

The Network Note January 2025

2025 DTW Conference Dates Moved to September 24-27, 2025

ID: No Primary/Secondary Division of Rights for Tribes
The ID Supreme Court rejected any distinction between primary and secondary purposes for tribal reservations. In *Coeur D'Alene Tribe v. Idaho*, the Court held that the Coeur D'Alene Tribe had broad rights to water, based on its 1873 reservation.

The US first set aside a reservation for the Coeur D'Alene Tribe in an 1867 Executive Order. When the Tribe learned about the reservation in 1871, it was not satisfied because it lacked fishing and water way use points. It still agreed to cede land in 1873, and US continued negotiating. Congress ratified a treaty in 1891.

In 2014, US DOJ filed 353 claims on behalf of the Tribe in the Spokane River/Coeur D'Alene Basin water right adjudication. The Tribe's claims fell into 6 water use categories, including 195 claims for wetlands. Three years later, the district court decided, on summary judgment, the Tribe's entitlements to water rights, disallowing water right claims based on:

- a homeland purpose theory
- secondary purposes (*i.e.* industrial, commercial, aesthetics, recreation, and others)
- water outside Reservation boundaries
- lake level maintenance of Lake Coeur d'Alene
- improper legal grounds

The Tribe/US appealed and the State/water users opposed.

The ID Supreme Court reversed *and* affirmed the district court decision. It held that the primary/secondary distinction from *NM v US* did not apply to tribal reserved water rights. The Court analyzed the Reservation's origins, holding the Tribe's priority date as 1873, when it first ceded land to the US, and subsequent treaties did not limit Reservation purposes. Reviewing the facts of the Reservation's creation in detail, the Court also held:

- Reservation had a "homeland" purpose.
- Tribe could claim water for domestic, agriculture, hunting and fishing, plant gathering, and cultural purposes.
- Tribe could not claim water for industrial, commercial, aesthetic, or lake-level maintenance purposes.
- Tribe could claim rights to groundwater and instream flow on the Reservation (but not off the Reservation).
- Water on reacquired lands had date of reacquisition for consumptive use and time immemorial for instream use.

DTW Conference Takes Shape – The MT Experience

After learning the Missoula Airport will close on the original dates, the Conveners quickly pivoted to new conference dates only a few weeks later. This conference will draw on lessons from MT – water court adjudications, statutory development of Prior Appropriation Doctrine, instream flows, tribal water, and other federal reserved water rights. **PLAN NOW TO JOIN US on September 24-27, 2025, in Missoula!**

In Focus:

Judge Kent Holmberg (UT)

When Utah created its water judge program, 3rd District Court Judge Kent R. Holmberg volunteered immediately. Water had intrigued him since early in life, with family living on farms and his teaching natural resource law at state colleges in MN. His education, however, did not touch water. He earned a BA from U of TN and a JD from William Mitchell College of Law.

Holmberg's understanding of water conflicts grew when he moved to UT 20 years ago, when his children went to college. In MN, water law was about too much water, while UT had conflicts over water shortages. In private practice and in the AG's office doing work on torts, he did water cases. When he represented the UT State Engineer, he learned about how and why the office managed UT water rights.

Gov. Herbert appointed Holmberg to the 3rd District bench in 2016, where he has served in SLC and Summit Counties. Even before he became a water judge, he adjudicated water, involving water districts, farmers, and other diverters. Once he became a water judge, his first trial involved the 3rd generation in the Beaver River dispute. In 2023, he got assigned to adjudicate the Virgin River in southern Utah. In light of local concern about a northern judge, Holmberg quickly visited St. George to get to know the court and the community. He earned community trust, with support from UT water lawyers. Neither he nor his special master heard any complaints about his work.

At the last *Dividing the Waters* conference in SLC, Holmberg loved the combination of water law, science, and passionate judges trying to make a difference in the water world. The field day was "incredible, a chance to go out on the Great Salt Lake, to places where I could never go otherwise." He appreciated sharing time and meals with other judges who knew so much and cared so much about water. He will retire this year, so he will not have the opportunity to enjoy this year's conference at the University of MT. His interest in water, however, remains.

Court Decision on Water? Profile on *You?* Email alfb@judges.org