The Network Note
May 2015

2015 Conference:  REGISTER NOW

WA:  Court Upholds Municipal Water Law As Applied
In its first “as applied” challenge to the 2003 Municipal Water Law (MWL), the Washington Supreme Court upheld the MWL’s statutory determination that existing municipal water rights were valid.

In Cornelius v. Washington State University (WSU), the court applied the MWL to groundwater rights claimed by WSU. WSU obtained groundwater right permits for seven wells, with priority dates from 1934 to 1987. Over the years, WSU had consolidated its pumping to two wells. After the MWL passed, WSU applied to the Department of Ecology (Ecology) to conform its water rights to actual use, and apply the MWL’s statutory confirmation of its municipal water rights.

The MWL arose out of ambiguity of whether municipal water rights required actual beneficial use or just the “pumps and pipes” to use the water rights. Ecology had been inconsistent on beneficial use. In 1998, the WA Supreme Court held, in Theodoratus, that WA law required actual beneficial use. The Legislature enacted MWL in order to define and confirm existing municipal water rights. The Supreme Court upheld the MWL on a facial challenge in its 2010 decision in Lummi Indian Nation v. State.

Cornelius timely protested that confirmation of the WSU rights would “revive” water rights that had been relinquished by operation of law due to non-use of some wells. Appellant asserted both Constitutional and statutory defects in Ecology and Pollution Control Hearings Board (PCHB) decisions. The Superior Court affirmed the PCHB and the Court of Appeals certified the case to the Washington Supreme Court.

In Cornelius, the Supreme Court, in a 6-1 decision, upheld the MWL, as applied to the facts presented. The court rejected constitutional challenges as “thinly veiled facial challenges,” which Lummi already had resolved. In rejecting appellant’s other arguments, the court repeatedly relied on the MWL’s provisions that confirmed WSU’s water rights and did not require Ecology to consider whether WSU had relinquished its rights by non-use. In dissent, the Chief Justice advocated remand to the PCHB to reconsider statutory relinquishment.

2015 Conference:  Preparing the Next Generation
This year’s Changing Conditions theme highlights not just changes in western water law, but changes in the judges who adjudicate water law conflicts. Recent years have seen many experienced water judges retire, as Justice Gregory Hobbs will do this summer. The Conveners plan to seek out and invite the next generation of judges with water cases. The webinar preceding the conference will offer newer judges water law fundamentals. But the greatest value Dividing the Waters offers is the experience of more senior judges. So, we need YOU to participate in this year’s conference.

In Focus:  Justice Debra Stephens (WA)
Growing up in Spokane, Justice Debra Stephens did not imagine she would one day serve as a judge on important water rights cases. Since joining the Washington State Supreme Court in 2008, however, she has participated in several critical water decisions, on topics from municipal water law (Lummi/2010) to instream flows (Swinomish/2013) and tribal water rights (Aguavella/2013).

Stephens’ origins on the dry eastern side of Washington help her understand the importance of water in the West. She still enjoys spending time on the Snake River, which has seen its share of litigation in recent decades. Stephens learned about Dividing the Waters from Justice Greg Hobbs (CO) in 2013. Her interest in science for judges piqued Hobbs’ interest. The Conveners have consulted with Stephens in developing both the 2014 and 2015 conferences.

Justice Stephens has a long history of supporting judicial and continuing legal education. She taught at Gonzaga University (1993). She and her husband, Craig, have been married since 1989, and have two children.

Profile on you?  Recent court decision?  Something to share?  ALFIII@sbcglobal.net
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