



A resource for judges resolving water conflicts

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THE NATIONAL
JUDICIAL COLLEGE

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President

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Groundwater Bench Book at ABA Water Law Conference

The American Bar Association Section of the Environment, Energy & Resources has decided to feature the *Dividing the Waters* bench book on *Adjudicating Groundwater* at the 2019 ABA Water Law Conference in Denver next March. The Section has invited one of the book's authors, Dr. Tara Moran (Stanford), to participate in the panel discussion.

MT: BLM Owns Water Rights in Reservoirs

The Montana Supreme Court upheld federal rights for stock water and wildlife uses in reservoirs built by a grazing permittee as a range improvement, in *US v. Korman*.

The Kormans acquired, in 1977, the Hammond Brothers' interests in grazing permits and range improvements on federal lands managed by the Bureau of Land Management (BLM). The Hammonds had received federal approval to build two stockwater reservoirs as range improvements in the 1960's. The Kormans executed a 1982 agreement with BLM that provided for federal title to the reservoirs.

The Montana Water Court issued a 2015 order granting summary judgment to BLM on 34 water right claims, and dismissed the Kormans' objections. In 2016, the Supreme Court affirmed the Water Court decision and remanded the action Court on remaining claims. The Kormans narrowed their claims in this appeal to the two reservoirs, arguing that they still had time to claim grazing water rights and BLM could not add wildlife uses to its water rights.

The Supreme Court affirmed the Water Court on both points. The 2019 deadline for claiming grazing water rights did not apply to claims in the federal reservoirs, as the statute limited those claims to "instream flow or ground water sources." The Kormans' time for filing expired in 1996, and they cannot now claim a right of assignment of the federal water reservoir rights. The Court also held that federal law required BLM to manage its waters for wildlife, and Montana law allows BLM to change the use of its water right to wildlife purposes, provided it does not expand its right or injure other users.

Next DTW Conference at Stanford April 10-13, 2019

Jury Finds Cities Have Prescriptive Groundwater Rights

After a month-long trial before DTW member Judge Peter Kirwan, a jury rejected landowner claims to superior water rights and held that public agencies have prescriptive rights.

NJC/DTW Registrar Rebecca Bluemer Retiring

After more than 12 years of service, Rebecca Bluemer will retire from The National Judicial College. She has served *Dividing the Waters* as registrar for its conferences and as our NJC resource. You have seen her name cited here in the *Network Note* for getting access to the Program's resources. You may have asked for her assistance yourself or seen her at a conference. DTW's Conveners and judges pay tribute to Bluemer for all her service to the Program. Thank you!

In Focus: NJC President Benes Z. Aldana

National Judicial College President Benes Z. Aldana comes to water law from an atypical direction – downstream, from the sea. He grew up in the West, near Seattle, and joined the Coast Guard after law school. His service took him to assignments around the nation and the world – Germany, Africa and Guantanamo Bay, Cuba.

Throughout his career, Aldana's connection to water and the environment remained strong. He served as a senior officer at coastal ports in Seattle and New Orleans, as deputy chief in the Office of Environmental Law, as trial attorney at USDOJ, and as chief legal officer for 8th Coast Guard District with responsibility for referrals for environmental prosecution.

After a decade as a Coast Guard attorney, he was appointed a trial judge in 2005. In the years that followed, he returned to Seattle and served in a number of judicial and command positions. He combined his Coast Guard service with leadership positions in the American Bar Association. In 2015, he was elevated to the Coast Guard Court of Criminal Appeals. He retired in 2017 as the Coast Guard's chief trial judge and took up "command" of NJC.

When Aldana joined NJC, he recognized *Dividing the Waters* for its expertise in water and the environment. Just after his arrival, the Conference of Chief Justices chose environmental law for focused work on judicial education. The new president suggested that the NJC could provide some of that education, drawing to some extent on the Program's unique expertise. "The NJC remains proud of its affiliation with *Dividing the Waters* and seeks opportunities for collaboration to serve judges' needs for water and environmental law," he said.

President Aldana looks forward to his continued work with *Dividing the Waters*. In the meantime, he will focus his NJC leadership on its new strategic plan, which calls for new courses to meet judges' evolving needs. He lives in Reno with his wife Rowena. His son, Ehrik, just graduated from Yale.

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