**Dividing the Waters Conveys Deepest Sympathy to the People of Texas**

Register [Here](#) NOW for November 1-4 Conference

Final preparations for this year’s conference at the Baylor law school have begun. The Conveners completed the agenda, and the speakers are preparing for leading discussions among *Dividing the Waters* members. (The [Executive Director](#) can provide the agenda via e-mail.) Registration does NOT require immediate payment, allowing for applications for travel-cost scholarships. Sign up today!

**South Dakota: Shared Right of Access to Public Waters**

Relying on riparian rights principles, the South Dakota Supreme Court recently held, in *Duerre v. Hepler*, that the public and underlying property owners share the right to use public waters, subject to legislative direction.

In 1993, “excessive rainfall submerged” plaintiffs’ property. In 2001, the public started using the waters overlying their land for recreation, boating in summer and ice-fishing in winter. In 2004, the Court held that all waters in South Dakota are public property, even if a private party owns the land beneath the water. *Parks v. Cooper*. When plaintiffs complained about trespassing to the state Game, Fish & Parks Department (GF&P), the agency responded that the public had a right to use the waters if they accessed them legally.

Plaintiffs filed suit against the GF&P, its Secretary and all those who used or intended to use the waters above their land. The suit sought declaratory relief to stop recreational use of the waters overlying their private land. The trial court certified a defendant class and granted declaratory relief prohibiting both public use of the waters and the state from facilitating that use. The State appealed both the class certification and the declaratory judgment.

The Supreme Court affirmed both public and private property rights. It upheld the defendant class but narrowed declaratory relief. Applying riparian principles of shared use of water, the Court reaffirmed its 2004 *Parks* decision on public ownership of water and recognized both public and private riparian landowner rights to use the waters. The Legislature, however, had not statutorily defined the public right to use the water for recreation. The Court therefore affirmed the prohibition on the State facilitating public use, but struck the prohibition on the public’s use of the waters.

**Conference to Review Groundwater Modeling Bench Book**

In conjunction with the upcoming conference, *Dividing the Waters* is collaborating with US Geological Survey, Stanford and UC Davis to develop a bench book on groundwater. It will include sections on the fundamentals, modeling, and adjudication of groundwater models. Conference participants will review a “conference draft” to see if it fulfills their needs. The book will be revised and subjected to USGS peer review. The Program hopes to make the final book available early in 2018, with judges receiving free copies.

**In Focus: Texas Chief Justice Nathan L. Hecht**

Texas Chief Justice Nathan L. Hecht holds the record as the longest-serving Texas Supreme Court justice in history, first elected in 1988. Texas Gov. Rick Perry appointed him Chief Justice in 2013, succeeding retiring Chief Justice Wallace Jefferson. He has served on the bench since 1981, starting at the district court and then the court of appeals in Dallas.

Hecht’s engagement in water law is more recent, but his roots in water go deep. He noted recently to Justice Greg Hobbs that his grandfather is said to have drilled the first well in Curry County, New Mexico, on the Texas border. His discussion with Hobbs reflected a deep-seated understanding of the inherent challenge of balancing a public resource on which human life depends with the private property rights to use that water.

In 2012, Hecht authored the Court’s landmark decision on groundwater, *Edwards Aquifer Authority v. Day*. That decision reaffirmed Texas’ long-standing “rule of capture” for water “in place” under land, holding that groundwater regulation could constitute a taking of private property and require just compensation. He followed up with last year’s *Coyote Lake Ranch* decision, holding that the water rights owner had a duty to provide reasonable “accommodation” for the overlying landowner uses. These decisions led the DTW Conveners to focus this year’s conference on groundwater.

Hecht has established his credentials for public service, starting with service in the US Navy Reserve JAG corps and including public service awards. He has advocated for legal aid to ensure all Texans have access to justice. He has served as an elder at his church. Since receiving his BA with honors in philosophy from Yale, Hecht has continued to participate in the Texas Philosophical Society. He also works with the law school at Southern Methodist University, where he received his JD. He lives in Austin.

**Recent court decision? Something to share?** [ALFIII@sbcglobal.net](mailto:ALFIII@sbcglobal.net)

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