

**Nevada Supreme Court Commission to Study the Adjudication of Water  
Cases**  
**(ADKT 0576)**

**Recommendations of the Subcommittee to Review Judicial Experience and Educational  
Requirements for Certification as a Specialty Water Judge**

The following are recommendations for the experience and/or education that state district court judges should have to qualify for certification as a Specialty Water Judge pursuant to a court rule that may be considered by the Water Commission.

The judicial education requirements proposed in this list were first compiled from the submissions of the members of the Commission as a whole, and then refined and prioritized by the Subcommittee for Judicial Education Requirements. The Subcommittee proposes that the below criteria be used for determining whether an applicant to be selected as a specialty water judge meets a sufficient threshold of knowledge of Nevada water law and the necessary hydrologic topics, which knowledge can come from a combination of practical experience or relevant education.

**I. SPECIFIC LEGAL, TECHNICAL AND/OR PRACTICAL KNOWLEDGE AND EXPERIENCE**

- A. Role of the Courts in Water Cases
  - 1. Distinction between general stream/aquifer adjudications, water rights decrees, and petitions for judicial review of State Engineer decisions:
    - a. Background for adjudications including
      - 1. proving up pre-statutory/vested water rights claims under common law;
      - 2. role of State Engineer in developing final order of determination;
      - 3. role of State Engineer in enforcing water rights decrees
    - b. Background of administrative law and its application to judicial review of State Engineer decisions.
  - 2. Other legal concepts in water cases:
    - a. equitable relief;
    - b. extraordinary writs;
    - c. expert witnesses;
    - d. special masters;
    - e. injunctions and stays;
- B. Role of the State Engineer and Administrative Agencies in Water Matters
  - 1. Administrative and Evidentiary Proceedings
  - 2. Process for obtaining a statutory water right, and a change to an existing water right, including the process for permitting and certificating a water right

- a. water availability, conflicts with existing rights, detriment to the public interest
    - b. interbasin transfers
  - 2. Conjunctive management of surface water and groundwater
  - 3. Overappropriation and curtailment
    - a. curtailment by priority
    - b. preferred uses
    - c. critical management areas and groundwater management plans
  - 4. Other administrative concepts
    - a. consumptive and non-consumptive use;
    - b. mitigation, including 3M plans and legal underpinnings;
    - c. adaptive management;
    - d. climate change and drought;
    - e. environmental protection criteria (federal/state law) and instream flows;
- C. Practical knowledge or experience of use of water in Nevada
  - 1. Uses of Water in Nevada
    - a. farming and irrigation, rotation of water, ditches and ditch companies;
    - b. stockwatering;
    - c. mining;
    - d. municipal & industrial;
    - e. instream flows and environmental uses;
    - f. water storage, reservoirs, aquifer storage;
    - g. well drilling and construction;
    - h. domestic wells
  - 2. Local and Regional differences in water uses and management throughout Nevada

## **II. GENERAL LEGAL KNOWLEDGE AND EXPERIENCE**

- A. General Principles of Nevada Water Law
  - 1. Doctrine of prior appropriation in Nevada and in other western states
    - a. historic role of water law in Nevada;
    - b. administrative management systems for water allocation, including water rights applications, permits, certificates, change applications
    - c. role of real property law in water cases;
    - d. attributes of a water right: point of diversion, place of use, manner of use, diversion rate, works of diversion, water duty, proof of beneficial use, perfection, pre-statutory vs. statutory
    - e. water delivery and conveyance
    - f. supplemental and temporary water rights
  - 2. Concept of beneficial use including:
    - a. usufructory nature of a water right;

- b. 'use it or lose it' principle, including forfeiture and abandonment;
- c. water speculation and its relation to Nevada water law;
- d. perfection and proof of beneficial use;
- 3. Role of federalism in Nevada water law, including proper deference of federal government to state administration of water resources and federal reclamation law;
- 4. federal river decrees;
- 5. Principles of the public interest principle and public trust doctrine;
- 6. Different types water rights, including federal reserved (Indian and non-Indian), vested rights, statutory rights, domestic use/domestic wells, temporary use, stockwater

### **III. SCIENTIFIC AND TECHNICAL KNOWLEDGE AND EXPERIENCE**

- A. Hydrology, Geology and Nevada's Environment
  - 1. The water cycle.
  - 2. The definitions of surface water, groundwater, evapotranspiration, an aquifer, and recharge.
  - 3. Movement of surface and ground water through the environment, including cones of depression, short- and long-term aquifer responses, stress tests
  - 4. The definition of a ground water basin and the 256 basins located in Nevada.
  - 5. The definition of a well and how are they constructed and drilled.
  - 6. An overview of local and regional differences in water management and an awareness of jurisdictional geography.
  - 7. The definition of perennial yield, how is it derived and used in water resource management.
  - 8. Definitions of a "water balance"
- B. Water measurement and water modeling

### **IV. CONTINUING EDUCATION**

Specialty Water Judge should be required to continue both their legal and technical/scientific education after selection. They should be required to take a minimum number of continuing education credits on the following subjects:

- A. Updates on modifications to Nevada water statutes and water law
- B. Updates on hydrology, water modeling and limitations, water measurement, including use of "Hydrologic Modeling Benchbook"

### **V. OTHER RECOMMENDATIONS**

The Judicial Education Subcommittee recommends the following:

- A. Develop (and regularly update) of a compendium of important caselaw, federal decrees, and decisions of the State Engineer regarding Nevada Water Law;

- B. Establish a judicial training program on water, water technology and water law.
- C. Provide for the availability of unbiased experts for judges to call upon in water litigation.
- D. Encourage Nevada counties and other jurisdictions to contribute to the expenses of judicial training and associated travel expenses.
- E. Make allowances for judges to attend annual Nevada Water Resource Association conferences and ongoing technical sessions.