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.

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