

Nevada Supreme Court Commission to study water case issues

Thoughts on the questions for 15 February assignment

1) Do I think a “water court” or “trained water judges” is appropriate?

I do not believe that a separate water court is the direction we should go. Contrary to much of the discussion we have heard, I do not believe that water law in Nevada is complex or complicated. Our water law is based on a simple principle – Prior Appropriation. I would support special training for District Court Judges in relation to water law and the associated principles. Whether that training is voluntary and those judges become ‘traveling’ judges to handle cases deferred by the District Judge; or mandatory, either would work. Maybe some judges need to be taught that law is adopted by legislators and it is not up to the judge to change it.

2) What should the scope of those judicial tasks be?

In cases where there are complex arguments where the science involved in the law are questioned (compared to just the law), those cases could have a set of specially trained judges that the District Court Judge could be encouraged to defer to.

3) If specially trained water judges are not necessary – why not?

Back to my previous statement – special training would be a benefit for our District Court Judges – whether mandatory for all District Court Judges, or voluntary and deferred to ‘traveling’ judges.

4) What would you define as either a water court or cases assigned to specially trained judges in water? --- I see a “water court” as a separate court entity, established in law, that all water cases are referred to – this is a system that I do not support.

Water judges could take a number of forms – but the two distinct options that I see are

- a. Mandatory special training requirements for all district judges in relation to water law and water case handling.
- b. Judges electing to receive specialized training, and a system in the law for District Court Judges to defer a case that comes before them to those specially trained judges (to be heard in the District).

5) How would you define a “water” case or the jurisdiction of a “water court”?

A ‘water’ case would involve something beyond the simple application of the law. Cases that involve complex legal arguments (possibly conflicts in the law) and/or complex scientific arguments mixed in the legal arguments.

I suppose if the direction is to create a new court system for water cases, the same criteria mentioned above could be used – complex legal arguments or complex scientific arguments in the application of the law.

With those things in mind, there is one other thought to consider – why are we here? The process that brought about this commission could basically be summarized in that the Nevada State Engineer’s office was and is overwhelmingly being beaten in court. Causes for this have been identified – mostly in that the office has not been following the law or diligent in creating a record for the decisions that they issue.

I will preface this as a personal idea, and not a statement of Nevada Farm Bureau Federation. We currently do not have distinct policy on this idea ---

One other option would be to create in law an oversight board for the Nevada Division of Water Resources; then making the Administrative Procedures Act apply to the State Engineer. We have this model of government in many of our agencies. State engineer regulations would be adopted by this board – not by the engineer himself. Decisions/orders of the State Engineer would be appealable to this board before going to the court system - this would aid in building the record for the court to review. There would need to be some specifics ironed out on how this council is appointed, how many members and such.

These are my thoughts on the questions posed.

Thank you,
Bevan Lister