

October 6, 2022

(Original mailed to Chief Justice Bacon; copies by email)

Chief Justice Bacon and Justices;

I am pleased to advise you that as the selected participant from the State of New Mexico, I have just completed the Environmental Law Institute's Climate Judiciary Project which launched the "Judicial Leaders in Climate Science" (JLCS) program to build capacity in state judiciaries to respond to the challenge of climate change. I was designated to this program by then-Chief Justice Michael Vigil in 2021. The program was a year-long curriculum of judicial leadership skills training integrated with climate science topics generally relevant to climate-related cases for a select group of U.S. judges. I was fortunate to be one of the 22 state judges who completed the JLCS program to become certified.

One of the fastest-growing and most significant trends in courts is the rise in litigation related to responsibility for, responses to, and planning for climate change. New Mexico is no exception to this trend. As one of New Mexico's Water Law judges (since 2011), I am proud to announce that New Mexico is uniquely positioned to lead the state courts in the Western U.S. in establishing the courts as a forum for climate change and expanding the importance of judicial and legal understanding of climate change and the ways it affects society and the legal system. As one of two states with a long-established Water Code, New Mexico has already spent decades dealing with a primary driver of climate change - drought.

In order to meet its objective of building capacity in state judiciaries to prepare them for the increasing numbers of state climate cases, JLCS has established a mandate for participants to take on a leadership role to advance the understanding of climate science and related legal issues among their peers in their respective states. As a certified participant of this program, I write to you to ask for your assistance in developing capacity in this State in the following ways:

Training for the State's judges and law students. The trend in increased climate litigation, raises an array of legal issues including federal and state constitutional issues, a variety of tort theories including nuisance and trespass, state securities and consumer protection laws, administrative and procedural challenges, economic issues related to climate adaptation, including climate attribution and impact, and many other issues. Currently, I am scheduled to speak to the UNM law faculty and its water and environmental law students on October 26, 2022, on both climate litigation and water law. I have prepared a PowerPoint interview that will be presented in two sessions. (At your request, I can send you a copy). In this same vein, I will ask the Supreme Court to assist me in planning, presenting, and training our State's judiciary. I have already spoken with Justice Thomson about the possibility of presenting at the annual Conclave.

(As part of my participation in educationally sponsored activities with governmental entities, I will adhere to Rules 21-307 and 21-301).

The creation and merger of a Climate Science/Water Court Division. As stated earlier, New Mexico has already spent decades dealing with a primary driver of climate change (drought)

through various sections of the Water Code and a well-established body of law. In fact, Climate Science and Water Law intersect at various sections: administering water rights during water scarcity/droughts, adjudicating priority of rights, flood control, transfers of water, ground water storage and usage, etc. For New Mexico and the Western states, climate change is water. Climate Science litigation will necessarily bring into play the rights found under the Water Code. This somewhat intersecting relationship will be demonstrated when individuals raise their priority rights under the Water Code, in the face of a clearly defined element of climate change - extreme drought.

I am not aware of any state that has an established Climate Science process or system within their courts. While a few courts (Texas and a couple of others) have an environmental law division that primarily deals with regulatory matters, none are coordinated with climate-related litigation. We have an established Water Court Division with a system of 13 districts in New Mexico, each with a Water Law Judge that is trained, and receives annual training. Incorporating Climate Science with Water Law training would result in New Mexico being the first Western state to not only have trained Climate Science/Water Law Judges, but we would be the first state in the nation to have an established system or process for handling Climate Science/Water Law cases.

The Water Court Division was established through a January 27, 2004, Supreme Court Order, creating Water Law Judges in each district. This Order could be amended to establish a Climate Science/Water Court Division without the need of legislative funding. As part of my mandate and leadership role to assist this State in building capacity to meet the climate science needs, I would propose the creation and merger of our Water Court Division with a new, Climate Science/Water Court Division. I would also make myself available to train the judges, assist in organizing training sessions, and bring in nationally recognized climate science experts to speak to our judges.

Creating legislative buy-in and funding. As indicated above, the creation of a system and process to deal with both Climate Science and Water Law issues can be done without legislative funding as we already have a process in place. Currently, New Mexico (as are most Western states) is reaching a "tipping point" where the life spans of most of our aquifers range from 5-10-25 years, with only a couple exceeding 25 years. Compounding this with a 22-year megadrought and current reservoir levels at about 11% capacity, it's certain that the legislature will have to act quickly and provide ample funding to mitigate the damage. The State's judiciary will hopefully, be in a position to lead with the adaptive changes necessary, and be a primary source of information and process for the State in this time of change.

Thank you Chief Justice and Justices for your time and consideration in this endeavor. After speaking with my Climate Science peers throughout this program, I am confident that New Mexico is uniquely positioned to lead the Western U.S. in establishing the judiciary as a forum for climate change and thus, expanding the understanding of climate change and its legal adaptations. I look forward to your response. Please feel free to contact me if you have any question on this important topic.

Respectively

Chief Judge Manuel I. Arrieta
Third Judicial District
Las Cruces, NM