



A resource for judges resolving water conflicts

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Changing Water Laws in Your State?

In odd years like 2019, legislatures in western states meet to adopt a state budget and pass new laws. Many complete their work by the time summer arrives. While most *Network Notes* concentrate on developments in the judicial branch, next month's edition aspires to report on water law developments in the other branch. If you have heard about your legislature passing a water law, please contact the editor, [Alf Brandt](#), to share whatever information you have and he can investigate.

CA Legislature Passes Water Bills, More Bills in Line

Just before the California Legislature took its summer break, it sent two significant water bills to the Governor. When it returns in August, the fiscal committees in both houses will consider additional water bills to send to the floor.

Safe Drinking Water Funding. The State Water Resources Control Board has identified 300 public water systems with unsafe water in poor communities. The voters approved water bonds to provide capital funding for new treatment plants, but the Board does not have sufficient operating funds and these communities lack the economic base to support new treatment plants. In the budget process, the Legislature and the Governor agreed to commit \$130 M every year from carbon cap-and-trade revenues in the Greenhouse Gas Reduction Fund. They also approved SB 200 to create a special fund to support the new program to fix these systems, and other failing systems in rural and urban areas across the state.

Mojave Desert Groundwater Exports. The Legislature also passed AB 307, requiring independent scientific review of a groundwater mining/export project in the Mojave Desert. Part of the bill's debate related to the role of courts in reviewing environmental documents under CEQA. The bill's author clarified that CEQA did not allow judges to judge the adequacy or correctness of the science the proponent offered.

Coming Up. The Legislature will consider other water bills when it returns from its summer break in August. Two bills in particular have engaged the CA water community:

- **CA ESA in Water Law.** In response to the Federal Government revising ESA biological opinions on operation of the federal and state water projects, SB 1 seeks to impose the federal ESA standards in place as of January 20, 2017 as part of its state ESA statute.
- **State Funding for Federal Project.** After the federal Friant-Kern Canal suffered damage from over-pumping groundwater, SB 559 proposes a \$400 M in state funding to restore the federal Canal's capacity.

Adjudicating Groundwater Bench Book Available

If you seek a copy of the 2018 *DTW* bench book *Adjudicating Groundwater*, please go to [the book's NJC webpage](#).

In Focus: Judge Michael Melloy (8th Circuit)

When you are a senior federal court of appeals judge in Cedar Rapids, Iowa, and your law clerk tells you the Clerk for the Supreme Court is on the phone, you take the call. That's how 8th Circuit Judge Michael Melloy got his start in water law. When he answered the phone, Scott Harris asked him about his knowledge of original jurisdiction cases. Harris explained how the Court had set a new direction in selecting special masters for water disputes between states, shifting from private attorneys to senior judges. The Court sought a new master in *Texas v. New Mexico*, a senior judge with trial experience. That's where Judge Melloy came in.

Melloy has a long history of trial experience, particularly as a judge. Starting in private practice in 1974, he practiced commercial litigation in Dubuque. In the 1980's, as Iowa's farming community struggled, Melloy practiced bankruptcy for a range of firms and farmers. The 8th Circuit appointed him to the bankruptcy court for the Northern District of Iowa in 1986. Six years later, President Bush appointed him to the federal trial court, where he served as Chief Judge for 7 years. The second President Bush appointed him to the 8th Circuit in 2001. When Harris called in 2018, Melloy had more than 30 years of service on the federal bench.

When Harris offered him the appointment, Melloy had trial experience but no experience in water. He nevertheless "didn't want to say no," and stepped into the long-running water dispute over water in the Rio Grande. The day after his appointment, Melloy sent a letter to counsel introducing himself, maintaining the previous master's deadline for a new proposed case management plan, and specifying the plan's form. He has kept the case moving at a good clip, hearing motions and preparing the parties for trial.

Melloy found the *Dividing the Waters* conference in The National Judicial College catalogue and welcomed the Federal Judicial Center's funding for his participation. In a thank you note to the FJC director, Melloy described the conference as "excellent" and said he "learned a lot." He also noted the value of comparing notes with the other Supreme Court special masters who participated in the conference. Melloy looks forward to using the knowledge and information resources that *Dividing the Waters* provides to its members, as he works his way through his first water case.

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

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