

to a jury than others, and I don't mean to say that how experts present aren't important considerations. But if we are concerned about getting accurate, objective information to our colleagues on climate science so that they can be prepared for these cases when they inevitably land on their dockets, shouldn't we approach it with an eye towards what experts would actually be qualified to testify on the subject in court? If I had looked at which expert to use from that perspective, selecting between the two local experts would have been obvious because the one they suggested actually is qualified on climate science, whereas the one I suggested is an expert, but not on climate science.

The other question Alf mentioned that you discussed was: *How can NJC assist the JLCS participants in sharing their knowledge?*

I'm incredibly grateful just for the connections that NJC has established, both within this cohort and with the first cohort. That access to other judges really is one of the significant benefits of the program. I reached out to Justice Rebecca Duncan of the Oregon Supreme Court from the first cohort after I was paired with her to discuss how she would suggest proceeding. She is the one that suggested the format for the presentation that I ultimately used (1.5 hours split equally between climate scientist, litigation trends, and then practical pointers – leaving time for questions throughout). And of course Brian's willingness to participate and to share practice pointers really moved the presentation from more than just informative, but to really useful.

In addition, NJC's connection with ELI is absolutely invaluable. I can't thank Helene and Jarryd enough for their contributions and tailoring of the presentation to a Utah audience. I emailed them regularly and they were always so responsive and helpful. I've never had that level of assistance in preparation for a presentation and I know I would not have been able to pull it off without their assistance. I would encourage anyone who is feeling uncertain about how to do such a presentation to trust that ELI has the necessary experience, and they are fully capable of adapting such presentations to the trends in any given state.

For my part, I'm happy to share the information I used in preparing for the presentation with any of you. I'm attaching the email letter which went out to our judges about a month prior to the presentation. I'm also attaching the script I mentioned which I sent to Brian in preparation for his portion. I think I mentioned that the actual presentation didn't follow the script exactly, but it gave Brian an idea of what kind of information I was looking for and he was very adept at responding to questions. Beyond that, I would suggest that you coordinate with your education department so that they don't schedule a competing session that attracts attendees away. I'm still trying to obtain the video of the presentation from our education department and if I can obtain it, I'm happy to share that with anyone who'd like to see it as well.

Again, feel free to email, text or call me any time if you have more specific questions. I'm so grateful to have met each of you and look forward to staying in touch!

Judge Jennifer Valencia

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— Attachments: —

Climate Science Break Out Session - Day 1 Fall Conference (1).pdf	106 KB
UT Fall Conference Script 91124 .pdf	139 KB



Judge Jennifer Valencia <jvalencia@utcourts.gov>

Climate Science Break Out Session - Day 1 Fall Conference

4 messages

Judge Jennifer Valencia <[REDACTED]>

Tue, Aug 13, 2024 at 8:15 AM

To: [REDACTED] All Senior Judges [REDACTED], District Judges

Dear District and Appellate Court Colleagues:

We write to call your attention to the Litigation and Climate Science break-out session scheduled on Wednesday, September 11, the first afternoon of the annual conference. Our presenters will be Dr. William Anderegg, Director of the Wilkes Center for Climate Science and Policy at the University of Utah; and Jarryd Page, Staff Attorney at the Environmental Law Institute. In Judge Valencia's role as Supervising Water Judge and as a recent participant in NJC and ELI's Climate Judiciary Project, she will be involved in the discussion portion of the program; California Superior Court Judge Brian McCabe will also be part of the discussion.

Bearing in mind that these cases involve complex scientific and legal questions, we have assembled a panel that will provide neutral, objective information for judges who ultimately may decide these cases, and for judges generally interested in these subjects. Beyond strictly environmental laws and issues such as water quantity, air quality, and land use, climate cases involve a wide variety of claims, including constitutional, statutory, regulatory, and common law. The Sabin Center at Columbia University Law School has catalogued nearly 2,000 cases across the country where climate change law, policy, or science is a material issue of law or fact in the case, including in Utah. As the body of climate litigation grows, judges must consider these issues, many of which are developing rapidly.

We anticipate that Dr. Anderegg, who is an interdisciplinary scientist, will devote a portion of the program to the basics of climate science, with a Utah-specific focus. Mr. Page will give us an overview of climate litigation, again, with an emphasis on Utah trends. The discussion will focus on practical approaches to understanding and preparing to decide these cases. You will learn more about our distinguished panelists when the program and biographies are circulated, but we want to emphasize that this session will assist Utah judges in developing competence in areas of growing importance that require familiarity not only with the relevant law, but with climate science.

Please consider joining us for the session and feel free to reach out to Judge Valencia and/or Judge Michael DiReda with any questions regarding the Climate Judiciary Project. And finally, Judge Appleby welcomes your thoughts about Utah's water judges program. We hope to see you in September.

I. Brief introduction:

I'm **Judge Jennifer Valencia**, I hope most of you know me. I'm a **District Court Judge** in the 2nd District Court. I took the bench in 2017, sitting in Ogden and have now been in Farmington since March 2023.

I am also the current **Supervising Water Judge**. We have 8 water judges with statewide jurisdiction and have a bench card we're developing for distribution that may be useful if you are not familiar with what kind of cases can be referred and the process for referring water cases. Myself and/or Judge Appleby would be happy to talk to you about the water judges' program afterward.

I had the opportunity to attend the National Judicial College's Judicial Leaders in Climate Science program they provide in partnership with the Environmental Law Institute's **Climate Judiciary Project** earlier this year. **Judge DiReda** attended the program approximately 2 years prior. It's an excellent program, highly recommend it, but the time commitment is significant, and I know others have expressed interest in attending as well. As opposed to going one by one every 2 years, we thought that bringing a slice of the program to all of you would be more efficient and hopefully beneficial to more of you. Can't thank them enough for their assistance with the presentation today.

II. Introduction of Judge Brian McCabe:

Both Judge DiReda and I have attended the Judicial Leaders in Climate Science Program along with a number of other judges across the country. Between the two cohorts, there have been 37 judges from 24 states and Puerto Rico who have participated in the program. **Establishing access** to those other judges, i.e. being able to easily reach out to other judges by phone, email, Webex or Zoom is, from my perspective, one of the significant benefits of the program. In planning for today, I had a chance to speak with Rebecca Duncan of the Oregon Supreme Court and have been amazed at how generous each of the participants in both cohorts have been with sharing their time and experiences.

I've asked one of my fellow participants, **Brian McCabe** to join us today for a bit more of a case-level discussion (case-level for him, not specific to any case pending in Utah, very mindful of the need to avoid conflicts).

Can you see and hear us, Brian?

[... hopefully yes]

Brian, I really enjoyed meeting you and getting a chance to pick your brain in Reno. And I appreciate your willingness to attend today to share some tips with all of us today.

Much of the information I've learned through the program was new information for me. Readily admit I had no prior experience litigating either water law or climate science until I became a water judge, still haven't had a climate science case as it's been defined today. For water law, I had one case that piqued my interest, gave it my best shot, but was ultimately overturned on appeal. I like to think of myself as someone who enjoys learning and who is willing to do the extra work that may be required to be a competent judge. And although I really enjoy learning, I don't enjoy being overturned on appeal any more than anyone else. So, my hope in trying to educate myself on these topics is obviously to **develop greater competence** to handle these types of cases once they land on my docket.

- A. In comparison to my lack of **experience prior to taking the bench**, did you have experience as a litigator in this area of law?
- B. In comparison to the fact that I have not had a **climate case on my docket**, even as a water judge for the last few years, how many climate cases have you had?
- C. Beyond the number of cases on your docket, let's talk about **the single case** that we've talked about in some detail previously. Can you give some of the basics of the **nature of the litigation, the parties, and how it landed on your docket**?
- D. Did you **feel prepared** to handle it when it landed on your docket?
- E. **How long** was the case on your docket?
- F. How did the case **ultimately resolve**?
- G. When did you become aware of **how long** the trial would take?
- H. How did you accommodate a trial of that length with all the other matters on your regular calendar?
- I. Let's get to some of the **lessons learned** then, was there anything you would have done differently to reduce the amount of time it took?
- J. Some in this room listening to you may think but that is CA – and they have a very different population size, different size of the judiciary itself, divergent political perspectives, and different degrees of litigiousness amongst the population, etc. – why do you think what you have told us today is relevant for judges in Utah?

K. Anything you would have done differently in **dealing with the attorneys or the evidence**?

- a. Are these attorneys who regularly practice in your court?
- b. Are these experienced trial attorneys?

L. Any other suggestions or pointers we haven't covered?

M. Any additional questions from Judge DiReda?

N. Any additional questions from others in the room?