



February 15, 2022

Via Email only: mfairbank@water.nv.gov
Micheline Fairbank, Esq., Deputy Administrator
Nevada Division of Water Resources
Department of Conservation and Natural Resources

Via Email only: jgradick@nvcourts.nv.gov
Jamie Gradick
Administrative Office of the Courts

Re: Commission to Study the Adjudication of Water Law Cases, In the Supreme Court of the State of Nevada, ADKT 0576

Dear Ms. Fairbank and Ms. Gradick:

This is in response to Justice Hardesty's request during the January 21, 2022 meeting of the Commission to Study Water Adjudication and Ms. Fairbank's February 8, 2022 email. Below are my responses to the questions set forth in the email.

What would you define as either a water court or cases assigned to specially trained judges in water?

How would you define a "water" case or the jurisdiction of a water "court"?

What the scope of those judicial tasks should be?

The phrase "water case" could be defined to include all legal proceedings in district court that arise under NRS Chapters 533, 534, 535, and 536 including, but not limited to, the following:

1. Statutory adjudications under NRS 533.165 – 533.195;
2. Judicial adjudications under NRS 533.240;
3. Petitions for State Engineer administration of decrees under NRS 533.310;
4. Appeals of State Engineer orders and decisions under NRS 533.450;
5. Injunctive relief under NRS 535.210 (dams) or 536.210 (ditches).

To determine the definition of "water case" and scope of judicial tasks, it would be helpful to understand how many water cases are pending in each judicial district, the type of case

(i.e. an adjudication, petition for judicial review, or others), and the length of time between initiation of the case and decision by the district court.

Whether you think a “water court” or “trained water judges” is appropriate?

If specially trained water judges are not needed, provide a viewpoint on that as well

I support providing water law and science education and training opportunities for Nevada judges. The Commission should analyze ways to improve judicial education in water law and science. Education and training are a necessary first step toward improving the adjudication of water cases. As pointed out by Judge Schlegelmilch, the National Judicial College’s Dividing the Waters (DTW) Program is a valuable resource and the Commission should look for ways to increase opportunities for Nevada judges to attend and participate in DTW programs. I believe the DTW plan described by Judge Schlegelmilch regarding on-demand and online courses would be beneficial and a good resource for Nevada judges. The Commission could recommend that the State Engineer and district courts request funding from the state of Nevada to support DTW, promote it to Nevada judges, and reimburse district court judges for fees and travel expenses to attend DTW’s educational seminars. Commission members and their organizations could join in support of such an initiative.

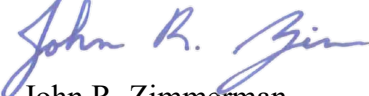
While DTW is a valuable resource, I also believe it would be beneficial to have training that is specifically tailored to Nevada water law. Accordingly, it would be worthwhile to create programs that educate and train judges on Nevada water law issues. Commission members, the State Engineer’s Office, and State Bar of Nevada could assist in this regard and perhaps partner with DTW to develop well-balanced courses. This type of course could also include elements of hydrology and hydrogeology most-relevant to Nevada and which most-commonly arise in Nevada water cases. Additionally, Nevada district court judges interested in water law could create a Nevada-specific program similar to DTW that provides opportunities for Nevada judges to share information regarding water cases they have handled, discuss problems they have encountered, and learn what works and what does not work.

As discussed above, to determine whether a water court is appropriate it would help to know how many water cases are pending in each judicial district, the length of time between initiation of the case and its adjudication by the district court, and the type of water case (i.e. petitions for judicial review, adjudications, or others). It also would be helpful to know how many cases were remanded to the State Engineer on the basis of equitable relief or procedural issues. The Commission should also study whether the standard of review in water cases should be clarified to address the issues described by the State Engineer in his June 22, 2021 memorandum to this Commission. This would allow the Commission to determine if other solutions could be implemented to improve the timeliness and efficiency of Nevada district courts in the judicial review of water cases.

If a water court is deemed necessary by the Commission, then I believe it would be appropriate to create it within each judicial district, if possible, similar to the manner in which other specialty courts are created. I believe that water cases with venue in a specific judicial district should be heard, if possible, by a judge of that district. Therefore, if a particular judicial district is not able to create a water court within its district because of a lack of judges willing to

serve on it, then the parties to water cases in that district should be allowed to keep the case in that district instead of being assigned to a water court outside the district.

Respectfully,



John R. Zimmerman