



A resource for judges resolving water conflicts

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### Next *Dividing the Waters* Convening?

*DTW* Conveners have brainstormed ideas for the next *DTW* convening. Justice Hobbs, Jody Grantham (CO) and ED Steve Snyder recently attended a demonstration of the CO decision support system and developed ideas for a related workshop. The University of Utah law school has invited the Program to convene in Salt Lake City. If you have topic or location ideas for a convening, please contact [DTW Exec Dir Steve Snyder](#).

### Diverse Minnesota Water Disputes Continue

In the land of 10,000 lakes, disputes over water may be a little different, but nevertheless continue in Minnesota state courts.

**Groundwater/Public Trust.** The Court of Appeals reversed a trial court judgment that the MN Dept. of Natural Resources (DNR) has a duty to protect surface water from over-pumping. Residents around White Bear Lake sued DNR for falling lake levels and won at trial. The Court reversed on two grounds:

- *Public Trust Doctrine* does not apply to groundwater, which is not publicly owned, even when it affects surface waters, which are public.
- *MN Environmental Rights Act* does not allow suit against DNR management. It requires suit against pump permits. Property owners plan to appeal to the MN Supreme Court.

**Water Quality/Copper Mine.** In a dispute over water quality effects from a proposed permit for a copper mine in northern MN, the Court of Appeals directed a second look before it reviews the case's merits. It ordered the district court to investigate allegations that the Minnesota Pollution Control Agency discouraged US EPA from submitting criticism of a permit for a copper mine in northern MN, so it would not appear in the public record. The dispute relates to the mine's effect on water quality. Challengers of the mine include the nearby Fond du Lac Tribe of Lake Superior Chippewa.

**Lake Name.** The Court of Appeals overturned a DNR decision to rename Lake Calhoun as Bde Maka Ska. The lake in Minneapolis has city park land surrounding it. The original name comes from the Secretary of War John Calhoun, who ordered the Army to survey area in 1817. After the 2015 Charleston church shooting, Calhoun's slavery practices got attention. The city park board recommended restoring the original Dakota tribe's name, and Hennepin County agreed. DNR approved the name change, but the Court of Appeal held that DNR lacked the authority to change a name after 40 years. DNR has appealed to the MN Supreme Court and the Legislature has proposed the name change as well.

### *Adjudicating Groundwater Bench Book Available*

If you seek a copy of *DTW* 2018 bench book *Adjudicating Groundwater*, go to [the book's NJC webpage](#).

### In Focus: Judge Paul J. Kelly (10<sup>th</sup> Circuit)

When 10th Circuit Senior Judge Paul Kelly got a message from "Chris" in the 202 area code, he thought it might relate to his son who lives in DC. He called and heard "Supreme Court, clerk's office." When "Chris" answered, he explained that the Court had asked him to see if Judge Kelly would be willing to serve as special master in the *FL v GA* case.

Assuming a water case, Kelly accepted. Coming from New Mexico, Kelly knew a water case would be interesting. In private practice, he had tried a water case in a Santa Rosa courtroom that was packed the whole week, and represented clients in the 51-year-long Aamodt water adjudication.

Kelly has roots in both West and East. Born in New York, he got a BA from Notre Dame. He went to Fordham law school at night while clerking for a NY law firm. When Kelly got assigned to a NM case, he asked local counsel if they needed any young lawyers. he interviewed and accepted the offer.

For the next 25 years, Kelly practiced as a New Mexico trial lawyer. He served 4 years in New Mexico's part-time legislature, while continuing his practice in Roswell. After his return to full-time lawyering, his firm asked him to return to Santa Fe to open a new office in 1983. Kelly continued his lawyering as well as his public service in Santa Fe. (He served for 32 years as a volunteer fire fighter/EMT.) In 1991, President Bush appointed Kelly to the 10th Circuit, where he has served with distinction on a range of cases – criminal, civil and constitutional. At a recent portrait-hanging ceremony in Denver, Judge David Ebel noted that Kelly had heard 6000+ cases and written 900+ published opinions. At the same time, he had maintained an active trial docket for the district court.

A former law partner and *Dividing the Waters* member, Jim Wechsler, suggested Kelly join the Program. After the Federal Judicial Center agreed to pay for *DTW* conference costs, he came to Stanford. He was most impressed by the other judges he met. "I was amazed at the knowledge of the judges I met, particularly those who adjudicate water cases almost full-time." While the Stanford conference did not address the riparian law in his case, he found the segments on the confluence of surface and groundwater very helpful, and the field day was "just wonderful."

Recent court decision? Something to share? Contact the *Network Note* Editor at [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)