

MEMORANDUM

To: The Nevada Supreme Court Commission on Water Adjudication
Fr: Hon. John P. Schlegelmilch
Re: NJC and DTW Proposed Water Resource Training Program for Judges
Dt: January 19, 2021

The National Judicial College and Dividing the Waters have joined forces to develop a judicial education program for judges presiding over water resource litigation. As Nevada's representative on DTW, I wanted to provide a little background on the project and encourage any suggestions you may have for the program.

Purpose and Importance of Proposed Program

Nevada, along with the entire Western United States, is in a drought that scientists believe (based on an examination of tree ring records and other data) to be the region's most severe drought since the late 1500s. The longevity and intensity of the drought is, at least in part, the product of climate change. The increase in average temperature is causing snow packs to melt faster; river flows, reservoir levels and groundwater levels to decline markedly; and soils and vegetation to parch. Conflicts over the use of water are accelerating as water users compete for the dwindling supplies of water.

Judicial decisions resolving water disputes have widespread ramifications. These decisions do not simply resolve the disputes among the litigants. These decisions have legacy effects that set the direction of and impose constraints on a state's water policy that can last for decades. Despite the impact of judicial decisions on a state's water policy, the judges who hear water disputes seldom are schooled in water law, water science or water resource management. Nevada judges who hear water disputes are general jurisdiction judges who are under-prepared to address the complicated scientific, engineering and regulatory issues that frequently arise in these cases. Even judges with relevant experience can easily become overwhelmed by the complexity of the scientific and technical evidence they need to understand before they can address the legal issues.

Proposed Collaboration on Water Resource Education

To enhance the courts capacity to address the complex questions surrounding water conflicts, the NJC and DTW plan to develop, in collaboration with interested western states, an educational program for judges presiding over water disputes that integrates the study of water law with the study of water science and water resource management.

The content of the program will be developed by a committee of judges, academics and practitioners selected by the NJC, DTW and the participating states. The NJC and DTW will lead the course development process, using the process they have successfully employed when developing their own courses. This will ensure that the program is both relevant to the judiciary's needs and

non-partisan.

Dividing the Waters has prepared a draft curriculum, attached as Exhibit A, to illustrate the breadth and depth of the program. The curriculum will include introductory material on water law, water science and water resource management as well as advanced material on specific topics related to conflicts brought about by drought, urban growth and environmental derogation. Of note, the curriculum covers a vast majority of the topics put forth by this commission to further educate judges on water law and science.

We anticipate that the course material will be delivered both through an online, on-demand program and small group workshops. Because the online program will also be on-demand, judges will be able to access the program when they need it, i.e. when they are first assigned a water case or when a specific topic of concern arises in their case. The small group workshops would address the scientific, technical and water management disputes that are likely to arise at trial. The workshop format will emphasize facilitated discussions of case scenarios illustrating how the laws of the participating states differ in addressing similar water management conflicts. This comparative and interactive approach will provide the judges with deeper insights into the nuances and subtleties of the water management challenge of concern and provide them with the intellectual tools they need to address novel and emerging issues in their states.

I encourage this Commission to support this novel collaboration among the judiciaries of the western states to improve the education of judges on water issues. If you have any suggestions for improvement of the program, please let me know.