

## The Network Note November 2024

**Next Online Course: Water Law/Prior Appropriation**  
University of NM Professor Reed Benson continues progress on developing the next online water course, on surface water law and the Prior Appropriation Doctrine. NJC engaged Southern Utah University to produce the next two online courses, on water law. NJC also may develop a course on the Clean Water Act.

### State-Specific Webinars in Development

After this month's CA webinar on groundwater, three other states (CO, NM, WA) have started developing their webinars.

### CO: Authority to Set Cap on Groundwater Pumping

The CO Supreme Court approved caps on the total volume of water that pumping permits for non-tributary groundwater allow. In *Parker Water v. Rein*, the Court affirmed the Water Court upholding the State Engineer (SEO) decision to impose a cap on the City of Parker's total pumping in five groundwater permits.

Parker Water and Sanitation District applied for and received six well permits for Denver Basin aquifers, which CO deems non-tributary to surface waters. Five permits included a limit on total volume of water available for withdrawal. Parker appealed the caps to the Water Court, arguing that SEO did not have authority to impose total volume caps. Neighboring cities of Aurora and Greeley intervened to support the caps. The Water Court affirmed the SEO decision, finding that the statute's requirement that the SEO determine the "quantity" of available groundwater allowed a cap on total volume.

The CO Supreme Court affirmed the Water Court. It concluded that the statute "unambiguously sets forth a total volumetric limit on withdrawals of nontributary Denver Basin groundwater over the lifetime of a well permit equal to the quantity of water underlying the landowner's land as determined by the State Engineer at the time the State Engineer issues a permit." The Court offers a history of the statute's development in 1973 and 1985 legislation, although its "plain language" holding barred analysis of legislative history. The decision also discusses technical issues of hydrostatic pressure and cones of depression. The Court's decision rests, however, on the statutory language, its use of the word "quantity" requiring volumetric limits.

The dissent argued that "quantity" applies only to the analysis for the annual pumping limits. The language dispute leads the dissent to analyze legislative history, which it argues shows no intent to put a cap on the total amount of pumping.

Court Decision on Water? Profile on *You?* Email [alfb@judges.org](mailto:alfb@judges.org)

**WA: Justice Debra Stephens Elected Chief Justice**  
WA Supreme Court justices elected *Dividing the Waters* Convener Debra Stephens as Chief Justice. Stephens will step up to the Chief's position in January 2025. Given her state's recent engagement and investment in water right adjudications, she plans to continue to work with *DTW*.

### In Focus: Senior Water Master Madeleine Weisz (MT)

It comes as no surprise that MT Senior Water Master Madeleine Weisz found her way to water law, considering she grew up surrounded by water, or at least snow, in Sun Valley, ID. Before law school, she spent her life in, on, or near water and snow, as a ski coach, raft guide, and on ski patrol. Her "water" experience gives her some understanding of its value in water rights.

Weisz started her MT experience at MT State in Bozeman, as an undergrad in economics. She left MT for law school at UC Davis, where she discovered her passion for water law, when she attended the CA Water Law Symposium at UC Berkeley. She joined the Symposium organizers and, after law school, served as the organization's Secretary.

The MT Water Court attracted Weisz back to MT, where she joined the Court as a Water Master immediately after law school. She has served as both a Water Master and a mediator, preparing watersheds for issuing a decree. She may preside at public meetings, conference and hearings, or work with parties to resolve issues behind the scenes.

Weisz reports that the highlight of her career has been service as the Mediator in the Water Compact Case involving the water rights of the Confederated Salish and Kootenai Tribes. She convened mediations in towns and cities across NW MT, leading to the filing of over 60 stipulated withdrawals of objections.

This year's *Dividing the Waters* conference in SLC offered Weisz her 2<sup>nd</sup> *DTW* conference, having participated in Spokane in 2015. She reveled in the opportunity to learn and engage with experienced water judges from across the West as well as with mentors like Professors Rick Frank and Jennifer Harder. *DTW* "surrounds me with others who speak the same water law language. It expands my MT water court bubble, to learn from judges from other states facing similar water challenges and questions. I love it!"

**PLAN YOUR CALENDAR NOW!**  
**2025 *DTW* Conference: September 3-6, 2025**