water rights decree in 1936. In 1991, the Paiute Tribe and the United States "sought recognition of the Tribe's right to a certain additional amount of water from the Walker River, under a principle that Native American tribes have superior water rights based on their relationship to the federal government." This decision arose in that case.

Mineral County intervened in the Tribe's litigation in 1994, asserting rights to a minimum lake level to protect the lake's viability and the County's tourism economy. Upstream water users and counties challenged the Mineral County claims. The upstream parties argue that public trust cannot touch previously adjudicated water rights

The 9th Circuit posed the public trust question in light of the Nevada Supreme Court's recognition of the Public Trust Doctrine under Nevada law in *Lawrence v. Clark County*. It did not address its effect on adjudicated rights. In a previous *Mineral County* decision, however, the Nevada court invited the federal court to ask about public trust, and a concurring opinion asserted that "the public trust doctrine operates simultaneously with the system of prior appropriation."

Adjudicating Groundwater?

If you currently or regularly adjudicate conflicts over groundwater, please contact the *Network Note* editor at ALFIII@sbcglobal.net. The Program wishes to identify groundwater judges who participate in *DTW*.

In Focus: Brian Walsh (Santa Clara, CA)

Santa Clara Superior Court Judge Brian C. Walsh arrived in the world of water litigation after a long and distinguished career as a trial judge, having taken the bench in 2000. He has served as a leader on both the bench and bar for more than 40 years. As President of the Santa Clara County Bar Association, Walsh was the architect of the Bar's Code of Professionalism, which provided the model for the California State Bar's 2007 Attorney Guidelines of Civility and Professionalism. He has served as the Presiding Judge and on California's Judicial Council twice. He received recognition as the "Outstanding Jurist" and "Trial Judge of the Year."

In 2017, Walsh joined Santa Clara's Complex Litigation Department and got assigned a water case of statewide importance. (California law presumes that water cases are "complex litigation," which allows the Chief Justice to assign the case to any of the State's complex case units.) Walsh's February 2018 water decision garnered statewide attention, when he ruled that California's State Water Resources Control Board did not have authority to enforce priorities against senior water rights dating to before California's water rights administration statute took effect in 1914.

To enhance his knowledge of water issues, a colleague referred Walsh to *Dividing the Waters*, which was organizing its May water fundamentals workshop. When he participated, he found the workshop "Truly excellent! A great combination of both high level and granular examinations of current water issues presented by true experts who are involved in water law and science on a daily basis." He plans to participate in next year's general conference just up the road, at Stanford.

Walsh received his JD from UC Berkeley and his BA from the University of Notre Dame. He has served as a pro tem appellate justice for California's 6th District Court of Appeal for over two years and continues to serve in leading roles within the California judiciary.

SAVE THE DATES: April 10-13, 2019
Next Conference: Stanford Law School

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

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