



# Truckee-Carson Irrigation District

## *Newlands Project*

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## MEMORANDUM

**To:** Commission to Study the Adjudication of Water Law Cases

**From:** Rusty D. Jardine, Esq., General Manager, Truckee-Carson Irrigation District (Providing Operation and Maintenance of the Newlands Federal Reclamation Project, Nevada)

**Date:** February 15, 2022

**Re:** Consideration of the following Foundational Questions:

1. Is a “water court” or provision of “trained water judges” in our state appropriate - necessary?
2. What should the scope of judicial tasks be?
3. Provide an explanation if specially trained water judges are not needed.
4. Defining a water court or cases assigned to specially trained judges in water; and,
5. Defining a “water” case or the jurisdiction of a “water court.”

### Introduction

Preliminarily, I wish to express appreciation for the opportunity to participate with the Commission. This is a high calling. As I expressed earlier, in so many ways *water is more precious than gold*. We know that! Nevada is the driest state in the union (as little as 10.3 inches of precipitation annually - with some regions receiving as few as 4 inches). <https://extension.unr.edu/climate>. Viewed only from that foundational perspective, water demands our greatest attention. And where best to apply that value than in the processes that lead to legal determinations governing the right to its use, the where, and the when, and the how, and the how much is to be used, and by whom it is to be commanded (a water right). Conceptually, distinguishing a water right from all other forms of property ownership is this: “The water of all sources of water supply within the boundaries of the State whether above or beneath the surface of the ground, belongs to the public.” NRS 533.025. That tenet alone invites specialization. Moreover, “[w]ater is life –safe and adequate supplies are the number one issue that will face individuals, communities, and governments around the world in coming decades.” Thomas

V. Cech, *Principles of Water Resources History, Development, Management and Policy*, 4<sup>th</sup> ed. [Hoboken: Wiley, 2018], p. 1.

Accordingly, study of the adjudication of water law cases is of untold worth. The fruit of that study, I believe, ought to be a recommendation that water cases be placed before judges that have specialized skills, training, and interest in such matters. Respectfully, I disagree with any of my colleagues that suggest we need not specialize in water cases. We are all witnesses to the success of drug courts, mental health courts, and business courts. Why we would suggest not pursuing such a course with water is simply lost on me!

What does my opinion matter? Little, if at all, I know; but, I do know those to whom we may turn our listening ears. In the Newlands Project we have over Three Thousand (3,000) water right holders. I'll speak for them. If at some point in time just one of them is found in a water law case, he or she will want a judge hearing the matter that has specialized skills, training and interest in his or her case. The view of a water right holder ought to be of the highest priority in determining this Commission's course.

## 1.

### **Is a Water Court or provision of Trained Water Judges in our State Appropriate or Necessary?**

In the foregoing Introduction, I expressed my bias. Yes, the training of water judges, assigned to water cases, is necessary. As to establishment of a "water court" –suggesting, ostensibly, a sole purpose with a separate dedicated staff: No.

Illustrative of the need for specialized training is the complex glossary of terms applying in water cases, such as the very attributes of a surface water right including ownership, source, manner of use, place of use, point of diversion, applicable duty, amount of appropriation, season of use, what special conditions may attend and why. With ground water, what is Darcy's law? With reservoir performance, are diffusivity equations useful? As to water measurement, what devices sense or measure velocity and which ones measure head or pressure?

We can well image the efficiency of a water judge hearing a case, knowing the language of water, and is undaunted by the perceived complexities of the issues involved -not to mention vastness of the record before him or her.

## 2.

### **What should the Scope of Judicial Tasks be?**

I believe the Scope of the tasks may be as broad as governing matters in which the primary claims or issues are based on or will require decision under NRS Chapters 532, 533, 534, 535, 536, 537, 538, 539, 549, 540A, 541, and 544 or other similar statutes from other jurisdictions. These chapters include, the State Engineer, Adjudication of Vested Water Rights, Appropriation of Public Waters, Underground Water and Wells, Dams and Other Obstructions, Ditches, Canals, Flumes and Other Conduits, Navigable Rivers, Interstate Waters, Compacts and Commissions, Irrigation Districts, Planning and Development of Water Resources, Regional Planning and Management, Water Conservancy Districts, Control of Floods, and Modification of Weather.



3.

**Why Specially Trained Judges May Not be Needed**

This is difficult for me –inasmuch as I assert the need for specialized training as stated herein above. Certainly, our best judges are capable of going it alone and advancing their own water law case experience. We imagine, however, the cumulative value to all water right holders in having judges that have been trained, have presided over water cases repeatedly, and have thus advanced their ability to timely-efficiently manage cases and fairly adjudicate the same.

4.

**Defining a Water Court or Cases Assigned to Specially Trained Judges**

I envision a process by which a “water matter” may be assigned to one of a panel of three to five judges, bearing the qualifications earlier cited. This form of assignment is the genesis of a “water court.” In the absence of a Local District Court Rules governing assignment, the appointment would be made by the Supreme Court. The water matters would be divided among the judges deemed water court judges. Parties may file a request in their pleadings that a case be assigned as a water matter. A person wishing to contest the designation of a case filed as a water matter would seek review with the Supreme Court. The decision whether or not a case is or is not a water matter would not be appealable or reviewable by writ. A case deemed not a water matter would be removed from the panel of water court judges and remanded to the District Court and department from which it came.

5.

**Defining a Water Case and the Jurisdiction of the Water Court.**

I suggest that a water case consists of a legal dispute where the right to the use of water In the State of Nevada or in another state, or the effects or objects of its use here or elsewhere, or any limitations, conditions, or restraints imposed upon its use here or elsewhere, are the primary claims or issues requiring resolution through the adjudicative process. NRS 533.035.

The question of further defining a water case and the jurisdiction of the Water Court, may be answered by Part 2 herein-above. It may helpful, however, to eliminate those matters that may not be the proper object of water court jurisdiction including, without limitation, the following:

1. Property damage claims involving water, water management decisions, and water management facilities;
2. Personal injury claims involving water, water management decisions, and water management facilities;
3. Claims brought against purveyors of water or irrigation districts;
4. Disputes regarding leases;
5. Claims of eminent domain related to water management facilities –such as tunnels, drains, pipelines, ditches, waterways, canals and works, dams, power plants, etc.
6. Disputes among purveyors of water.
7. Actions involving contracts.
8. Occupational health or safety related to the waters of the State of Nevada.
9. Environmental claims not touching or concerning water rights.
10. Administrative agency, tax, zoning, and other appeals not having a direct relationship to water uses.

11. Contracts related to the generation of electric energy and to contract for the generation, distribution and sale of such energy,
12. Disputes relating to assessments, rates, and fees.
13. Actions involving Governments approvals, permits, licenses, variances, registrations, and findings of suitability, related to lands to which water rights are appurtenant and not touching the use of water.
14. Proceedings to register or enforce a judgment associated with a water related matter.
15. Disputes relating to drainage, safety or health projects.
16. Claims relating to ownership of water related facilities in other states.

### Conclusion

I believe we need specially trained judges in water cases –however we seek to define such. Water is too precious not to accord it the highest level of specialized thought and action. An endnote: January was the second driest month for precipitation we may have ever had. (Source: NOAA).

Respectfully,

TRUCKEE-CARSON IRRIGATION DISTRICT

By: 

Rusty D. Jardine, Esq.  
General Manager