



A resource for judges resolving water conflicts

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## The Network Note March 2022

### **DTW Remembers Greg Hobbs April 7, 2022 at 11 AM MST**

*Dividing the Waters* will celebrate the life of the late CO Supreme Court Justice Gregory Hobbs. The [December 2021 Network Note](#) offers a moving tribute to the man we knew as Greg, a legend in water for his opinions *and* his poetry. Greg served as a *DTW* Convener for more than 20 years, joining his last *DTW* call just weeks before he died on November 30.

The *DTW* Conveners will lead the remembrance, but Greg's close friends and former law clerks will join the celebration. Please join us, and [register here](#).

#### **MT: Private Water Rights on State Trust Lands**

The MT Supreme Court upheld a 2019 statute creating a process for the State to assert ownership over privately developed water rights used on the State's school trust lands. It rejected arguments that the law violated the State's trust obligations to protect trust land value.

In 2015, the MT Trust Lands Management Division (TMLD) discovered 141 groundwater right permits for water used on State trust lands. Private parties had developed or diverted the water rights on private lands after the 1973 Montana Water Use Act established the permit system. TMLD filed forms with the Department of Natural Resources Water Rights Bureau to add the State as a co-owner. The water right owners had no statutory process to object to the TMLD action.

In response, the Legislature passed a 2019 bill to remedy due process issues arising from TMLD's involuntary transfers of private water rights. HB 286 created a process for the State to acquire water rights in privately developed or diverted ground water used on school trust lands. It rescinded the transfers.

The Advocates for School Trust Lands (Advocates) filed a facial challenge to the law, alleging that HB 286 violates the State's trust obligations imposed by the federal Enabling Act (for granting trust lands to the state) and the Montana Constitution. The trial court granted summary judgment to the State on the grounds that Advocates' claims were unripe and their proposed amendment was futile.

The MT Supreme Court affirmed, finding one claim unripe and potential amendments futile. It concluded, however, that the Advocates' claim that the statute created a presumption against state ownership was ripe, but wrong. The statute only created a process, not a presumption against the State.

### **SAVE THE DATE – NEXT DTW CONFERENCE: November 30-December 3 in Santa Fe, NM**

The Conveners have started planning their return to in-person conferences this fall, starting with a sure-to-be-memorable convening in SANTA FE, NM. Stay tuned for more, soon!

#### **In Focus: Judge Stacy Boulware Eurie (CA)**

Like so many *Dividing the Waters* members, Sacramento Superior Court Judge Stacy Boulware Eurie never expected to become a water judge. While she grew up in TX and CA, she had no connection to water, until a big water case showed up on her docket in 2020. Now she leads CA discussion of water/climate education for judges.

Boulware Eurie started life in Maine, but moved to Plano, TX in kindergarten. With the exception of 1979, when her family lived in Iran, Boulware Eurie lived in TX until 1985, when her family moved to CA, where she has stayed and built a successful legal and judicial career. She went to college at UCLA and law school at UC Davis. She started her career at a criminal defense firm and joined the AG's Office in 2000, where she litigated employment discrimination cases, as well as led the Government Law Section, where she litigated constitutional and political question cases, not water cases.

Governor Schwarzenegger appointed Boulware Eurie to the bench in 2007. She moved to the Juvenile Court in 2010, and served eight years as its Presiding Judge. When she returned to the Superior Court to handle criminal/civil matters, the Presiding Judge assigned her "coordinated" cases reviewing the State Water Board decision on the CA Delta Water Quality Control Plan. She now understands the critical role that the Delta plays in CA water, with litigation dating back to 1978.

Boulware Eurie has been an active member of the CA bench and bar for over 20 years, and has served on the CA Judicial Council since 2014. Water and climate issues have drawn Boulware Eurie into new roles, including service on a workgroup designing a new water law curriculum for the CA judiciary. She recently agreed to lead efforts on judicial education related to water and climate litigation, participating in this month's Climate Judiciary Project conference at NJC. She considers *DTW* and NJC "critical resources" for "ensuring access to justice in the arena of water and climate litigation."

The prospect of making a difference in our world of drought and climate change excites Judge Boulware Eurie:

"I'm fortunate to be able to roll up my sleeves in real-time to handle some of the most pressing matters of our time."

**Ideas for Network Note? Court Decision on Water? Contact [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)**