

## Commission to Study the Adjudication of Water Law

### Suggestions for Educational Requirements

Name	Organization	Suggestions
Mauricia Baca <i>Not a member of this commission</i>	Nevada State Director The Nature Conservancy	<p>Receive training on water interactions with plants and wildlife through the following;</p> <ul style="list-style-type: none"> <li>• National Judicial College and Dividing the Waters</li> <li>• Include Continuing Legal Education in the area of water issues</li> <li>• Utilize the Nevada Water Resources Association for instruction</li> <li>• An article series in the <i>Nevada Lawyer Magazine</i>, Nevada Water Resources Association's <i>waterSPOT</i></li> <li>• Develop and circulate materials through a water education organization like the Water Education Foundation</li> </ul>
Tom Baker	Agricultural	<ul style="list-style-type: none"> <li>• Prior appropriation is essential to provide consistent water rulings</li> <li>• Understanding hydrology and the connection between surface and ground water</li> <li>• Water models; their creation, limitations, and how to manipulate them</li> </ul>
Allen Biaggi	Mining	<ul style="list-style-type: none"> <li>• Basics of Nevada water law related to surface and ground water allocation</li> <li>• Nevada geology and basic hydrology, the Basin and Range, and Nevada's 256 water basins.</li> <li>• Require judges to obtain training in water law prior to being certified to hear such cases</li> <li>• Establish and administrative oversight board for the Division of Water resources</li> </ul>
Bert Bryan	Walker River Irrigation District	<ul style="list-style-type: none"> <li>• Water law</li> <li>• Water rights</li> <li>• Hydrology and pumping basics</li> <li>• Engineering and modernization basics</li> <li>• Nevada basins and water basin balances</li> <li>• Nevada history</li> </ul>
Gordon H. DePaoli, Esq.	Practicing Water Law Attorney	<ul style="list-style-type: none"> <li>• Understanding the science behind Water law, especially in light of climate change</li> <li>• Groundwater, groundwater modeling, surface water modeling and climate change modeling</li> <li>• Interconnection of surface and groundwater and the modeling of that interconnection</li> <li>• The material provided by Steve Snyder of the Nation Judicial College is a good example of needed education.</li> <li>• General education on water appropriation under common law</li> <li>• History of the area involved</li> <li>• Understanding of meaning and significance of basic water law concepts</li> </ul>

**Commission to Study the Adjudication of Water Law**  
 Suggestions for Educational Requirements

Name	Organization	Suggestions
Ross de Lipkau, Esq.	Mining	<p>Feels the State Engineer is the best resource for water law cases. If a ‘water judge’ were to be appointed, the following would be recommended:</p> <ol style="list-style-type: none"> <li>1. Should be an existing district court judge</li> <li>2. Spend time observing the State Engineer’s process for handling appeals and with the adjudication staff</li> <li>3. Attend one or two-day seminar listening to the State Engineer, a member of the Supreme Court, the deputy attorney general for the State Engineer and private practice attorneys experienced in both appeals from the State Engineer and the entire adjudication process. Those representatives should prepare an outline of procedures to be followed in appeals from rulings of the State Engineer</li> <li>4. If appeals or objections are de novo or not, the judge should be subject to identical training. If de novo, the judge would employ the State Engineer and staff as Special Master</li> </ol>
Judge Kathleen Drakulich	Washoe County District Court	<ol style="list-style-type: none"> <li>1. Attend tutorial by State Water Engineer including;           <ul style="list-style-type: none"> <li>• State Water Engineer Personnel and scope of responsibilities</li> <li>• Application process</li> <li>• Hearing process</li> </ul> </li> <li>2. Attend tutorial by State Water Engineer hydrologic engineers covering water resources in Nevada including ground water, surface water, domestic wells and the way depletion of these resources is interconnected, groundwater basin are allocated/over allocated, etc.</li> <li>3. Attend tutorials by key water providers/agencies such as SNWA, TMWA, TCID, WRID, etc., regarding each agencies’ overall management of Nevada’s water supply, allocating, water rights, rule of priority, maintaining beneficial use, etc.</li> <li>4. Attend contested Water Engineer Hearings</li> <li>5. Compile a manual containing;           <ul style="list-style-type: none"> <li>• History of Nevada water law including; Riparian Water Rights Doctrine, doctrine of Prior Appropriation, reallocation of basins, e.g., “The History of Water Law in Nevada and the Western States”</li> <li>• History of key Nevada Supreme Court decisions in water law</li> <li>• Key State Water Engineer decisions</li> <li>• Recent legislation impacting water policy in Nevada</li> <li>• NRS, NAC, and other statutory sections addressing water law</li> </ul> </li> <li>6. Compile key decrees relate to water resources in Nevada</li> <li>7. Attend National Judicial College program “Dividing the Waters” or similar</li> <li>8. Attend on-site tours of key water resources treatment plants</li> <li>9. Become familiar with Regional Plans to understand long-term development and water needs</li> <li>10. Meet with key community leaders to discuss local perspective on water issues, supply, use, and impact of growth and drought</li> </ol>

**Commission to Study the Adjudication of Water Law**  
 Suggestions for Educational Requirements

Name	Organization	Suggestions
Judge Gary Fairman	White Pine County District Court	1. Nevada hydrology 2. Climate science 3. Ground water modeling 4. Using the publication “ <i>Adjudicating Groundwater: A Judges Guide</i> ” as a reference 5. Having one or more uninterested experts in Nevada ground water science (hydrogeology) available to District Court judges
Rick Felling	Practicing Water Rights Engineer/Hydrologist	<ul style="list-style-type: none"> <li>• Basic and non-biased information on the hydrographic basins on interest based on studies provided by the USGS for the Nevada Dept. of Conservation and Natural Resources</li> <li>• General and Nevada focused hydrology publication not basin specific, see email for examples</li> <li>• District Court Judges should have a list of non-biased or uninterested hydrologists to be used as references</li> </ul>
Jeff Fontaine, Esq.	Rural Water Interests Water District	Three major subject areas; 1) Water Law: Classes in <u>Water Rights in Nevada</u> and <u>Advanced Water Rights in Nevada</u> provide comprehensive training. Requirements should also include seminars on the two basic principles of Nevada water law: prior appropriation and beneficial use 2) Water Science: Basics including surface water hydrology, ground water concepts and terminology, well pumping and aquifer drawdown, perennial yield and water budgets Advanced topics including analysis of aquifer test data, groundwater modeling, use and analysis of model results 3) Administrative Law: review the provisions of NRS 533.450 addressing judicial review, procedure, motion for stay and appeals of orders and decisions of the State Engineer
Judge Elizabeth Gonzalez	Clark County District Court	<ul style="list-style-type: none"> <li>• Basics of hydrology</li> <li>• Basics of hydrologic engineering</li> <li>• Basics of real estate transfers and recording of documents</li> </ul>

## Commission to Study the Adjudication of Water Law

### Suggestions for Educational Requirements

Name	Organization	Suggestions
Rusty Jardine, Esq.	Irrigation Districts	<ol style="list-style-type: none"> <li>1. Judicial Excellence in General <ul style="list-style-type: none"> <li>• Review the 2017 report “Elements of Judicial Excellence – A Framework to Support the Professional Development of State Trial Court Judges”</li> </ul> </li> <li>2. Judicial Excellence in Water Law <ul style="list-style-type: none"> <li>• Understanding of math, science, engineering, case management skills</li> <li>• Have the ability to follow and understand expert testimony, weigh the expert’s credibility, and distill fact and opinions into appropriate findings</li> </ul> </li> <li>3. On The Job Training or Existing Expertise <ul style="list-style-type: none"> <li>• Training through the National Judicial College, <i>Dividing The Waters</i>.</li> <li>• Cases should be assigned to judges bearing special interest and experience in water cases</li> </ul> </li> </ol>
Jason King	Practicing Water Rights Engineer/Hydrologist	<ol style="list-style-type: none"> <li>1. Enlist personnel from NDWR Hydrology, USGS, and/or DRI to teach a class on Hydrology 101 including aquifer response to pump tests and time lag, and Surface water/groundwater connectivity</li> <li>2. Comprehensive Nevada Water Law class held by NDWR covering: <ul style="list-style-type: none"> <li>• Perennial yield concept and how the estimates were derived <ol style="list-style-type: none"> <li>i. Evapotranspiration, Perennial Yield estimates based on ET capture</li> <li>ii. Pumping captures ET and valley floor springs</li> <li>iii. Given i and ii above, how can ground water development be environmentally sound?</li> </ol> </li> <li>• Adaptive management</li> </ul> </li> <li>3. A general understanding of Modeling presented by NDWR, USGS and DRI</li> <li>4. NDWR Water bulletins should be sent to the courts, especially highlights on law change</li> <li>5. Judges should attend Nevada Water Resources Annual conferences or possible create a concurrent session</li> </ol>
Bevan Lister	Agricultural	
Jon McMasters	Walker River Paiute Tribe	
Christopher W. Mixson, Esq.	Inter-Tribal Council of Nevada, Inc.	<ul style="list-style-type: none"> <li>• Federal reserved Indian water rights</li> <li>• Fundamentals of hydrologic science</li> <li>• Fundamentals of groundwater/surface water interactions</li> <li>• Concepts regarding water rights (usufructuary, irrigation seasons, consumptive/non-consumptive use, water duty, etc.)</li> </ul>

## Commission to Study the Adjudication of Water Law

### Suggestions for Educational Requirements

Name	Organization	Suggestions
Karen Peterson, Esq.	Practicing Water Rights Attorney/Rural Counties	<ul style="list-style-type: none"> <li>• Administrative law</li> <li>• Nevada water law</li> <li>• Introduction to hydrology including ground and surface waters</li> <li>• Introduction/basic geology</li> <li>• Introduction to groundwater modeling</li> <li>• Soil and water conservation class including consumptive use, irrigation practices, conveyance and crop losses, etc.</li> <li>• General natural resources management or rangeland management course</li> </ul>
Kyle Roerink	Environmental/NGOs Great Basin Water Network	<ul style="list-style-type: none"> <li>• Understanding of key provisions in Chapters 533 and 534</li> <li>• Compiling resources to create a guide for key terms</li> <li>• Understanding of pumping, over-pumping, damming or diverting water and the effects on a hydrographic system</li> </ul>
Judge John P. Schlegelmilch	Lyon County District Court	<p>Created a proposed curriculum with the National Judicial College for an on-line, on-demand instruction course covering the following topics;</p> <ul style="list-style-type: none"> <li>• Basics of water science</li> <li>• Water control, capture, and use</li> <li>• Overview of water law</li> <li>• Administration of water rights in prior appropriation states</li> <li>• Groundwater administration</li> <li>• Environmental flows: protection of watersheds and their associated fish and wildlife</li> <li>• Allocation of interstate waters</li> <li>• Water cases as complex litigation</li> </ul>
Laura Schroeder, Esq.	Rural Water Interests/Water District	<ol style="list-style-type: none"> <li>1. Education: The commission should work with the Nevada representative of “Dividing the Waters” to follow, support, and participate in the development of this program.</li> <li>2. Selecting Judges: <ul style="list-style-type: none"> <li>• Legislation to set up three divisions covering the state. Each division would be appointed a water judge who would be suitable trained.</li> <li>• All divisions would apply the same procedural rules, also adopted by the Supreme Court and Legislature</li> <li>• Acquire a case management software to allow easy and free web access</li> </ul> </li> <li>3. Administration: Legislation should allow for judicial review in specialized courts. If possible, allow adjudication courts to handle contested matters to alleviate caseload from the State Engineer’s office</li> </ol>

## Commission to Study the Adjudication of Water Law

### Suggestions for Educational Requirements

Name	Organization	Suggestions
Paul G. Taggart, Esq.	Practicing Water Rights Attorney/Domestic Wells	<ol style="list-style-type: none"> <li>1. Adjudications for Pre-statutory Water Rights Including:               <ol style="list-style-type: none"> <li>a. Developing a Court Decree</li> <li>b. Administering a Court Decree</li> <li>c. Federal and Native American Reserved Rights</li> </ol> </li> <li>2. Statutory Process for Appropriation of a Water Right</li> <li>3. APA Process and Administrative Process Used by State Engineer</li> <li>4. ‘Use it or lose it’ doctrines – abandonment, forfeiture, and cancelation</li> <li>5. Uses of Equitable Relief by Judiciary in Water Cases</li> <li>6. Basics of Groundwater Hydrology and Groundwater Interaction with Surface Water</li> <li>7. Recent Supreme Court Caselaw regarding Water and Administrative Law</li> </ol>
Oscar (Oz) Wichman	Rural Counties	<p>Study water science in the following subjects;</p> <ul style="list-style-type: none"> <li>• Data collection</li> <li>• Modeling and it’s limitations</li> <li>• Hydrology and related subjects</li> <li>• How everything comes together during the litigation process</li> </ul>
John R. Zimmerman, Esq.	Urban Municipal Water Purveyor Truckee Meadows Water Authority	<ul style="list-style-type: none"> <li>• National Judicial College’s “Dividing the Waters” program               <ul style="list-style-type: none"> <li>○ Adjudicating groundwater: A Judge’s Guide to Understanding Groundwater</li> <li>○ Modeling and the Hydrologic Modeling Benchbook</li> <li>○ Additional webinars and training programs</li> <li>○ DTW’s annual conference provides insight from judges in other states</li> </ul> </li> <li>• Commission should encourage counties to contribute funds for travel and participation in DTW.</li> <li>• If a water court were created, judges participating should be required to take 6 hours of legal education per year on water law or related fields; Hydrology or hydrogeology</li> </ul>