

## The Network Note September 2025

### Missoula Conference: Building the *DTW* Network

Participation in this year's *Water Law at the Quarter Century* conference had a record number of judicial participants and faculty, at close to 60. Newer judges met experienced judges who they can contact when new issues arise, with many commenting on the value of their new contacts.

In the year ahead, *DTW* Conveners and NJC staff will work on further building the *DTW* Network. All who are interested in water adjudication are welcome to join the Network and receive the *Network Note*. (Only judges, however, can participate in conferences.) *Dividing the Waters* has become more than an occasional conference. It offers water judges a knowledge network of experience and information resources. Please encourage colleagues and water aficionados, to join at:

[https://www.judges.org/dividing\\_the\\_waters/dtw-join/](https://www.judges.org/dividing_the_waters/dtw-join/)

### CA Court Reaffirms “Principle” of Water as Real Property

After ordering a rehearing in *Sandton v. 4-S Ranch* in April, CA 5<sup>th</sup> District Court of Appeal reaffirmed that groundwater is real property unless severed from the land. The outcome remained the same, affirming the trial court's summary adjudication on the point. The March *Network Note* offered a case summary of the first decision, so this note just adds a few points. This court:

- Observed: “California water law has been described as arcane but some concepts are so well established as to be considered hornbook principles.” [citations omitted]
- Quoted Witkins *Summary of CA Law*: “Water in its natural state is a part of the land and therefore real property. When severed from the realty, reduced to possession, and placed in containers, it becomes personal property.”
- Distilled water law as having “the basic common element of possession.” But, to “hold that merely exercising ‘dominion and control’ over water is sufficient to establish a personal property right would be contrary to the fundamental principles of California’s water laws.” [citations omitted]

### Where Does *Dividing the Waters* Go Next?

With the Missoula conference completed, Conveners will consider which watershed will host the next conference, in spring 2027. Some participants talked about their preferred location. If you have ideas, send them to [Alf W. Brandt](mailto:Alf W. Brandt).

### Lessons Learned from 2025 Conference

Before concluding the conference, *DTW* Executive Chair Kate Appleby and Alf Brandt led a discussion of the most important lessons learned from the conference, including:

- Water is life. It's emotional, cultural, historical.
- Learn from Tribes and what works in other states.
- Integrate climate change into decisions for the future.
- Consider the judge's role in building public confidence in the rule of law and the state water system.

### IN FOCUS:

#### Judge Bina Peters (MT)

Growing up in Billings, MT, Associate Water Judge Bina Peters enjoyed her state's river recreation, but did not consider water as a career. Water law showed up in her life when she started a clerkship at the MT Water Court, for Chief Water Judge C. Bruce Loble. She stayed, as a MT water master, for 4 years.

Initially, Peter's life plans focused on music. After high school, she moved to WA and got a fine arts degree in music from the U of Puget Sound (Tacoma). After working on the East Coast and on farms in New Zealand, she returned to MT and got a JD from U of MT (Missoula) in 2009. In law school, she received awards for her work on equal justice, ADR and women's issues, not water. She started her MT legal career as a plaintiffs' lawyer, but found the Water Court clerkship through an acquaintance.

Peters found water complex and critical to MT and the US. It offers a meaningful way to engage with Montanans. When she returned to private practice, she formed River and Range Law. She took leadership positions in the MT water law community, and joined the Water Court's Adjudication Advisory Committee. When Stephen Brown moved up to Chief Water Judge in 2025, she applied and got appointed Associate Water Judge.

Participating in *Dividing the Waters* was the natural extension of her water interest. Judge Brown invited her to present. In her first conference, she found the interstate network of water judges most valuable. “I found it reassuring to hear that we are all facing similar issues and struggles.” She found several judges to mentor her career as a judge. While she appreciated the presentations by author John Maclean and 9<sup>th</sup> Circuit Judge Anthony Johnstone, she found the “problem solving through dialogue” the most “wonderful” part of this year's conference. She looks forward to future *DTW* conferences in other states.

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