

The Network Note

March 2017

Article: Judicial Evolution of New Mexico Water Law

The University of New Mexico law school's Natural Resources Journal recently published an article, by Judge Matthew Reynolds, on how its courts have shaped New Mexico's water law. [*Trial and Error: How Courts Have Shaped Prior Appropriation*](#) tells the story of water law decisions that reflected and made New Mexico, as a state and a territory. This article, particularly relevant for *DTW* judges who continue to affect the water law of their states, concludes with advocacy for greater state investment in its general adjudications. The "legislature must ensure that our statutes and funding for their implementation match the urgency of New Mexico's critical water needs, not just for the present, but also for a more arid New Mexico that our children and grandchildren will soon face."

9th Cir: Tribes Have Reserved Groundwater Rights

In a matter of first impression, the Ninth Circuit held that federal reserved water rights include rights to groundwater. The Circuit rejected arguments by the neighboring water district that would limit the *Winters* doctrine to surface water.

In *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*, the 9th Circuit considered the claim of a desert Indian tribe (Tribe). Presidential orders in 1876 and 1877 set aside federal lands around what is today Palm Springs, to encourage Indians to "build comfortable houses, improve their acres, and surround themselves with home comforts." A 1938 court decreed a small amount of surface water rights for the Tribe, but that water comes during the winter. The Tribe and its neighbors rely on groundwater for most uses. Since the 1980's, those uses have caused the overdraft of the groundwater aquifer.

The Tribe filed suit for a declaration that it has reserved rights to groundwater pursuant to the *Winters* doctrine. The district court held that the Tribe had reserved rights to groundwater, and certified the question for appeal.

In concluding that the Tribe held a reserved right to groundwater, the 9th Circuit held: 1) the Government intended to reserve water when it reserved lands in 1876-77; 2) the reservation included groundwater; and 3) federal reserved rights pre-empt water rights under state law. The court rejected the water agency arguments that the Tribe's water rights under state law satisfied its needs.

Join *Dividing the Waters* at Baylor (Texas)

November 1-4, 2017

***DTW* Seeks Funding for Judges' Travel**

In light of limited foundation funding, the *DTW* Executive Director is pursuing funding for judges' travel to Texas from other sources, including state governments. Three states are considering funding for *Dividing the Waters* (NV, CA, CO).

In Focus: Chief Judge Matthew G. Reynolds (NM)

The diversity of experience of New Mexico 7th District Chief Judge Matthew G. Reynolds recalls the time of those 19th-Century judges who "rode the circuit" practicing law and dispensing justice across the West – Wyoming, Alaska, New Mexico. His experience in New Mexico water law adds to his western credentials. But, like many 19th-Century western judges, Reynolds started out in the Midwest, with degrees from Notre Dame in Indiana.

Reynolds started life in Anadarko, Oklahoma, son of a nurse and a journalist. He went to Notre Dame for a BA in classical languages and MA in theology. He moved to Cheyenne to teach Greek and theology to high school students. A growing family inspired him to go to law school at the University of Wyoming. Following graduation, they all moved to Alaska, where Reynolds practiced in firms and as a deputy DA. In 1992, warmer weather drew them to Truth or Consequences, New Mexico, where Reynolds initially served as a high school crisis counselor and began to practice law on his own.

Like many lawyers in New Mexico, Reynolds' general practice included water law. When he took the bench as a district judge for four NM counties in 2005, the New Mexico Supreme Court appointed him as the region's water judge. He attended his first *Dividing the Waters* conference in 2009 at NJC, where he appreciated the opportunity to join other state and federal judges with water cases. "The *DTW* conference on 'Water Law and Climate Change' helped shape my understanding of the law's response to a changing environment."

Reynolds lives outside a ghost town in the foothills of the Black Range Mountains near Truth or Consequences, with his wife Susan, "an artist, author and walking adventurer."

Recent court decision? Something to share? ALFIII@sbcglobal.net

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