

## The Network Note October 2025

### Online Resources on Water Remain Available to Judges

*Dividing the Waters* does not stop serving water judges when its conference ends. Its online resources remain available to judges who have a water case. The *Adjudicating Groundwater* bench book is available to all. Online courses on water science and water rights are available in CA, CO, NV, NM, UT, & WA.

### CO: Anti-Speculation Doctrine & Groundwater

The Anti-Speculation Doctrine, which denies water rights to those who do not intend to apply water to beneficial use, does not apply to CO groundwater augmentation plans. In *Franktown Citizens Coalition v. Independence Water & Sanitation District* (District), the CO Supreme Court held that augmentation plan reviews require only analysis of injury to existing water rights, not application of the Anti-Speculation Doctrine.

In Denver Basin aquifers, CO law recognizes “nontributary water” (no surface water depletion in 100 years) and “not-nontributary water” (surface water depletion in 100 years). Nontributary groundwater is allocated based on ownership of land, not Prior Appropriation Doctrine. Rights to such water vest when State Engineer issues a well permit. A Basin-specific law allows water right adjudication for existing *and* future uses.

A 2006 decree in the Denver Basin set amounts of each type of groundwater available for beneficial uses. It approved surface water augmentation by allowing certain not-nontributary water to be used on lands in the Basin.

The District intended to provide water to a future 920-home development. When it applied to the water court to amend its augmentation plan to add authorized municipal uses for not-nontributary water, neighbors objected.

The water court reviewed whether the amendment injured other water rights. It rejected plaintiff summary judgment motion to apply Anti-Speculation Doctrine. Relying on *East Cherry Creek*, the water court held that the statute applied the Anti-Speculation Doctrine only to the State Engineer’s well-permitting process.

The CO Supreme Court affirmed the water court’s judgment, but on a different basis. The Court held that *East Cherry Creek* did not apply to augmentation plans, which do not set water rights. Instead, it held that augmentation plans and Anti-Speculation Doctrine serve different purposes. The sole inquiry in reviewing augmentation plans is injury to existing water rights.

### Encourage Colleagues/Water Aficionados to Join DTW

DTW invites the water community to receive the *Network Note* and watch live webinars. They can sign up here:

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

### Dividing the Waters Webinar in December

DTW plans to hold a December webinar, possibly arising out of issues discussed at the Missoula conference. Stay tuned for the date and topic.

### IN FOCUS: Judicial Assistant Emily Natale (AZ/MT)

This year’s program on self-represented claimants in general stream adjudications showed it takes an entire team to achieve success. AZ Judicial Assistant Emily Natale shared experience in structuring water court practices to serve thousands of the self-represented. Many are older, rural, with limited means, and limited internet access. They may need court assistance in accessing necessary documents by mail and understanding the process of adjudication through phone calls.

Growing up in MT, Natale did not expect to spend her work life talking water rights. She went to college at UMT in Missoula, married, moved to CA for a few years, but eventually came home to Bozeman, MT to focus on raising a family.

Natale’s entry into the water world was not planned. After leaving a tech startup, her mother suggested the MT Water Court, where she had worked. Natale knew little about water, but Sarah Calkins invited her to join the Court staff. With support of her colleagues, and a great learning environment, she learned water quickly. Applying customer service practices, Natale responded to calls from unrepresented claimants and found ways to address their difficulties in asserting water right claims.

In 2021, Natale moved to AZ where she joined the AZ water adjudication, as judicial assistant to the Water Master (now Sherri Zendri). This year, she joined Zendri and her former MT colleagues in her first DTW conference. She enjoyed being surrounded by those who understand water adjudication. Water “is boring in the most interesting way. Once you understand it, you can geek out in the details.” She found that she and Zendri would see “light bulbs at the same time,” from lessons learned for adjudication practices in AZ. She hopes to have another opportunity to participate in *Dividing the Waters*.

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