NM Supreme Court: Domestic Well Permits OK
The New Mexico Supreme Court has upheld the New Mexico law requiring the State Engineer to issue domestic well permits without any investigation as to availability of unappropriated water, in *Bounds v. New Mexico*.

Bounds, who previously had obtained domestic well permits, challenged a New Mexico statute on domestic well permits, alleging the statute violated the NM Constitution “because it requires the State Engineer to issue domestic well permits without regard to the availability of unappropriated water, to the detriment of senior water users and in violation of the doctrine of prior appropriation.”

The Court rejected Bounds’ facial challenge because senior water right holders could “not demonstrate a concrete risk of impairment” to their rights. It went on to address the merits of plaintiff’s constitutional argument. It held that the state constitution’s provision on appropriative water rights related to administration, not permitting, while the statute related to permitting. It described plaintiff argument’s “basic flaw” as assuming that a permit gave an absolute right to use water. A permit, however, was subject to reduction in a drought or if it interfered with senior rights.

The Court also rejected plaintiffs’ other arguments regarding whether the State Engineer would ever curtail use of domestic wells. It noted that the constitution allowed administration by law, and the Legislature had continued to address difficulties with domestic wells and development. Relying on plaintiff’s failure to show impairment, the Court also rejected the due process claims. For a summary, see the DTW Resources Page.

Instream Flow Workshop: Time to Register
The agenda is set for the October 17-18 instream flow workshop at NJC (Reno). Now it’s time to register. A limited number of spots for travel reimbursement remain available. First priority goes to judicial officers with past experience or future assignments on instream flow. If, however, your court can fund your travel, then you are welcome to participate. While the Federal Judicial Center will not participate in this workshop, our funding may extend to some federal judges directly involved in this instream flow issue. To register, please contact NJC/DTW Registrar Rebecca Bluemer at: Bluemer@judges.org.

Dividing the Waters: Network Note
August 2013

2014 Conference: University of Oregon Law School
The *Dividing the Waters* Conveners have chosen University of Oregon School of Law (Eugene) as the site for next year’s full conference. The conference will start Wednesday evening, May 14, and conclude at noon on Saturday, May 17. The Conveners will begin developing the conference topics and theme in the months ahead. SAVE THE DATE!

Water Quality Law/Fracking Webinar Postponed
*Dividing the Waters* has postponed the Water Quality webinar, originally set for September 25, due to technical difficulties. The Program has postponed the webinar to allow a more complete update on water quality and fracking in the coming months. This webinar will follow up on last year’s workshop on *Water Resources and Fracking* in Pittsburgh. Stay tuned! Next month’s *Network Note* will provide the new date and offer registration.

In Focus: Montana Chief Water Judge Russ McElyea
With his recent appointment as Chief Water Judge for Montana, Russ McElyea joins the *Dividing the Waters* network as a new judge but an old hand at water issues. Prior to appointment as Chief Water Judge this year, McElyea served for a year as Montana’s first Associate Water Judge. Montana’s adjudication involves over 200,000 water right claims, as well as federal and Indian reserved rights.

Judge McElyea had a diverse work history prior to serving on the bench. As an attorney in private practice, McElyea worked on water right and natural resources cases for virtually every type of client including ranchers, farmers, cities, developers, and conservationists. He handled cases in water court, state and federal courts, and before numerous boards and administrative agencies.

Judge McElyea also has the perspective of a water rights owner and business operator, having served first as general counsel and then as chief executive officer of Moonlight Basin, a four-season ski and golf resort in Big Sky Montana.

Judge McElyea lives in Bozeman with his wife Rienne, who is also an attorney, and their two boys. He looks forward to learning about solutions to water issues in other states and to meeting new colleagues at *Dividing the Waters*.

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

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