

The Network Note July 2025

Dividing the Waters 2025 Conference September 24-27, 2025 – Registration Cap

More than 40 judges have registered for this year's conference, and capacity is set at 60 participants, due to space limitations, particularly for the Friday field trip. If you plan to participate this year, [**REGISTER NOW!**](#) (Deferred payment allowed)

NM: Beneficial Use and Intent to Abandon Rights

The NM Supreme Court held that long-term non-use of water creates presumption of intent to abandon water rights under the common law, given the centrality of beneficial use to NM water law. In *State Engineer v. Intrepid Potash*, the Court affirmed the trial and appellate courts in finding water rights abandoned.

Intrepid Potash had rights to Pecos River water dating back to 1883. It completed a refinery in 1932, with 55K acre feet of water rights. The refinery closed in 1973, and Intrepid eventually removed the Pecos River water diversion facilities.

While Intrepid tried to lease rights, it did not use the water itself. It applied to the State Engineer (OSE) for more time to put water to beneficial use. In 1991, OSE initially declined to grant an extension, until Intrepid agreed to provide instream flow to the Interstate Stream Commission (ISC). In 2003, ISC settled instream flow issues but did not include Intrepid's water rights because it had a zero-use history. ISC offered Intrepid the opportunity to object, but it did not object to the agreement.

When Intrepid filed to change the purpose of use in 2016, parties to the administrative case before OSE filed a complaint for an *inter se* adjudication of Intrepid's water rights. The district court held that Intrepid had abandoned and forfeited its water rights, except for 150 AF, because it had not used water since 1974. The appellate court affirmed the district court on law and facts.

The NM Supreme Court described beneficial use as "the constitutional principle that determines the right to the use of water." It concluded that Intrepid had abandoned its water rights because its evidence did not rebut the abandonment presumption and speculation is contrary to beneficial use. It distinguished between common law abandonment (with intent) and statutory forfeiture, rejecting Intrepid's defenses as to intent. It described the 1969 *South Springs* decision as the "definitive test for abandonment of water rights," harmonizing it with Intrepid's emphasis on the 2021 *Gray* decision.

Tribal Water Rights Webinar: Winters Case History

Noon PDT – August 27, 2025 – [Register Now](#)

The webinar with historian and author John Shurts (*Indian Reserved Water Rights*) on the history behind the 1908 *Winters* decision is now open for registration. As Tribes defend water rights in state courts today, understanding the history may help judges assess the history of those tribal reserved water rights.

Travel Plans? When Do You Arrive in Missoula?

In August, NJC will ask participants whether they plan to arrive for the pre-conference workshop on management of parties and science in general stream adjudications (9 am), the dam field visit or the opening reception at 5 pm on Wednesday, 9/24. The workshop and dam visit may have limits on participation.

IN FOCUS:

Judge Richard Mrazik (UT)

UT Judge Richard Mrazik originated on the East Coast, growing up in CT and receiving his BA from Bowdoin College in ME. In his year serving as an AmeriCorps member at the Fourth Street Clinic serving the Salt Lake City's homeless community, he fell in love with SLC, the snowy Wasatch, and the law.

Mrazik stayed in SLC, went to law school at the University of Utah, and started his career in private practice. After thirteen years as a litigator, Gov Gary Herbert appointed Mrazik to the 3rd District Court in 2018.

While he calls the Wasatch Front home, Mrazik serves the Wasatch Back as a district court judge in Summit County, in addition to Salt Lake and Tooele Counties to the west. Beyond responsibilities on the bench, he chairs the UT Judicial Council's Standing Committee on Resources for Self-Represented Parties and serves on the Board of the Utah Avalanche Center.

With encouragement from Judge Appleby, Mrazik accepted a Judicial Council appointment as one of UT's water judges. His interest in water originates from his passion for skiing, but he saw water law in private practice (for Town of Alta) and on the bench, where water issues arise in the context of development.

He hopes to come to Montana this year, but state funding may limit his opportunity to travel. *Dividing the Waters* will help him on his path to "continuous improvement" as a water judge. Its online courses on water science and water rights may be first steps on the path, as he looks forward to future conferences.

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