

DATE: February 15, 2022

TO: Justice Hardesty

FROM: Jeff Fontaine

RE: Commission to Study the Adjudication of Water Law Cases - Comments

Thank you for the opportunity to provide comments in response to your questions from the January 21st meeting. I would like to preface my remarks by expressing uncertainty about whether there is a problem with the way water law cases are currently being adjudicated. The State Engineer has identified the challenges he has in administering Nevada water law and discussions amongst commissioners has provided some additional perspective on these and other issues. However, without quantitative data on caseloads and the nature and disposition of appeals it is difficult to support significant changes to the current system.

I respectfully submit the following responses based on the information available at this time and with the understanding that the Commission will not recommend changes Nevada water law.

A water court is not appropriate and “trained water judges” is appropriate under certain conditions; including, but not limited to; broad representation of “trained water judges” from rural judicial districts, defined specialized continuing educational requirements, and consent based (joint request or stipulation of the parties) assignment of cases to “trained water judges.”

The scope of judicial tasks for “trained water judges” should be:

- Objections to preliminary order of determination and issue decrees
- Petitions for judicial review
- Requests from the State Engineer for injunctive relief and restraining orders
- Penalties sought by the State Engineer

I would define a “water” case as:

ADJUDICATION OF VESTED WATER RIGHTS; APPROPRIATION OF PUBLIC WATERS
NRS 533.450 - Orders and decisions of State Engineer subject to judicial review; procedure; motions for stay; appeals; appearance by Attorney General

UNDERGROUND WATER AND WELLS
NRS 534.195 - Injunctive and other relief
NRS 534.330 - Project for recharge, storage and recovery of water: Penalties

DAMS AND OTHER OBSTRUCTIONS
NRS 535.200 - Additional penalties
NRS 535.210 - Injunctive and other relief

DITCHES, CANALS, FLUMES AND OTHER CONDUITS
NRS 536.200 - Penalties for violation of chapter, order or regulation
NRS 536.210 - Injunctive and other relief.