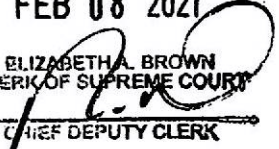


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMISSION TO STUDY THE
ADJUDICATION OF WATER LAW
CASES.

PETITION

ADKT 576
FILED
FEB 08 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

James W. Hardesty, Chief Justice of the Nevada Supreme Court, petitions the Nevada Supreme Court on its administrative docket to consider the creation of a Commission to Study the Adjudication of Water Law Cases in Nevada's Courts. In support of the petition, Chief Justice Hardesty alleges that:

1. Nevada Revised Statutes 533.025 declares that "[t]he 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 Chapter 533 generally provides for the appropriation of public waters and the adjudication of vested water rights.

2. As a part of Chapter 533, NRS 533.160-.200 provides the district court with the authority to enter a decree affirming or modifying the order of the State Engineer that makes a determination of rights to water of a stream or stream system. Such orders are subject to appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution.

21-03733

3. Further, NRS 533.450 provides for judicial review of certain State Engineer decisions in the district court. Appeals of district court judgments may be taken “to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution” NRS 533.450(9).

4. Water law is a unique and complex area of the law and judicial review of water cases frequently involves, among other matters, an assessment of lengthy records, geologic and hydrologic concepts, conflicting expert testimony, and years of relevant Nevada history. And just as frequently, water cases take years to adjudicate, which adversely delays water law decisions in our state.

5. Since November 20, 2020, petitioner has collaborated with administrators and staff from the Department of Conservation and Natural Resources and the Acting State Engineer concerning studies and approaches in other states to adjudicate water law cases. Attached to the Petition as Exhibit “A” is a “Summary of Water Courts in the western United States” prepared for petitioner by Micheline N. Fairbank, Esq., Deputy Administrator of the Division of Water Resources. As the Summary shows, four of the sixteen western states surveyed have implemented some form of specialized water court, including three states by rules adopted by their supreme court. The fourth state, Colorado, provides for the appointment of water judges and staff by its supreme court, and all of the states that have implemented water courts have provided for specialized education and training for judges to serve on water cases. While the state has not implemented specialty water courts, such courts were recommended in 2002 in a multi-branch Water Disputes Task Force in Washington.

6. Based on the forgoing, petitioner believes that a study by the Nevada Supreme Court is warranted to improve the education, training, specialization, timeliness, and efficiency of Nevada's district courts in the judicial review of water cases. Further, the proposed Commission should consider the authority of the Chief Justice under Section 19 of Article 6 of the Nevada Constitution and NRS 3.040 to designate duly trained district judges to serve on water cases throughout Nevada.

7. With input from the State Engineer, petitioner believes that the Commission membership should include representatives from the following groups, entities, and industries:

a. Department of Conservation and Natural Resources/
Division of Water Resources;

b. Practicing Water Rights Engineer/Hydrologist: involved in a wide range of projects and industries throughout Nevada;

c. Practicing Water Rights Attorney: involved in a wide range of projects and industries throughout Nevada;

d. Urban Municipal Water Purveyors: representing approximately 80% of the Nevada population

1. Southern Nevada Water Authority;

2. Truckee Meadows Water Authority;

e. Rural Water Interests

1. Central Nevada Regional Water Authority;

2. Humboldt River Basin Water Authority;

f. Agriculture: representing the largest water users in Nevada

1. Nevada Farm Bureau;

2. County Farm Bureau;

g. Irrigation District;

h. Mining: representing potentially the most poorly understood water users who generally provide the largest economic value per volume of water consumed;

i. Environmental/non-government organizations

1. The Nature Conservancy;
2. Nevada Conservation League;
3. Great Basin Water Network;

j. District Court Judges;

k. Rural Nevada Counties

1. Eureka County Natural Resources;
2. Nye County Water District;
3. Lincoln County Water District;

l. Urban Nevada Counties;

1. Clark County;
2. Washoe County;
3. Carson City.

8. The Department of Conservation and Natural Resources and the acting State Engineer support this study and have agreed to provide staff support to the Commission for the purpose of scheduling meetings, maintaining minutes, keeping records of all documents considered, and conducting such research as may be requested by the Commission.

Accordingly, petitioner requests that the Nevada Supreme Court place this Petition on its administrative docket and, following a public hearing thereon, approve the creation of the Commission to Study the Adjudication of Water Law Cases, authorize the Chief Justice to appoint the members of the Commission, conduct all hearings in public, post all meeting minutes and documents considered by the Commission on the Supreme

Court's website, and require the Commission to provide its report and recommendations no later than September 30, 2021.


_____, C.J.
Hardesty

EXHIBIT "A"



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

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TO: Chief Justice James Hardesty
Nevada Supreme Court

FROM: Micheline N. Fairbank, Esq.
Deputy Administrator

DATE: January 28, 2021

RE: Summary of Water Courts in the western United States

Per your request, the Division of Water Resources has conducted preliminary research relating to water courts throughout the western United States and how various states resolve disputes over the administration of water. Each of the identified states apply either the prior appropriation doctrine or some adaptation of the prior appropriation doctrine in the management of the respective state's water resources.

<i>State</i>	Judicial Review Procedures & Process
<i>Alaska</i>	Alaska has not established a specialized water court. Judicial review of challenges to decisions by the Alaska Department of Natural Resources are performed by the state Superior Courts.
<i>Arizona</i>	Arizona has not established a specialized water court. Judicial review of challenges to decisions by the Arizona Department of Water Resources and adjudications of water rights are performed by the state Superior Courts.
<i>California</i>	California has not established a specialized water court. Judicial review of challenges to decisions of the Water Resources Control Board and adjudication of water rights in California are performed by the state Superior Courts.

<p><i>Colorado</i></p>	<p>“The Water Right Determination and Administration Act of 1969 (the "1969 Act") created seven water divisions based upon the drainage patterns of various rivers in Colorado. Each water division is staffed with a division engineer appointed by the state engineer, a water judge appointed by the Supreme Court, a water referee appointed by the water judge, and a water clerk assigned by the district court.</p> <p>Water judges are district judges appointed by the Supreme Court and have jurisdiction in the determination of water rights, the use and administration of water, and all other water matters within the water division.</p> <p>Water matters are generally commenced in a water court by the filing of an application with the water clerk. The water clerk publishes a summary of each application that is filed in the monthly water court “resume” and in a legal notice in one or more newspapers. Interested persons may then file statements of opposition to an application within the time allowed by statute. Because claims in water rights adjudications may affect, in priority or otherwise, any water right claimed or previously adjudicated within each division, owners of affected rights must appear to object and protest as provided in the 1969 Act or be barred from claiming injury to their water rights as a result of claims made in an application. The monthly resume published by each water court can be viewed on that court’s website.</p> <p>All water courts operate under a standard case definition approved by the Supreme Court in 1981. This made possible the establishment of water court filings standards, which have been reported annually by water division since July 1, 1981.”</p> <p><i>Source:</i> Colorado Judicial Branch website, https://www.courts.state.co.us/Courts/Water/Index.cfm</p>
<p><i>Idaho</i></p>	<p>With the initiating of Idaho’s Snake River Basin Adjudication in 1987, a specialty district court was established to preside over the more than 150,000 claims which included approximately two-thirds of Idaho’s irrigated agricultural lands as well as thousands of reserved water right claims by tribal nations and the federal government. With the conclusion of the Snake River Basin Adjudication in 2014, the water court continues to hear water</p>

	<p>related appeals from the State Engineer and Water Board and is addressing smaller adjudications throughout Idaho.</p> <p><i>Source:</i> John E. Thorson, <i>A Permanent Water Court Proposal for a Post-general Stream Adjudication World</i>, 52 Idaho L. Rev. 17 (2016), accessible at https://www.uidaho.edu/-/media/UIIdaho-Responsive/Files/law/law-review/articles/volume-52/52-1-thorson-john-e.pdf?la=en&hash=5D10FECDF62BAB0B14A0856FAC47549DDF8FB3B.</p> <p>The Adjudication Court is comprised of a presiding judge and two special masters. While the court was established for a limited basis, the court is seemingly ongoing. Additionally, there does not appear to be any formal legislative or other act that has established the court as a permanent, rather than temporary, court.</p>
<i>Kansas</i>	<p>Kansas has not established a specialized water court. Judicial review of challenges to decisions by the Kansas Division of Water resources are performed by the state District Courts.</p>
<i>Montana</i>	<p>The 1979 Legislature created the Montana Water Court to expedite and facilitate the statewide adjudication of over 219,000 state law-based water rights and Indian and Federal reserved water rights claims. The Water Court has exclusive jurisdiction over the adjudication of water rights claims.</p> <p>The Chief Justice of the Montana Supreme Court appoints a Chief Water Judge and Associate Water Judge from a list of nominees submitted by the Judicial Nomination Commission. A division water judge is also designated for each of Montana's four major water divisions. The Chief Water Judge appoints Special Masters, referred to as Water Masters, to assist the water judges. <i>Source:</i> https://courts.mt.gov/courts/water</p> <p>In 2017, the Montana Legislature passed Senate Bill 28 (SB 28) that expanded the jurisdiction of the Montana Water Court to allow persons aggrieved by a Department of Natural Resources and Conservation's decision relating to new water right permits and changes to existing water right permits. SB 28 now allows for a litigant to choose between either bringing their dispute before the district court (the proper venue prior to the adoption of SB 28) or</p>

	the Water Court, which was historically limited to addressing the statewide adjudication.
<i>Nebraska</i>	Nebraska has not established a specialized water court. Judicial review of challenges to decisions by the Nebraska Department of Natural Resources are performed by the state District Courts.
<i>New Mexico</i>	New Mexico has not established a specific or specialized state water court. Several years ago, the New Mexico Supreme Court initiated a study committee to review how adjudications were being conducted in other states. As a result of that process, the New Mexico Supreme Court, through court rule, established a single judge to handle state adjudications. It appears that through that study committee, it was also recommended that each of the state district courts appoint a sitting judge to serve as a "water judge" to handle all administrative appeals from the State Engineer. These judges have their standard court docket in addition to serving as the district's water judge. Each of the water judges in New Mexico are required to participate in annual training specific to their water dockets. Unfortunately, the New Mexico court rules relating to the creation of the adjudication judge and water judge positions is not available online; however, the Division is working to obtain copies of the relevant order(s).
<i>North Dakota</i>	North Dakota has not established a specialized water court. Judicial review of challenges to decisions by the North Dakota State Water Commission are performed by the state District Courts.
<i>Oklahoma</i>	Oklahoma has not established a specialized water court. Judicial review of challenges to decisions by the Oklahoma Water Resources Board are performed by the state District Courts.
<i>Oregon</i>	Oregon has not established a specialized water court. Judicial review of challenges to decisions by the Oregon Water Resources Department are performed by the County Circuit Courts.
<i>South Dakota</i>	South Dakota has not established a specialized water court. Judicial review of challenges to decisions by the South Dakota Department of Environment and Natural Resources are performed by the state Circuit Courts.

<i>Texas</i>	Texas has not established a specialized water court. Judicial review of challenges to decisions by Texas Groundwater Conservation Districts or the Texas Water Development Board are performed by the state District Courts.
<i>Utah</i>	Utah has not established a specialized water court. Judicial review of challenges to decisions by the Utah Division of Water Rights are performed by the state District Courts.
<i>Washington</i>	<p>There have been various efforts in Washington to establish a water court. However, this effort has been focused on the creation of a specialty water court for the purpose of performing the many adjudications of water rights within Washington.</p> <p>Currently, Washington Superior Courts hear disputes relating to water rights, decisions from the Washington Department of Ecology relating to the administration of water rights, and adjudications. However, in 2002 a multi-branch Water Disputes Task Force was created and later recommended the creation of a separate, specialized statewide water court to handle more water right adjudications. This resulted in the creation of a substantial amount of legislation, though it does not appear any of those legislative proposals were successful. Then in 2004 the Board for Judicial Administration (BJA) worked to develop a judicial policy statement regarding water courts and made certain proposals for advancing adjudications in a timelier manner. This included the creation of a Water Court Work Group to develop a report that included background information as well as recommendations for a judicial response to certain proposals.</p> <p>“The report included background information on: Washington’s water laws; general adjudication processes; the differences between general adjudications and other cases heard in superior court; and, the need for specialized expertise in judges, commissioners, clerks, and other court personnel hearing and processing these cases. The report recommended a set of criteria for evaluating proposals for reforming the general adjudication process and posited advantages and disadvantages for several different proposals. The report recommended that, if the other branches of government decide to increase the pace for adjudicating water right claims around the state, a specialized water court should be created to hear the increased number of general adjudications. The report also made</p>

	<p>several recommendations for how such a court might be implemented. The report also set forth recommendations for changing general adjudication procedures, including a recommendation about affidavits of prejudice. Several appendices to the report present additional background information on water law and general adjudications.” Upon review of the report, the BJA adopted a judicial policy statement making certain recommendations regarding the adjudications of water right cases, including certain elements relating to judicial terms of office and other criteria.</p> <p>Source: Washington Courts, https://www.courts.wa.gov/committee/?fa=committee.display&item_id=425&committee_id=109.</p> <p>It does not appear that any of these proposals were adopted modifying the judicial process for adjudicating water rights in Washington.</p>
<p><i>Wyoming</i></p>	<p>Wyoming has not established a specialized water court. Judicial review of challenges to decisions by the Wyoming State Engineer’s Office are performed by the state District Courts.</p>