

## Minnesota Association of City Attorneys Annual Conference 2020

### *NOAA Atlas 14: The Prequel – Cities, Stormwater, and Climate Resilience (February 7, 9-10:30am)*

#### ***Potential Liability From Stormwater-Related Projects & Infrastructure***

Stormwater-related projects and infrastructure present unique liability challenges to municipalities, particularly when combined with changing climate dynamics that effect the frequency and volume of precipitation events. To mitigate risk exposure and limit potential liability, municipalities need to be mindful—both in project design and construction, as well as in the operation, maintenance, and repair of their stormwater conveyance systems—of how factors both within and outside their control impact drainage patterns throughout their jurisdictions.

Where property owners are negatively affected by stormwater discharge, inundation, or accumulation, state or federal law provide a variety of potential causes of action. For example:

- Inverse condemnation claims seek to compel exercise of eminent domain where private property is taken for a public use without compensation. Minnesota courts have found that inverse condemnation claims may proceed where physical appropriation of property occurs as a result of a frequent, regular, and permanent flooding conditions. Upon prevailing on an inverse condemnation claim, litigants can recover diminution of the market value of the subject property, as well as attorney, engineering, and appraisal fees incurred in the litigation.
- Negligence claims may arise in different contexts. Negligence theories may apply in the design and construction of a stormwater-related project. Separately, negligence claims may lie in the operation, maintenance, or repair of a stormwater conveyance system; municipalities owe the same duties of care of maintain and repair their stormwater infrastructure as those of private property owners.
- Trespass and nuisance (private or public) claims may also attach where a stormwater conveyance system causes water to invade property without the owner's permission or consent or where water obstructs and interferes with an owner's use and enjoyment of her property. Minnesota law makes injunctive relief available under nuisance claims, in addition to damages.
- By its 2019 decision in *Knick v. Township of Scott*, the U.S. Supreme Court overturned long standing precedent and held that property owners may now pursue federal constitutional claims under the Takings Clause and 42 U.S.C 1983 **without** first exhausting state-law inverse condemnation remedies. As a result, property owners may now pursue concurrent takings claims based under **both** federal and state law. Importantly, federal law provides that intermittent flooding, seasonal flooding, or flooding of even limited time duration may amount to compensable takings.



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Andy Pieper develops and executes cost-effective trial strategies that leverage his client's strengths to achieve the best possible results. He's an experienced trial attorney who applies his skills no matter how a dispute arises, whether in land use, natural resources, employment, bankruptcy, intellectual property, or other areas.

In addition, Andy provides risk mitigation advice to clients seeking to avoid litigation before it begins.

Andy's also a *Pro Se* Project volunteer with the Minnesota chapter of the Federal Bar Association, through which he regularly assists indigent clients with navigating litigation in federal court, and the Minnesota State Bar Association has recognized him as a North Star Lawyer for annually donating 50+ hours of pro bono legal services.

## INTRODUCTION TO THE FIRM

Stoel Rives LLP offers a full suite of transactional and litigation solutions. Attorneys in our Minneapolis office provide exceptional legal services to a broad spectrum of clients, including in the public sector. We regularly assist clients on matters related to land use and environmental issues, renewable energy projects, real estate development, and all aspects of litigation, among other practice areas.

We have many years of experience working on behalf of municipal clients. Our work for these clients includes:

- Environmental issues and disputes;
- Development and redevelopment projects involving contaminated properties
- Regulatory compliance, include federal, state, and local permitting
- Transactional due diligence
- Land use and planning
- Tax
- Finance
- Public contracts

## OTHER PROFESSIONALS



**Kevin D. Johnson**  
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Kevin advises and represents companies and local governments on issues involving environmental, energy, land use, and natural resources law. He develops effective strategies and solutions to address such matters as:

- Siting and development of facilities
- Regulatory compliance and response to enforcement actions
- Federal, state and local permitting
- Due diligence in transactions
- Property contamination issues

Clients particularly rely on Kevin for his experience with energy projects — including bioenergy (waste-to-energy), biofuels (ethanol and biodiesel), wind and solar energy, and natural gas. He also assists in addressing issues associated with waste management facilities, agribusiness operations, natural resources industries and redevelopment projects.



**Thomas Braun**  
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Clients rely on Thomas for his broad experience in matters involving environmental and energy issues at the federal, state, and local levels. Thomas works strategically and finds creative solutions to matters involving:

- Management, remediation, and redevelopment of contaminated properties (brownfields)
- Siting, permitting, and development of large commercial facilities
- Due diligence in corporate and real estate transactions
- Regulatory compliance and response to enforcement actions

Prior to joining Stoel Rives, Thomas worked at the U.S. Department of Justice and Minnesota Pollution Control Agency.