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The Honorable James W. Hardesty
Chief Justice
Nevada Supreme Court

RE: SEPT 17 ASSIGNMENT FOR COMMISSION TO STUDY THE ADJUDICATION OF WATER LAW
CASES

Chief Justice Hardesty:

The Great Basin Water Network offers its response to the task you posed at the commission meeting on September 17th. The assignment — to outline criteria for district court judges adjudicating water issues in Nevada — offered a good opportunity to boil down what many believe to be a complex web of statutes, case law, regulations, technical jargon and high-strung emotions.

This assignment provided us an opportunity to convene with fellow commissioners, water attorneys and the State Engineer's Office in order to deliberate on some of the very issues that warranted the creation of this commission, offering the benefits of a collaborative dialogue geared toward finding a consensus of what's best for the state. During our discourse with the water community on this matter there was one overwhelming sentiment we discovered in our deliberations: We need judges who have an ability to read case law, interpret statutes, and possess a basic understanding of hydrographic basins and hydraulic functions.

While that seems obvious, we've seen complications in practice. We believe that a judge of reasonable competence should be prepared to comprehend the following concepts:

Key provisions in Chapters 533 and 534 that include but are not limited to: NRS 533.087 through 533.320; 533.370; 533.450; 534.037; 534.100; 534.110.

Key terms: The USGS and Nevada State Engineer have basic primers of key terms that are easily accessible via a Google search. These guides offer insight on many of the basic concepts of water law such as the Doctrine of Prior Appropriation, Beneficial Use, Perennial Yield, evapotranspiration and more. Without reinventing the wheel, the aforementioned documents could be compiled into a tidy resource for judges and others in an unbiased and uncompromising way.

Environmental, social and economic factors in the basin of which a point of diversion occurs:

A judge must be conscious of more than what's written in statute. A judge should seek to comprehend what pumping, over-pumping, damming or diverting water will do in a hydrographic system. A judge who understands the full range of impacts will help ensure the use of the waters of the State of Nevada are appropriated and adjudicated in the public interest.

Conclusion — Reasonable Competence vs Narrow Scope: Every participant in Nevada's legal system deserves a judge of reasonable competence. This commission has yet to define, highlight and underscore the root cause of any particular problem within the judicial branch as it relates to water adjudications under NRS 533 or 534. However, many of us have heard compelling anecdotes about certain failures of judges regarding water cases. But many are also skeptical about how a new system would play out in practice. Fellow commissioners and onlookers have expressed a myriad of scenarios that could have a chilling effect. Folks have also sketched ideas that could potentially reap positive results for all parties. Regardless, we have to wonder about the present: Are certain failures within the judicial system exceptions or rules in some cases? We do not yet have the answer to that question. And we look forward to investigating that topic with our peers on this commission.

We believe that this commission's existence is an important exercise in public education and consensus building. We look forward to continuing the dialogue in a way that defends the public interest, the rights of water users and the integrity of our state.

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