

The Network Note September 2024

TX v NM Webinar: State Control of Interstate Water Thursday October 3, @ 10 AM PDT

Don't miss the insights on state-federal control of interstate waters from the recent SCOTUS decision in *TX v. NM*!! Expert water law professors [Buzz Thompson](#) (Stanford) and [Burke Griggs](#) (Washburn) will discuss how the recent SCOTUS rejection of the TX-NM settlement of their compact dispute may impact your state's control of interstate waters. [Register now!!](#)

CO: No Standing to Exercise State Riverbed Ownership
The CO Supreme Court rejected a fisherman's declaratory relief claim of a right to wade in the Arkansas River to fish. In *State v. Hill*, the Court held that plaintiff had no standing to exercise the State's ownership rights to the bed of the Arkansas River.

For many years, Roger Hill had fished in his favorite fishing hole in the Arkansas River. A neighboring landowner chased him from his fishing hole, sometimes with force, and threatened arrest for trespassing. Hill filed suit against the landowner for declaratory relief and to quiet title in the riverbed. He argued that the riverbed was public land owned by the State of CO in trust for the people, so he had a right to stand in the riverbed.

When the case was removed to federal court, the State of CO intervened. The US court remanded the case back, where the trial court concluded that Hill had no standing, and dismissed.

On appeal, Hill argued that the federal Equal Footing Doctrine, not state law, applied and gave him rights to wade. The court of appeal affirmed dismissal of the quiet title claim, but found Hill had standing to assert "an interest that is his own—the right to wade and fish in the river at the location in question." It remanded the case for trial, but the State and the defendants petitioned for *certiorari*. The Court granted the State's petition.

The CO Supreme Court reversed the court of appeal on the declaratory relief claim, holding that Hill had no standing because he had no legally protected interest. (The parties had not appealed whether Hill had an injury in fact.) It noted that plaintiff had alleged that the State owned the riverbed. The declaration he sought therefore depended on the State's claim to ownership "that is not his to pursue." The Court concluded:

Because Hill seeks a declaration of the State's property interest as a necessary precursor to any individual legally protect interest, he does not have standing to pursue the declaratory judgment claim.

PLAN YOUR CALENDAR NOW!

2025 DTW Conference: September 3-6, 2025

The *Dividing the Waters* Conveners have identified several water issues that arise in MT and are relevant to conflicts in other western states, including the tension between the Prior Appropriation Doctrine and evolving state laws, instream flow, and the *Winters* Doctrine for tribal reserved rights. The field day will include a visit to the Confederated Salish Kootenai Tribes' reservation, which includes a dam below Flathead Lake, and lunch/program at the UMT Flathead Lake Biological Station.

This year, some *DTW* judges had calendar conflicts preventing them from participating in SLC. The MT conference is the week after Labor Day, possibly making it easier to block out.

NJC-DTW Will Create Water-Tribal Program for WA

Earlier this year, the WA Legislature passed a law authorizing courts to appoint "water commissioners" to assist with water right adjudications. The new law also requires the WA Administrative Office of the Courts to train the commissioners "as soon as reasonably practicable," on:

- Water Law & Indian Law
- Water Science
- Cultural Awareness of WA Tribal History and Tribal Governmental Relationships

WA judges' experience in SLC this year led to discussion of how NJC could assist the WA AOC in delivering the required education on water and tribal issues. NJC's water attorney, Alf W. Brandt, had unique experience, expertise and relationships that convinced WA to engage NJC on water/tribal education.

The WA program will include both in-person and online programs to address the AOC's required water/tribal education topics. It starts with Brandt consulting with WA State and Tribal leaders involved in the legislation, to invite their comments on the education plan. WA AOC plans to take the online programs into its judicial education system, so they will be available for judges across the state.

State-Specific Water Webinars

In conjunction with their payment for *Dividing the Waters* services, NJC will offer state-specific webinars to judges in four states. These webinars will address water issues identified by courts and judges in WA, NM, CO, and CA.

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