

This supplemental authority is relevant to Plaintiffs' arguments in their Motion for Summary Judgment [ECF 3491], and more specifically in their Reply in Support of Motion for Summary Judgment [ECF 3504], as follows:

Point I(B): A reasonable time to place water to beneficial use is less than 20 years.

Rather than rotely applying a pre-determined time to develop a water right in all cases, the NMCOA held that "each case would have to stand and be decided on its facts," using a totality of the circumstances approach. (Opinion—27, 33, 42).

Point I(D): It is for the State Legislature to add a mining exception to *Mendenhall's* application.

The NMCOA specifically applied the *Mendenhall* criteria to mining claims because it "has been adapted flexibly to meet new circumstances as cases presenting new issues arose," including industry and municipalities. (Opinion—27). The Court had no difficulty in applying the doctrine to the "unique character of extractive industries." (Opinion—42).

The new case law bolsters Meech's prior arguments that her water right should reflect a continuing ability to place water to beneficial use in the mining industry after due consideration of is attributes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 24, 2021, I filed the foregoing pleading electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Filing to be served by electronic means.



Tanya L. Scott