

**In the Matter of  
the Creation of Commission to Study the Adjudication of Water Law Cases  
Minutes November 17, 2022, at 12:00pm**

**I. Roll Call Members Present**

Chief Justice Hardesty  
Justice Ron Parraguirre  
Micheline Fairbank  
Rick Felling  
John Zimmerman  
John Entsminger  
Jeff Fontaine  
Laura Schroeder  
Bevan Lister  
Bert Bryan  
Ross deLipkau  
Karen Peterson  
Oz Wichman  
Therese Stix (for Laura Schroeder)  
Paul Taggart  
Judge Drakulich  
Judge Schlegelmilch

**Members Absent:** Jason King, Tom Baker, Rusty Jardine, Allen Biaggi, Kyle Roerink, Chris Mixson, Gordon DePaoli, Judge Fairman, Judge Gonzalez & John McMasters

**II. Public Comment**

- None

**III. Review and approval of minutes of April 19, 2022, meeting.**

- Approved

**IV. Review and discussion regarding assignment of cases to specially trained water Judges.**

- Justice Hardesty opened that this is next phase of the process. Curriculum unanimously approved by subcommittee. Administrative issues to be addressed with the Administrative Office of the Court (AOC), but Justice Hardesty and Chief Justice Parraguirre feel that it met the purpose of the assignment. Next phase is implementation.
- Consider what other states have engaged for water courts: New Mexico, Colorado, and Utah. Utah and New Mexico adopted through a series of Supreme Court rules. Utah's water court just went into effect November 1 with nine appointed water judges, which are

approved by a judicial council. Justice Hardesty requested information from Chief Justice Parraguirre and Judge Schlegelmilch to discuss Nevada's role in Dividing the Waters.

- Chief Justice Parraguirre conveyed that the Dividing the Water was taking place from November 30<sup>th</sup> through December 3<sup>rd</sup> and a fundamentals workshop scheduled for the beginning of December. The Dividing the Water conference included educational requirements as Commission approved but would not cover specialty Nevada rules. Chief Justice Parraguirre hopes that at District Court conference there can be a presentation on those topics. The Dividing the Waters planned to have a Colorado River case study with more than 60 judges from western states in attendance. Nevada was going to be represented by 10 sitting district court judges: Chief Justice Parraguirre; three from Clark; two from Washoe; and, the rest from rural Nevada. Sitting judges scheduled to attend included Judge Drakulich, Judge Delaney, Judge Fairman, Judge Gall, Judge Shirley, Judge Schlegelmilch, Judge Robb, Judge Yeager, Judge Young, and Judge Bell. Chief Justice Parraguirre asked Judge Schlegelmilch to coordinate with regarding Nevada education component at the District Judges conference. Other conference issues related to Colorado River management and issues.
- A discussion of authority of Supreme Court in appointing qualified judges to hear water cases and process of adopting/changing court rules followed. Ross de Lipkau asked who will be instructor for proposed judges? Justice Hardesty responded that, generally speaking, the educational department of the AOC has judges within the State and other specially trained individuals outside of the state, lecture at the training conference. Judges are required to attend and take courses on a variety of topics including evidence or other matters; judicial education department of AOC can adequately address this sequencing issue.
- Jeff Fontaine asked where is Dividing the Water conference was being held? Judge Schlegelmilch responded that it was scheduled to be held in Santa Fe, New Mexico. Mr. Fontaine asked if Dividing the Waters was associated with the Nevada Judicial College or whether it has that changed and whether the conference was held annually? Judge Schlegelmilch responded that Dividing the Waters has attempted to do annual conferences with the division of labor shared between Judicial College and Dividing the Waters regarding accreditation, arranging speakers. Justice Hardesty stated that collaborative efforts between AOC and Dividing the Waters will fulfill curriculum requirements agreed upon by committee previously and that the Dividing the Waters agenda will substantially address several topics in our curriculum; a judge out of Dividing the Waters process will be better exposed than many sitting judges.
- Paul Taggart asked whether the AOC reviews the curriculum from the Dividing the Waters and confirm whether the material is appropriate? Justice Hardesty responded that the AOC confirms that judges attend the course initially and repeat the course on a required timeline. Business court judges receive training from the National Association of Business Courts.
- Chief Justice Parraguirre stated that Business court reports annually to Supreme Court and wondered whether water judges would be required to do the same? Justice Hardesty said it could be set by rule. Urban counties have business court, must provide an annual report with statistics regarding what was done in that year.

- John Zimmerman asked whether specialty judges be sitting judges, or could senior judges also be considered and asked about party opting in for test case? Justice Hardesty responded that “judge shopping” is not the right approach. Important that we’re either all in, or all out, unless the pilot is operated on that basis. All water law cases go to water judges. Chief Justice Parraguirre opined that it should be a go all-in process initially but can back off later. Justice Hardesty stated that a rule should retain expectation that civil attorneys may want to exercise peremptory challenge, would be replaced with another water educated judge.
- Mr. Taggart asked about the process to come to consensus on the types of cases going to water judges? Whether it should be limited to NRS chapters, writs or PJRs, but what beyond that? Justice Hardesty stated that water law matters under NRS chapters is in conformity with designation of specific chapters being heard by business courts. Remaining question whether water law matters from other chapters would be excluded. Mr. Taggart confirmed cases coming from 533, 534 are bulk of cases.
- Karen Peterson supported approval of rule option so the Court can adopt as needed but want to have that in the rule that the case should be heard in the jurisdiction where the issue arises. Justice Hardesty stated that assignment of the judge is separate from where the case is heard. For example, Judge Young may sit in Eureka if Judge Fairman is preempted, the case will be heard in that locale, but may not be that judge that hears it. There was also a discussion relating to the rule being implemented as a pilot project.
- Justice Hardesty proposed the creation of a subcommittee to review the proposed rules and put in a format to be voted on by the commission, including incorporating today’s comments. That way the Commission will have a document to vote on. Justice Hardesty suggested reviewing the New Mexico rules to consider whether it’s a good fit for Nevada, based on discretion of subcommittee. Justice Hardesty said that it would be a “rocket docket” to get the process started to allow the Commission to review the proposed rule before the next meeting.
- Mr. Fontaine inquired into pare down courses and add more rigorous science courses. There was also discussion relating to if the proposed rule were to move forward as a pilot study, there would need to be more discussion on timing, requirements, etc. that need to be in place before they hear cases, including the cycle of when training would take place.
- Justice Hardesty acknowledge that as of right now no one is trained, and too much concern with the detail of how it is implemented will delay this at least another year. Rather, it is appropriate to defer to AOC, who has the specialty, to determine how to have it implemented. Once the Supreme Court designates the curriculum, the AOC can handle the administration.
- Mr. de Lipkau inquired about whether the group can identify the 10 most important Nevada case law opinions, and make mandatory reading, the judges would be further along than they are now. Justice Hardesty offered that it be challenging as older cases have seen changes in recent years, so hard to rely upon those, and that Judge Drakulich’s subcommittee did a good job identifying topics and the priority of those courses. Mr. Taggart said in the subcommittee they identified a “compendium of relevant case law” as a recommendation.

- Justice Hardesty conducted an informal poll, inquiring as to whether there was a preference for a year-long pilot or jump in wholehearted- pilot, no pilot, some other qualification. A pilot would roll out a program and operate for a year or two, then assess the success/failures/struggles/problems, make changes to the operative rules based on those issues discussed. Justice Hardesty supported a two-year pilot; Chief Justice Parraguirre supported a pilot of a minimum of two years, all members present supported a two year pilot. Judge Schlegelmilch offered to work on the rule with an eye toward district court judges.
- Justice Hardesty asked if there was any objection to having subcommittee develop rules and bring back to the committee for a vote. Judge Schlegelmilch, Ms. Peterson, Mr. Zimmerman, Ms. Fairbank volunteered. Justice Hardesty stated the subcommittee would be appointed and a schedule for meeting developed with them.
- Justice Hardesty stated the next meeting would be scheduled no later than the third week of December and the Chief Justice Parraguirre and Judge Schlegelmilch would report from the Dividing the Waters Conference.

**V. Adjournment.**

Meeting adjourned at 1:13 p.m.