



A resource for judges resolving water conflicts

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THE NATIONAL  
JUDICIAL COLLEGE

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### **REGISTER A COLLEAGUE TODAY!**

#### **Fundamentals Workshop: May 17-18 (Reno)**

The National Judicial College has opened registration for this May's Water Fundamentals Workshop, which will be held at NJC in Reno on May 17-18. This workshop will be especially helpful for newer members and other colleagues who recently saw a water case show up on their docket. NOW is the time to encourage your colleagues to [register HERE](#) so they can gain from the knowledge and experience of the judicial network that celebrates its 25<sup>th</sup> birthday this year.

#### **Utah: Public Access Rights to Navigable River**

The Utah Supreme Court applied federal navigability law to interpret a state law allowing public access to the Weber River, in *Utah Stream Access Coalition v. Orange Street*.

In 2008, the Utah Supreme Court recognized, in *Conaster v. Johnson*, a "public easement right to incidentally touch the beds of Utah waterways for recreational or other lawful purposes." In response, the Legislature enacted the Public Waters Access Act, which "cuts back" on the Court's easement. The statute recognizes an access right for navigable waters on public lands and waters on private lands with "sufficient width, depth, and flow" to allow floating vessels.

In 2011, the Coalition sought a declaration that a 1-mile segment of the Weber River was navigable and accessible for recreation. It sought to bar public and private landowners from interfering with its members recreational use rights. The trial court found navigability based on this segment's use for floating logs in the years leading up to Utah's statehood, and it quieted title to the State for the streambed.

The Utah Supreme Court affirmed the lower court's finding of navigability and access under the statute, but vacated the quiet title action. It interpreted the state statute as adopting a "cluster of ideas" in federal navigability law, and rejected defendants' arguments that the statute set a different standard that required current-day trade and travel on the river. Instead, the Court affirmed the trial court decision based on evidence of the River's use at statehood, as required by federal law.

#### **SCOTUS Rejects Challenge to Water Transfer Rule**

The Supreme Court let a 2<sup>nd</sup> Circuit decision upholding the 2008 "Water Transfers Rule," allowing transfers between water bodies without an NPDES discharge permit.

#### **Adjudicating Groundwater Bench Book Coming Soon**

The authors and editors of the *Dividing the Waters* bench book on are working on final editing of *Adjudicating Groundwater*, after completing a peer review process through the U.S. Geological Survey

#### **NEVADA JUDGES: No Charge for Workshop**

Funding from the Nevada Legislature for *Dividing the Waters* allows the Program to offer the upcoming fundamentals workshop at no charge to Nevada judges. NJC has worked with the state Judicial Educator and the Chief Justice in identifying Nevada water issues and judges. If you know a Nevada judge who may benefit, please send them this *Network Note* or contact the [Executive Director](#), to invite them.

#### **NEXT DTW GENERAL CONFERENCE: @ STANFORD, MARCH 2019**

#### **DTW Law School Network in Fundamentals Workshop**

Several years ago, *Dividing the Waters* created a network of the leading water law professors across the country, from Washington to Florida. The DTW Law School Network has advised the Conveners on the latest developments, in both water litigation and academic study. The LSN, for example, identified interstate groundwater conflict as a key issue for last year's conference in Texas, with the issue arising in new areas like *Mississippi v. Tennessee*.

This year, LSN is in the middle of developing the comparative water law segment for the upcoming fundamentals workshop. They will take the most fundamental aspect of western water law – the Appropriation Doctrine – and work with workshop participants to apply it to emerging challenges – drought, surface water-groundwater conflicts, and growing cities. Several professors will lead the class, including:

- *Robin Craig* (University of Utah) has played leadership roles in water at the ABA. Over the last 18 months, she worked with the Utah judiciary to develop a 3-part series on Utah water law and adjudication practice.
- *Michelle Bryan* (University of Montana) has taught national water law for DTW (last year's groundwater webinar) and ABA. She currently is working with colleagues on authoring the Montana Water Law Treatise.
- *Rick Frank* (UC Davis) moved to academia after retiring from the CA AG's Office as public resources chief. He brought the 2012 DTW general conference to UC Davis and introduced California's water challenges.

Recent court decision? Something to share? [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)