



A resource for judges resolving water conflicts

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THE NATIONAL
JUDICIAL COLLEGE

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The Network Note July 2018

Your Opinion Solicited on Proposed Tuition Model

Historically, *DTW* has waived tuition and paid a substantial portion of judges' travel expenses. For a variety of reasons, *DTW* is considering shifting to a tuition model for the 2019 conference, which would require judges to pay tuition as well as travel costs. The Conveners have not made a final decision because we would like to hear from you. If you would be unable to obtain funding assistance from your court or agency, please contact [Steve Snyder](#). We anticipate that scholarships will be available for those who need them.

SCOTUS Remands *FL v. GA* to Special Master

In the enduring water conflict between Georgia and Florida, the U.S. Supreme Court rejected, in a 5-4 decision, its Special Master's recommendation to dismiss the case and his conclusion that "Florida has not proven by clear and convincing evidence that its injury can be redressed by an order equitably apportioning the waters of the Basin." It remanded the case to the Master for further proceedings.

The Apalachicola-Chattahoochee-Flint River (ACF) Basin starts in northern Georgia and flows south to Florida and the Gulf of Mexico. Its reservoirs, operated by the U.S. Army Corps of Engineers (ACOE), serve drinking water to Atlanta, whose growth has led to less freshwater flowing into Apalachicola Bay and the decline of the Bay's oyster fishery.

Florida sought leave to sue Georgia over apportionment of the ACF Basin in 2013. Georgia filed an opposition and the Court invited the opinion of the United States, which urged the Court to grant leave, although it did not waive sovereign immunity. Georgia moved to dismiss, arguing that ACOE is a necessary party. The Special Master denied Georgia's motion and held lengthy discovery and evidentiary proceedings. Ultimately, the Special Master recommended dismissal.

The Supreme Court's decision offers an impressive review of interstate water apportionment jurisprudence. The Court's decision disputes conclusions of both the Special Master and the dissenters. It offers its own set of principles for interstate apportionment. The Court holds that the "Special Master applied too strict a standard when he determined that the Court would not be able to fashion an appropriate equitable decree." In reviewing Florida's exceptions, the Court reviews the ACOE Master Manual in detail, identifying factual issues for further proceedings. It cautions that Florida will be entitled to a decree only if it shows that "benefits of the [apportionment] substantially outweigh the harm that might result."

Adjudicating Groundwater?

If you currently or regularly adjudicate conflicts related to groundwater, please contact [Alf Brandt](#), editor of *Adjudicating Groundwater*. The Program wishes to identify groundwater judges who participate in *DTW*.

In Focus: Joseph Wiseman (CA Tribal Courts)

Tribal Judge Joseph Wiseman developed an early interest in water law, as a student of Professor Charles Wilkinson at the University of Oregon. Wiseman took environmental law and federal Indian law, hoping for a career in environmental law. Instead, he found work in federal criminal law. In 1996, he started teaching Indian law and, in 2014, was appointed judge for the Round Valley Indian Tribes in Mendocino County on California's North Coast. He now serves as a judge for four California tribes, including the Tule River Tribe.

Wiseman's judicial appointment reinvigorated his interest in water, as water is a critical resource for Round Valley, which draws water from the Eel River. While the North Coast has a reputation for heavy rain, illegal marijuana cultivation and water diversions have dried some of its watersheds. Wiseman joined *Dividing the Waters* to gain a better understanding and help the tribes he serves. Tribal judges can play an informal advisory role for their tribes. While many California tribes have limited water rights, the Round Valley and Tule River tribes have reservations with reserved water rights that draw Wiseman into water disputes.

Wiseman participated in the 2015 *Dividing the Waters* general conference in Spokane. He has since participated in all Program events, including the ABA environmental section's "water day" at the 2016 ABA-SEER Fall Conference. Wiseman finds the Program's other participants most valuable and helpful. "*Dividing the Waters* draws a small group of judges who are committed and passionate about water. That passion is reflected in the conferences, in how we drill down deep on water." Without acknowledging any pun, Wiseman noted that the recent groundwater bench book, *Adjudicating Groundwater*, helped him recognize how much science he has to learn, and *DTW's* book offers him a helpful tool.

Wiseman got his BA from UCLA in 1978 and his JD from the University of Oregon four years later. While he lives just outside Sacramento, his judicial duties take him far and wide to tribes across Central and Northern California.

Next Conference: April 10-13, 2019

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