

Science in the Courtroom

2nd Annual Water Law in Eastern Washington Conference -- 2025

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Overview

- ▶ Brief Recap of Judicial Review in Washington - How and When
- ▶ Science In The Courts
 - ▶ We are (generally) not scientists
 - ▶ But we do science
- ▶ How Cases Reach Us
 - ▶ Trial Court or Administrative Tribunal/Officer
 - ▶ Standards - “Frye”
 - ▶ The Record
 - ▶ Educate Us
- ▶ Outside Efforts
 - ▶ Dividing the Waters/Washington Judicial Water Law Training
 - ▶ Climate and the Judiciary

Background: Washington Courts

- ▶ Superior Courts: 39 Counties; 32 Superior Courts
- ▶ Court of Appeals: Three Divisions; 22 judges
 - ▶ Consistent workloads, timelines, staffing
 - ▶ Cases may be transferred between divisions
 - ▶ Judges may rotate between divisions
 - ▶ Differences between the Divisions
 - ▶ Percentage of oral argument verses non-oral argument
 - ▶ Zoom verses live
- ▶ Supreme Court

Science in Court

- ▶ Remember First, We Are Not Scientists
- ▶ But We Deal With Science and Math
 - ▶ Examples:
 - ▶ Statistics and Mixing Zones: Crown Resource Corp. v. Ecology, 10 Wn. App. 1040 (2019); -----Pollution Control Hearings Board: No. 14-018 (2015)
 - ▶ Statistics and DNA: State v. Nicholas, 2025 WL 1293762 (2025) (Frye and Cold Case/Database)
 - ▶ Water Rights!
 - ▶ Ecology v. Acquavella (I), 100 Wn.2d 651 (1983) (service on water users) (4000 systems, 40,000 users)
 - ▶ Ecology v. Yakima Reservation Irr. Dist (Acquavella II), 121 Wn.2d 257 (1993) (Tribal Reserve)
 - ▶ Ecology v. Acquavella (III), 141 Wn.2d 746 (1997) (award to Yakima- Tieton Irr. District)

Science in Court

- ▶ How do cases get to us?
 - ▶ Superior Court - Adjudications
 - ▶ Administrative Review: Ecology >> PCHB (Individual rights, changes)
 - ▶ Educate Us
 - ▶ Build a Record

Science in Court

► Evidence: Frye

The primary objective under Frye is to determine whether the evidence being offered is based on established scientific methodology.

To make a determination under Frye, the court considers (1) whether the underlying theory is generally accepted in the scientific community and (2) whether there are techniques, experiments, or studies using that theory which are capable of producing reliable results and are generally accepted in the scientific community.

We do not review whether a particular scientific theory is correct, but our review is whether the theory is generally accepted in the scientific community.

To determine whether a consensus of scientific opinion has been achieved, we examine expert testimony, scientific writings that have been subject to peer review and publication, secondary legal sources, and legal authority from other jurisdictions.

Unanimity among the scientific community is not required, and the court should exclude expert opinion only if there is a significant dispute among qualified experts.

Science in Court

▶ What Are the Courts Doing?

- ▶ Water
 - ▶ Dividing the Waters (Western States)
 - ▶ Water Science for Judges
 - ▶ Water Tribal History
- ▶ Climate Science - <https://cjp.eli.org>
- ▶ Continuing Judicial Education

QUESTIONS?

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