

The Network Note March 2025

REGISTER NOW!

DTW 2025 Conference – U of MT Law School Missoula, MT – September 24-27, 2025

NJC invites you to register for this year's *Dividing the Waters* conference now, even if you are not certain about funding. Your registration now will help conference planning. Growing judicial interest in water may lead to greater participation. When you register, just click on deferred-payment button. You have until August to confirm/pay for registration. Register [HERE](#).

CA: Groundwater Stays with the Land
The CA Court of Appeal (5th App Dist.) affirmed the principle that groundwater rights remain appurtenant to overlying land. In *Sandton Ag Investments v. 4-S Ranch Partners*, the Court held that a former landowner cannot claim water as personal property once the water enters the aquifer.

Plaintiff 4-S defaulted on a loan from Sandton in 2018, leading to foreclosure on the “property,” voluntary bankruptcy, and enforcement of the deed of trust, by a \$20 M sale to Sandton in 2021. 4-S and its predecessors had had agreements with water districts to allow floodwaters to flow on their land and seep into the aquifer. It had previously sold some groundwater and argued that the “property” did not include 500,000 AF of groundwater, which was “personal property,” worth \$400 M. Sandton filed suit for ownership of land and water, while 4-S countersued, alleging misdeeds by Sandton in the sale to itself. The trial court granted summary adjudication for Sandton and sustained the demurrers to 4-S counterclaims.

The Court of Appeal affirmed the trial court, holding that the groundwater was part of the real property. Once the floodwater seeped into the land, it became subject to water rights and overlying landowners have the right to water under their land:
[A]llowing water to seep into an aquifer changes its legal classification to percolating groundwater, regardless of whether it was previously classified as floodwater or personal property. Percolating groundwater is in a “natural state” and, as such, “is part of the land.”

The court summarized CA water law, and rejected 4-S arguments on groundwater as personal property. It noted that 4-S did not cite case law on groundwater as personal property after CA adopted the “reasonable use” doctrine in its Constitution in 1928. The court also rejected 4-S arguments on improper sale.

WA Water/Tribal Program Progresses

The NJC/DTW program for WA AOC progressed significantly this month, with a webinar on Indian law and an in-person course on water science at WA State University (Pullman). Jonathan Yoder, Director of the WA Water Research Center organized the professors to teach in a number of fields. NJC helped them understand judges’ needs for science.

IN FOCUS: Water Judge Todd Taylor (CO)

When then-Chief Judge Jim Hartmann invited Judge Todd Taylor to serve as the alternate water judge in CO Water Division 1, Taylor had no experience in water. Taylor still said yes, because he understood the importance of water for his region around Greeley, CO. The 19th-Century “Union Colony,” which became Greeley, created some of CO’s first ditches. As a trial lawyer, he had seen 30 water lawyers show up for trials.

Taylor had grown up on a nearby farm and went to college at U of CO in Boulder. For law school, he moved to Washington DC to go to Georgetown. He served in the US Dept. of Education and Legal Services Corp. before returning to CO so he could try cases. He joined the DA’s Office, where he met Jim Hartmann. He moved to private practice for trials in civil and criminal law, until he took the bench in 2010. Water did not appear on his radar until the 2013 invitation from Judge Hartmann.

“Turned out, I loved water, endlessly fascinating and so critically important.” Taylor has tried 6 water cases, and his decisions go straight to the CO Supreme Court. Last year’s *Parker Water v. Rein* case helped him understand the complexity of surface and groundwater in the Denver Basin Aquifer, and its importance to his community’s needs for drinking water.

Taylor encountered *Dividing the Waters* when he got the *Adjudicating Groundwater* bench book, after trial in the *Lazy D* case, which was all about geology. It helped build his understanding of groundwater scientific principles and judge the competing testimony of geohydrologists. He wished he had had it before trial, and expects to use it in a future trial.

DTW’s greatest value for Taylor may be its network, because he learned the value of water mentorship when Judge Hartmann appointed him water judge 9 months before he retired. Water adjudication offers so much complexity that experienced water judges offer insight into how best to resolve intense water conflicts. He hopes to join this year’s DTW conference.

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