Conference Materials Now Available on NJC Cloud
As part of its continuing effort to serve water judges, *Dividing the Waters* now offers the materials from the “Changing Land, Changing Water” conference to any judicial member of the DTW network. The conference materials, as well as the webinar on water law fundamentals, are available on the NJC-DTW Cloud. You can obtain access to these materials and the webinar from Christal Keegan@judges.org.

**NM: Instream “Carry” Water = Beneficial Use**
The New Mexico Court of Appeals held that Albuquerque’s application to use Rio Grande water to carry its contract water from the Colorado River system is a beneficial use and requires an appropriation for non-consumptive use, in *Carangelo v. Albuquerque-Bernalillo Co Water Utility Auth.*

Albuquerque has a contract with the Bureau of Reclamation to obtain water from the San Juan-Chama Project (SJCP) in the Colorado River basin. It applied to use native Rio Grande water to “carry” SJCP water to its treatment plant, labeling the use as “non-consumptive” and “not beneficial,” therefore not requiring an appropriation. Protestants appealed the State Engineer’s permit approval to the district court, which granted summary judgment to the applicant and the State Engineer.

The Court of Appeals rejected arguments from both sides, holding that the instream use of water to carry the imported SJCP water was a beneficial use requiring an appropriation. The court interpreted the New Mexico Constitution to allow permits only for beneficial use, and finding instream use a beneficial use. Applying the stipulated facts from the permit hearing process, the court concluded that the State Engineer had considered the necessary facts to issue a water right permit. On remand, the court directed the State Engineer to issue the permit.

The appellate court upheld the district court on other related matters of interest to DTW members, affirming the State Engineer’s actions in assessing Rio Grande Compact compliance and rejecting protestant requests for recusal. The court held that the State Engineer could learn about the project before the hearing without biasing the outcome and denying protestants’ due process. It drew the line at whether the State Engineer had expressed any prejudice, and the record showed no such indication. Mere familiarity with the facts beforehand was not determinative. [Thanks to the NM judicial officer who shared this decision.]

**Conference Participants Offer Questions for Colleagues**
After panel discussions and the field trip to the Willamette-McKenzie watershed, conference participants identified several questions for their colleagues to consider in adjudicating water issues. Questions focused on science and the many factors involved in land-water nexus issues. These questions can be found on the *DTW Conference Page.*

**In Focus: Michael “Mick” O’Hara (Colorado)**
Judge Mick O’Hara never expected to serve as one of Colorado’s water judges. He grew up in Southern California and moved his family to Steamboat Springs, Colorado in 1991. He practiced there for 11 years, emphasizing family law, personal injury and criminal defense – NOT water.

After his appointment to the bench in 2002, but before beginning his new job, O’Hara went to the Colorado Judicial Conference and his predecessor asked him to go to an evening meeting on water. His predecessor did not come, and Justice Greg Hobbs asked O’Hara to report on the status of water cases in his district. It was a short report because O’Hara knew nothing about the water cases, but committed to learn about water. Not long after, he assumed the water judge post for Division 6 (NW Colorado).

O’Hara fulfilled his commitment to learn about water when he joined *Dividing the Waters* in 2004. He has participated in many Program conferences, including this month’s conference in Eugene. The afternoon before the conference, he married Nicole, his longtime companion and spent the days following in the Willamette River watershed with his DTW colleagues. “I get the most out of DTW from the interaction with other water judges who all face the same sort of challenges. Additionally, the “hands on” experiential learning aspects are invaluable in applying what we learn to real life situations.”

“…I have come to appreciate how crucial this area of the law has become and it is actually daunting to think about the impacts of water decisions and policy on society as a whole. I will be forever grateful to all those involved with DTW for being there when I needed them.”

O’Hara received his undergraduate degree from St. Mary’s Seminary and his J.D. from the University Of San Diego in 1984. O’Hara practiced in San Diego for 7 years before the move to Steamboat Springs, where he and Nicole still live. He won the 1999 Northwest Colorado Bar Professionalism Award.

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

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Hon. Chad Schmucker  
President

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Executive Director