**Dividing the Waters**

*Network Note*

**December 2012**

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**Supreme Court Says Flooding Could Be Temporary Taking**

This month, the United States Supreme Court rejected the Federal Government’s claim of an automatic exemption from takings claims for government-induced temporary flooding. In a case arising out of flooding of an Arkansas wildlife management area, the Court held that temporary flooding could constitute a temporary taking but remanded the case to the Federal Circuit for further consideration, under the Penn Central factors for assessing regulatory takings.

In 1948, the Army Corps of Engineers built Clearwater Dam, 115 upstream of the Black River Wildlife Management Area owned by the State of Arkansas. For decades, the Corps operated the Dam pursuant to a manual. In 1993, the Corps approved a deviation from the manual, at the urging of farmers, to reduce dam releases and give farmers more time to harvest. When the Corps retained more water behind the dam, later high-flow releases extended the flooding period for the Wildlife Management Area. The State Game and Fish Commission sued for a taking.

The Court of Federal Claims found a temporary taking but the Federal Circuit reversed, holding that there was an automatic exception from takings law for temporary flooding. The Supreme Court reversed. For more information on this case, visit the *Dividing the Waters* resource webpage: [DTW Resource Page](#).

**What Do You Know? What Can You Share?**

The success of this new *Network Note* depends on you. Building connections among its members forms the foundation for the *Dividing the Waters* network. Sharing information is how we keep you informed on the latest developments in water law and policy that may help you adjudicate your water cases. To do that, we need you to share what you know about those developments. With your help, this *Network Note* can offer a critical information tool and expand the resources available to you and the other members of the network in making decisions about water. What can you share?

Share at [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net).

**DTW Develops Board of Advisors**

Several leading lawyers have accepted the *Dividing the Waters* invitation to join the new “Board of Advisors,” which will support the Program’s efforts through advising, fundraising and advocacy. The Board’s convene for the first time in late February at the NJC in Reno, where the Board will consider how to advise the Program on the issue of how best to incorporate water science into adjudication. In order to ensure compliance with our ethical duties, this Board of Advisors will remain separate from the judges. The Board will advise the Program through the NJC and the Executive Director.

**DTW Webpages Offers Ready Access to Information Resources**

A recent update to the DTW webpages on the NJC website focused on easing member access to the Program’s information resources. In addition, NJC recently introduced its “NJC Cloud” document storage system, to allow judges to retrieve documents from conferences upon their return to chambers. These innovations make it that much easier for you to find the information you need. See, [DTW Resource Page](#).

**In Focus:**

**DTW Convener Gregory Hobbs**

When you engage Colorado Supreme Court Justice Greg Hobbs in a casual conversation, you cannot avoid discovering his passion for water. His passion comes through, in his questions and comments, in his observations, and in his storytelling, especially about his latest river experience. That passion led him to join the *Dividing the Waters* leadership as a Convener in 1998.

His passion for water also provides the inspiration for much of his writing, whether it’s a court opinion, a law review article or a conference paper. But his poetry reveals the depth of his passion for water and water law. If you have attended a *Dividing the Waters* event, then you have heard a Hobbs poem about a DTW conference. His more recent publications include: *The Public’s Water Resource*, (Continuing Legal Education in Colorado, Inc. 2007); *Living the Four Corners, Colorado Centennial State at the Headwaters* (Continuing Legal Education in Colorado, Inc. 2010), and *Into the Grand* (Continuing Legal Education in Colorado, Inc. 2012).

Greg Hobbs is no newcomer to water. Before becoming a Supreme Court justice in 1996, Hobbs practiced for 23 years, with water as a constant. As a justice, his passion for water has only grown, writing many of Colorado’s most significant decisions. He also contributes to the water dialogue on his own time, as Vice-President for the Colorado Foundation for Water and a regular contributing writer for publications and conferences.

Justice Hobbs earned his undergraduate degree in History at the University of Notre Dame in 1966. After volunteering with his wife Bobbie in the Peace Corps in Colombia, Justice Hobbs pursued a law degree at the University of California at Berkeley, graduating in 1971. Justice Hobbs began his legal career as Law Clerk to Judge William E. Doyle, Tenth U.S. Circuit Court of Appeals, then served with the EPA and the Colorado Attorney General’s Office before entering private practice.

Who’s Next? Would you be willing to share a bit of your experience in water with others in the DTW network in this monthly column?

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**Happy Holidays!**

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