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Dividing the Waters

Overview

About Dividing the Waters

Dividing the Waters is for judges who adjudicate water litigation. The “conveners,” judges with experience in water adjudication, lead the program and invite other judges to join. But any judicial officer is welcome to join the network when adjudicating a case related to water.

For more information, contact either [Steve Snyder](#), executive director, or [Joy Lyngar](#), provost of The National Judicial College.

The Process

Dividing the Waters believes that judges can best make these important public resource decisions with the support of other judges who know how to navigate water conflicts. Always adhering to the Canons of Judicial Conduct, the program helps both federal and state judges:

- **Share information** about how the different states and courts have structured and



- **Discuss problems** in conducting these adjudications and cases, from legal and logistical to intellectual and political.
- **Learn what works** and what does not work, so other judges do not have to make the same mistakes.
- **Benefit from expertise** of technical and scientific resource people who are involved in the many subject areas involved in water cases.
- **Build a water knowledge network** where judges, masters and referees develop lasting personal and professional relationships.

The Vision

Dividing the Waters prepares the judges of today and tomorrow – across the nation – to apply the law, science, good judgment and wisdom in efficiently and effectively adjudicating water-related cases, to meet human and environmental needs.

Dividing the Waters connects judges, special masters and referees who preside over complex water litigation to the information and training resources they need to resolve some of the most difficult disputes about how to allocate and share this most precious and communal resource.

Dividing the Waters offers judicial officers with water cases an opportunity to collaborate as a network with a vast array of knowledge of water resources, law and management. The program relies on judges helping judges. Some participants specialize in water litigation and others have a long history with a complex water case. The newest members of the network may have just recently received their first assignment of a water case. All are welcome. Our members include both state and federal judges, as well as other judicial officers who contribute to judicial adjudication of water conflicts.

Mission

Dividing the Waters offers the network and the resources to help judicial officers adjudicate complex water cases. We accomplish this mission through:

- **Education.** *DTW* improves judicial understanding of the complexities of water law, management and adjudication through educational programs, at conferences and workshops offered in person and/or via webcast. The education topics include water law and management, science and technology, and effective case management.



- **Networking.** *DTW* facilitates understanding through judge-to-judge interaction that fosters strong personal and professional relationships among judges who share a common practice in water conflicts. The program will build and strengthen that network through conferences, mentoring, and web-based connections.
- **Information Resources.** *DTW* will develop and offer information resources that are helpful to judicial officers who adjudicate water conflicts. These resources include publications (books and pamphlets), webcasts, connections to other reputable organizations offering resources, and timely summaries of key appellate court decisions.

History

Dividing the Waters was founded in 1993 with the support of the Ford Foundation. For more than 20 years, various foundations funded the program with Hewlett and Bechtel leading the way. Today, the program seeks to diversify its funding with support from state governments, its Board of Advisors, and regional foundations.

Beginning as a discussion forum on western water right adjudications, the program has evolved to address the most critical water issues facing judges today: climate change, water quality, endangered species and growing cities. Its 2007 affiliation with The National Judicial College and its interaction with the Federal Judicial Center allow the program to offer the latest expertise, methods and technologies for state and federal judges assigned to water litigation to build their understanding of the complex issues in front of them. Dividing the Waters has begun extending its reach to regions where water conflicts are relatively new and may benefit from the network's experience.

Academic Freedom Statement

Dividing the Waters provides a forum for judges to discuss issues in a manner that allows them to best serve the public and the judicial system. In order to encourage open discussion and debate among judges, *Dividing the Waters* maintains the confidentiality of such discussions, consistent with the Canons of Judicial Ethics, while adhering to The National Judicial College's [Academic Freedom Statement](#).

DTW Network Note



DTW Board of Advisors



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DTW Staff

Steve Snyder

Executive Director

Steve Snyder is a former special master for the Pecos, Lower Rio Grande, San Juan and Animas general stream adjudications in New Mexico. During the 14 years Steve served as special master, he heard a variety of disputes over conflicting claims to the use of water in New Mexico's principal river basins. Prior to becoming a special master, Steve was a commercial litigator and partner of a major law firm in Denver. Steve earned his undergraduate degree and an MBA from the University of New Mexico and his JD from the University of Texas. He lives in Santa Fe. In his spare time he enjoys visiting the pre-historic and historic sites of New Mexico and the greater Southwest.

[Click to email Steve Snyder](#)



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DTW Conveners



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Dividing the Waters

Publications

Adjudicating Groundwater: A Judge's Guide to Understanding Groundwater and Modeling

Unique Resource for Groundwater "Judges"

Dividing the Waters offers this groundwater science bench book that cannot be matched by any other scientific or judicial

publication. *Adjudicating*

Groundwater combines the expertise and experience of academic scientists (UC Davis/Stanford), federal scientists (U.S. Geological Survey), and judicial officers to create a resource that can



most difficult groundwater conflicts. This bench book explains both the fundamentals of groundwater science (hydrogeology) and groundwater modeling. The bench book received peer review from scientists and judges, with oversight by the U.S. Geological Survey, making this book among the most reliable resources for judges with water cases.

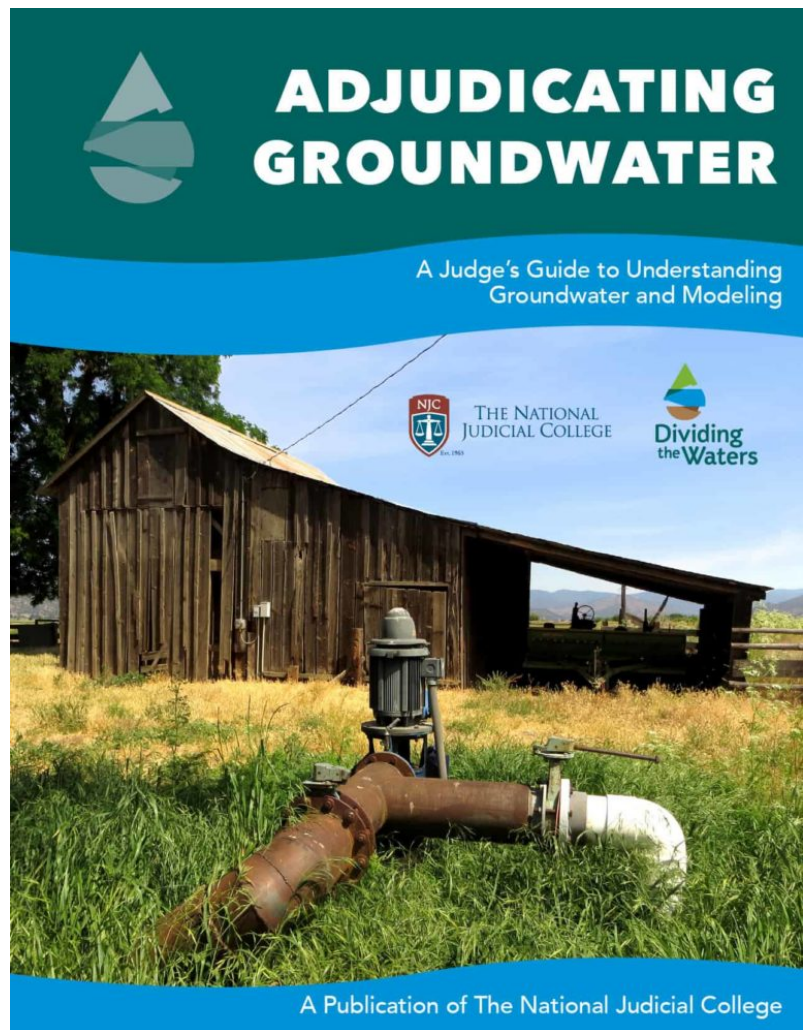
Unique Resource for Groundwater "Judges"

Dividing the Waters offers this groundwater science bench book that cannot be matched by any other scientific or judicial publication.

Adjudicating Groundwater combines the expertise and experience of academic scientists (UC Davis/Stanford), federal scientists (U.S. Geological Survey), and judicial officers to create a resource that can fulfill the needs of judges tackling the most difficult groundwater conflicts. This bench book explains both the fundamentals of groundwater science (hydrogeology) and groundwater modeling. The bench book received peer review from scientists and judges, with oversight by the U.S. Geological Survey, making this book among the most reliable resources for judges with water cases.

The last chapter, written by *Dividing the Waters'* own Judge Eric Wildman (Idaho), explains how a judge can apply the traditional *Daubert* factors in assessing the reliability of a groundwater model presented in court. Wildman has first-hand experience of overseeing the development and then adjudicating a groundwater model for the aquifer providing water Idaho's fertile Eastern Snake River Plain. He explains how a judge can ask good questions about a model's development before making a judgment. He offers his colleagues judicial checklists, and the book includes a glossary for easy reference. Gain from Wildman's experience!

Essential Tool for Non-Science Decisionmakers



have the expertise in groundwater science. *Adjudicating Groundwater* offers those officials insight into how to make their best decisions, as well as an understanding of how a judge who may review their decisions would approach some of these questions on the science of their aquifer.

Critical Time for Groundwater Decisions

Climate change and growing water demands make this a critical time for decisions on how to manage the nation's groundwater. In the East, governments have encountered declining groundwater and growing conflicts. In the West, declining groundwater has led to conflict and significant legal change. Nevada debates use of isolated, rural aquifers for Las Vegas or conflict between surface water users and groundwater pumpers in the Humboldt River basin. California's recent drought led to plummeting groundwater supplies and a new Sustainable Groundwater Management Act, which requires new groundwater management plans by 2020. *Adjudicating Groundwater* arrives at an auspicious time for helping judicial officers make judgments as to allocation and use of groundwater.

Getting Your Copy

Judges can download a **free digital copy of *Adjudicating Groundwater*** by [clicking here](#). Printed copies of *Adjudicating Groundwater* are available but are in limited supply. Judges who would like a printed copy should contact Steve Snyder, Executive Director of *Dividing the Waters*, at sesnyder@q.com.

Lawyers and other interested persons can obtain digital copies of *Adjudicating Groundwater* from the law firms that have provided financial support for the publication of the book. Those law firms are identified below.

Financial Support

The Water Foundation provided major financial support for publication of *Adjudicating Groundwater*. The Water Foundation works with groundwater managers across the West and the nation to improve groundwater management.

The following **law firms** have provided additional financial support for the publication of *Adjudicating Groundwater*.

California

Downey Brand LLP, Sacramento

Contact: (copy of the book) Merry Iseley, miseley@downeybrand.com, 916-520-5342/



Kronick, Moskovitz, Tiedemann & Girard, Sacramento

Contact: Daniel J. O'Hanlon, dohanlon@kmtg.com, (916) 321-4522

Somach Simmons & Dunn, Sacramento

Contact: Ramsey E. Kropf, rkropf@somachlaw.com, (303) 449-2834

Colorado

Somach Simmons & Dunn, Boulder

Contact: Ramsey E. Kropf, rkropf@somachlaw.com, (303) 449-2834

Idaho

Barker Rosholt & Simpson LLP

Contact: Albert Barker, apb@idahowaters.com, (208) 336-0700

Utah

Clyde Snow & Sessions, PC

Contact: Steven E. Clyde, sec@clydesnow.com, (801) 322-2516

Washington

Cascadia Law Group

Contact: Tom McDonald, tmcdonald@cascadialaw.com, (360) 786-5039

Stoel Rives (Boise, Idaho) also provided funding for the bench book.

About the Authors

Dr. Thomas Harter is the Robert M. Hagan Endowed Chair for Water Resources Management and Policy at the University of California, Davis. He holds a joint appointment as Professor and Cooperative Extension Specialist in the Department of Land, Air, and Water Resources and is currently chair of the Hydrologic Sciences Graduate Group. Dr. Harter received his BS and MS in Hydrology from the Universities of Freiburg and Stuttgart, Germany; and his PhD in Hydrology from the University of Arizona. He is a member of the American Geophysical Union and is serving on the Board of Directors of the Groundwater Resources Association and of the Water Education Foundation. Dr. Harter's research and extension emphasizes the nexus between groundwater and agriculture. In 2008, Dr. Harter's research and extension program received the Kevin J. Neese Award in recognition of its efforts to engage scientists, regulators, farm advisors, dairy industry representatives, and dairy farmers to better understand the effects of dairy operations on water quality.



for Stanford's Water in the West Sustainable Groundwater program, Dr. Moran identifies research opportunities for improved groundwater management and connects groundwater managers throughout California and the western US with groundwater researchers at Stanford University. She also works with policy makers and other agencies to advance groundwater policy for more sustainable groundwater management. Dr. Moran has published numerous research papers focusing on water resource management and water isotope thermometry. Tara received her doctorate in Geography from the University of Calgary, Canada. She holds a first-class honors B.Sc. in Environmental Science from the University of Calgary.

Honorable Eric Wildman (Idaho District Court) served as a staff attorney and judge for the Snake River Basin Adjudication (SRBA) from 1999 to its completion in 2014. He currently is adjudicating the water rights in the Coeur D'Alene-Spokane River Basin. He has served as a "Convener" for the *Dividing the Waters* Program at The National Judicial College since 2010. He currently serves not only as Idaho's water judge, but as the administrative judge for Idaho's Fifth District Court in Twin Falls. He received a B.A. from the University of Utah and a J.D. from the University of Idaho.

About the Editors

Alf W. Brandt served as the part-time Executive Director of the *Dividing the Waters* Program from 2011 until he completed work on the bench book in May 2018. He serves as Senior Counsel to California Assembly Speaker Anthony Rendon and has responsibility for overseeing the Assembly's development of water law and policy. He previously served as a water lawyer at the U.S. Department of the Interior and as a director at the Metropolitan Water District of Southern California. He received a BA from UCLA and his JD from UC Berkeley.

Dr. Michael Fioren is a Research Hydrologist at the USGS Upper Midwest Water Science Center in Middleton, Wisconsin and an Assistant Adjunct Professor in the Department of Geoscience at the University of Wisconsin-Madison. He received his PhD in environmental fluid mechanics and hydrology from Stanford University and a BA in Geology from Macalester College. He specializes in providing decision-making support for environmental managers that considers uncertainty in all aspects of decisions and strives to extract the most information from the data.

Dr. Jeremy White started the *Adjudicating Groundwater* project while he served as a groundwater modeler at the U.S. Geological Survey in Texas. He now works at GNS Science in New Zealand, where he is a hydrogeologist with a background in computer science. His



techniques to real-world scale environmental modelling analyses and development of software tools to implement these techniques. Jeremy has experience in a wide variety of environmental modelling analyses including groundwater flow and reactive transport, surface-water hydrologic and hydrodynamic modelling, coupled surface-water/groundwater modelling, and density-dependent and heat-transport modelling.

Hydrological Modeling Bench Book



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Dividing the Waters

Networks

Networks

In recent years, *Dividing the Waters* has developed several networks to support the work of judicial officers with water cases, starting with its network of judges.

Judges

Dividing the Waters started, in 1993, as simply a meeting of the judges and other judicial officers involved in the large western state water right adjudications, to discuss common challenges. With the support of the Ford Foundation and Hewlett Foundation, the Program developed into a recurring conference addressing particular challenges in water litigation, moving among the major watersheds in the West. Many of the participating judges came back every year, developing lasting professional relationships that allowed for dialogue throughout the year. Presiding over these water cases can often be a lonely task. These judges found that it was the network of judges addressing similar complex water issues



Waters judicial network is today – a way to gain access to critical information, training and expertise of other experienced water judges.

Law Professors

For many years, *Dividing the Waters* has invited leading water law professors to present their latest research at conferences. Some have participated in development of publications. In 2011, the Program started developing a network of these professors, to engage them more broadly in the Program's work. This network meets quarterly, by conference call, to advise the Conveners as to the most critical, emerging water issues and help develop programs to help water judges gain the information they need. The members of the Law School Network include:

- **Adell Amos**, University of Oregon
- **Amy Kelley**, Gonzaga School of Law
- **Barbara Cosens**, University of Idaho
- **Barton “Buzz” Thompson**, Stanford University
- **Brian Gray**, UC Hastings
- **Dan Tarlock**, Chicago-Kent School of Law
- **Mark Squillace**, University of Colorado
- **Reed Benson**, University of New Mexico
- **Reed Marbut**, Willamette University
- **Richard Frank**, UC Davis
- **Robert “Bo” Abrams**, Florida A&M University
- **Robert Anderson**, University of Washington
- **Robin Kundis Craig**, University of Utah
- **Sandra Zellmer**, University of Nebraska

Board of Advisors



The [Board of Advisors](#) (Board) advises the Program on issues identified by the Conveners. The National Judicial College convenes this Board to support the work of *Dividing the Waters*, especially with raising the necessary funding for the Program. This group of leaders from the water community convenes at the NJC in Reno as necessary, to address the problem identified by the judges and Conveners. The Board, however, does *not* meet directly with the judges or Conveners. Instead, the Board meets with the *Dividing the Waters* Executive Director, some members of the Law School Network, and NJC staff, who work with the Board to address the problem presented.

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Dividing the Waters

Webinars, Conferences & Trainings

Past Conferences

Materials from past conferences are available to judges on request. Please email [Joy Lyngar](#) for more information.

2019 Sustainable Water Rights in Drought

April 10 – 13, 2019 | Stanford Law School |
Stanford University, Palo Alto, CA

Conferees considered how the law impacts our ability to manage water in sustainable ways during times of shortage. The faculty included a mix of judges, academics, and



Peninsula, where several “on the ground” projects addressed the consequences of a long-standing water shortage.

2017 Groundwater Law in Transition

November 1 – 4, 2017 | Baylor University
School of Law | Waco, Texas

This 2.5-day conference prepared judicial officers for adjudicating and resolving groundwater conflicts. The faculty, comprised of scientists and judges, focusing on the enduring and emerging conflicts over groundwater in Texas and across the West. As surface water has become fully committed, farms and growing communities have turned to groundwater, leading to conflicts over water as well as land-use.

2015 Established Water Rights and Changing Conditions

October 14-17, 2015 | Gonzaga University
School of Law | Spokane, Washington

» Resources from the conference are available to all judges, please contact [Alf W. Brandt](#).

At the 2015 Dividing the Waters conference in Spokane, Washington, judicial officers heard testimony and made judgments about a water/salmon dispute in the hypothetical “Justice River Basin.”



Changing Land, Changing Water

May 14-17, 2014, University of Oregon School of Law, Eugene, OR

2013***Judges and the Science of Instream Flow***

October 17-18, 2013, The National Judicial College, Reno, NV

2012***Fracking and Water Resources***

November 8-9, 2012, Pittsburgh, Pennsylvania

Making the Connection: Surface and Groundwater

October 17-20, 2012, University of California, Davis King Hall School of Law

2011***Crossing the Ag-Urban Divide***

October 9-12, 2011, Reno, NV

10 federal judges, 2 Supreme Court Masters

2010***The Impact of Water: Adjudication Along America's Longest River***

November 3-6, 2010, St. Louis, Missouri

26 participants, 17 states, 11 federal judges

2009***Fundamentals of Water Law Adjudication Course******Science for Judges Workshop: Taking Climate Change into Account***

November 11-12, 2009, Reno, NV

36 participants, 20 states, 17 federal judges, 1 U.S. Supreme Court Master

El Paso, Texas

27 participants, 9 states, 2 U.S. Supreme Court Masters



2007

Science for Judges Workshop

November 11-13, 2007, La Jolla, California

27 participants, 6 states

Science for Judges Workshop

May 13-15, 2007, Boulder, Colorado

26 participants, 8 states

2006

Science for Judges Workshop

March 12-14, 2006, Santa Fe, New Mexico

23 participants, 9 states

2005

Jackson Hole, Wyoming

June 8-11, 2005

55 participants, 11 states, 3 U.S. Supreme Court Masters

2004

Science for Judges Workshop

October 7-9, 2004, Seattle, Washington

32 participants, 11 states, 3 U.S. Supreme Court Masters

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Dividing the Waters

Webinars, Conferences & Trainings

Trainings & Conferences

Dividing the Waters offers three kinds of training sessions – general conferences, workshops, and webinars. The Program holds its general conferences, approximately 18 months apart, in different watersheds, where judges from across the West can learn about the local conflicts as well as how to address the broader challenges of water adjudication. The general conference includes a field day where judges see local conditions and talk to local water managers. *Dividing the Waters* workshops typically last 2 days and focus on a narrower topic. With fewer participants, the Program holds its workshops at the NJC in Reno. The Program’s webinars may address water law fundamentals or a timely topics.



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