

**Nevada Supreme Court Commission
To Study the Adjudication of Water Law Cases**

Meeting Summary

April 16, 2021

Members Present:

Chief Justice Hardesty
Associate Chief Justice Ron Parraguirre
Tom Baker
Allen Biaggi
Bert Bryan
Gordon H. Depaoli
John Entsminger
Micheline Fairbank
Judge Gary Fairman
Rick Felling
Judge Elizabeth Gonzalez
Rusty Jardine
Jason King
Ross de Lipkau
Bevin Lister
Chris Mixon
Karen Peterson
Kyle Roerink
Judge John P. Schlegelmilch
Laura A. Schroeder
Paul Taggart
Oscar (Oz) Wichman
John Zimmerman

Guests Present:

Patrick Donnelly
Adam Sullivan
Amber Torres

Staff Present:

Jamie Gradick, AOC

I. Call to Order and Determination of Quorum

- Chief Justice Hardesty, Chair of the Commission to Study the Adjudication of Water Law Cases, Administrative Docket No. 0576, called the meeting to order at 1:33 p.m.
- Ms. Fairbank conducted the roll call, with all members present except Judge Drakulich

II. Opening Comments

- Chief Justice Hardesty provided introductory comment to the Commission and appointed John McMaster, as representative of the Walker River Paiute Tribe and John Fontaine to represent both the Central Nevada Regional Water Authority as well as the Humboldt Basin Water Authority.
- Chief Justice Hardesty states the Commission will follow the general guidelines associated with public meetings. Full transparency will exist with respect to this process and these discussions. The following will be posted on both the Supreme Court website and the website for the State Engineer.
 - ♦ All agendas
 - ♦ Meeting summaries

- ♦ Documents considered
- ♦ Communications received
- ♦ Public comment offered
- Chief Justice Hardesty made the following comments;
 - ♦ This commission was designed not for the re-writing of Nevada’s laws or statutes, but for the study of the adjudicated water law cases in an effort to improve the following aspects of Nevada’s District courts in the Judicial review process;
 - Education
 - Training
 - Specialization
 - Timeliness
 - Efficiency
 - ♦ During the progress of this Commission, the focus should be on the process by which water rights are adjudicated.
 - ♦ Council members will be asked for their opinions on what this commission should be studying and what factual information should be developed.
 - ♦ A public letter was received and will be posted to the website under public comments. The letter suggested various considerations;
 - The time it takes to adjudicate the case
 - The underlying decisions from the State Engineers Office
 - The ultimate outcome
 - ♦ Members will be asked to provide a presentation on the Nevada Judicial process to ensure familiarity and cohesiveness with the State Engineers Office. Gaps will be identified and filled by either court rule or other processes.
- Ms. Jamie Gradick has been appointed the Commission contact for the AOC. Please forward written public comment to Ms. Gradick or Ms. Fairbank.

III. Public Comment

- No written public comment was submitted.
- Ms. Amber Torres, Chairman for the Walker River Paiute Tribe offered the following commented: “Good afternoon (speaks in native language) Good afternoon all, my name is Amber Torres, I’m the chairman for the Walker River Paiute Tribe in Schurz, Nevada. I just want to say thank you so much for the selection of John McMasters. He will be a major asset to the Committee and I just wanted to say thank you so very much for making sure that placement happens next week and we are very glad that you are going to have a native perspective on with general issues and concerns and perspective brought to the table and I just wanted to say thank you so much for that.”

IV. Introduction of Commission Members

- Each member provided a brief introduction.

V. Presentation by Acting State Engineer: Adam Sullivan

- Mr. Sullivan provided an overview of water resource management challenges in Nevada. *(Please see meeting materials for additional information)*
- ♦ Chief Justice Hardesty made the following requests of the Commission members based on the information in slides 9, 10, and 11 in the presentation:
 - Departments should develop a memo of cases and statutes where the decisions and responsibilities of the State Engineer have come in conflict with inconsistent judicial decisions.

- Each member should identify a list of goals, objectives and outcomes they believe would be beneficial to the State of Nevada and its citizens.

VI. Overview of Water Dispute Adjudications in the Western United States by Micheline Fairbank, Esq.

- Ms. Fairbank provided the Commission with the Summary of Water Court in the western United States (*Please see meeting materials for more information*)
 - ♦ Chief Justice Hardesty stated that he will provide materials from studies conducted in other states to discuss in future meetings.

VII. Review of John E. Thorson's, "A Permanent Water Court Proposal for a Post-General Stream Adjudication World"

- **Chief Justice Hardesty commented on the importance of finding ways to develop quality** decision making with efficient and timely outcomes while considering the use of specialization by the judges involved.
 - ♦ Attendees discussed whether the Commission should support specialized judicial review of State Engineer decisions and Water Law questions or prefers that these matters be heard on a general basis by judges who are not necessarily trained in water law.
 - ♦ Attendees discussed whether it is necessary for judges to secure appropriate education, limiting the need to retain experts at additional costs and whether it could be beneficial to fast-track cases of first impression to the Appellate Court?

VIII. Individual Goals and Objectives of Commission Members

- Mr. Depaoli hopes to be able to meet the objectives by improving the process and the education of the staff involved. He would like to improve the process without the aid of the legislature.
- Mr. Taggart stated his goal is to shorten the time period and cost of getting water matter through the process and the judicial process. The process of adjudications may benefit from a specialized judge.
- Mr. Mixon stated his goal is the Commission would be well served with a clear view of the current problems with the judicial review of water cases. Those problems need to be supported by data based on previous cases. Ensuring the Commission is fully informed of the Federal Reserved Indian Water Rights.
- Mr. Wichman stated he would like this Commission to consider creating a specialized court system, broken into 5 to 7 districts. The judges would be appointed by the Supreme Court based on the district's geographic location. Also, the decisions made by this specialized court should be based on a group vote and appealable to the Supreme Court.
- Ms. Peterson stated her goal for the Commission is to shorten the time frame and the cost of processing water laws. What is the caseload of the State Engineer's office in terms of judicial review and adjudication? What does the future case load look like with future deadlines looming? She would like the review process to continue to be informal for the benefit of unrepresented people.
 - ♦ Chief Justice Hardesty requested that commissioners with specific data requests please forward those to himself or Ms. Fairbank for review and circulation.
 - ♦ Chief Justice Hardesty requested that Mr. Sullivan or, alternatively, Ms. Fairbank, provide a discussion and a summary of the State Engineer's budget for the past three biennium, and an evaluation of the request vs. what was provided
- Mr. Roerink would like to define the problems and the root causes, then substantiate through clerical data to provide clear understanding. Local representation is important and should be

maintained. A specialized court could be beneficial. Education requirements should guarantee legitimacy and be impartial.

- Mr. Biaggi stated he wants to ensure the water quantity decisions are consistent and based on science, sound public policy, and in accordance with Nevada Water Law.
 - ♦ Decisions should be provided in a timely manner to ensure efficiency and responsible expenditures of both public and private resources and funds.
 - ♦ The caseload and burden on the Nevada judicial system should be reduced and judges should receive specialized education.
 - ♦ The Commission should look at both the administrative and judicial solutions to the challenges being evaluated.
- Mr. de Lipkau feels the law should not be changed, it should be enforced. Lawyers and Judges should be educated and should follow the law directly. He suggests appointing a few District Court judges to hear all water rights cases and they should be educated accordingly.
- Mr. Bryan feels knowledge and education is important. He also feels the process takes longer than it should. His goal is to gain a better understanding of the process from the local level to the judicial level.
- Mr. Jardine would like to make this process less complicated, more accessible, identify how this commission can help the State Engineer's office.
- Mr. Baker's goal would be to make sure, if the Commission changes anything, they create and maintain a system where water rights holders have a good idea where they're standing and what they may be facing in the future.
- Mr. Lister shared information from a Water Town Hall meeting in Winnemucca and reported that group felt the most significant water issue was getting the Division of Water Resources to follow the written laws. His goal would be to evaluate different perspectives and issues that are facing our water law and our judicial system and to ensure water rights holders have a just and equitable place to bring their grievances.
 - ♦ Chief Justice Hardesty requested the members of the Commission provide a list of topics or decisions the State Engineer has given that have not conformed to water laws. Please reach out to colleges and local contacts for information.
- Ms. Schroeder agreed with the idea of a water law court and suggested the Commission examine discrepancies in how cases are decided based on what type of court reviews the case.
 - ♦ It would be beneficial to have a specialized court comprised of local staff with knowledge of the geographical area. An administrative law option could benefit the cost and speed of processing cases.
- Mr. Zimmerman stated there is a need to understand; what are the issue, where the problems are, and how to solve them. He suggested inviting the "Dividing the Waters" program to give the Commission a presentation on how they educate judges.
 - ♦ Chief Justice Hardesty stated he has spoken with President Benes Aldana of the National Judicial College and is in contact with multiple resources to obtain their expertise in the matter.
- Mr. Entsminger would like to ensure certainty from this Commission. There are parts of the water law that do not appear in Nevada Revised Statutes or the Nevada Administrative Code which hinders the enforcement of the law.
 - ♦ This does not need to be a one-size-fits-all approach.
 - ♦ Chief Justice Hardesty remarked that, while preparing a speech for the Western Nevada Water Conference, he discovered there were policies and practices a person would not know about they were new to the process and did not have experience working with the State Engineers Office or a Water Rights Lawyer. This would play a role in the outcome of decisions being made will be an important discussion.

- Mr. Felling feels the subject of water law has become increasingly complex and the need to education is important, possibly even retain in-house expertise.
- Mr. King feels strongly about creating a specialized judicial review, similar to New Mexico, by establishing a water judge in each District Court.
- Ms. Fairbank stated she feels a broad range of background and opinion is necessary to assist this Commission's purpose.
 - ♦ Water law has become very complex. There is a need to find a more expeditious and inexpensive resolution, ensuring solutions are accessible to the general public.
 - ♦ Ms. Fairbank suggested an Alternative Dispute Resolution process be established to address these disputes as appropriate and commented that, as a state, they should be acting in the best interest of the resource, the law, and the longevity.
 - ♦ Chief Justice Hardesty stated Alternative Dispute Resolution is a valuable resource they will consider further.
- Judge Schlegelmilch stated there is a need for a just, efficient, and equitable process to get everyone through the system in a timely manner, ending with similar results regardless of where the decision is made. A streamline process should begin in administration and end in the court system.
- Judge Fairman commented that the appointment of specialized judges with training and experience in water law will help streamline the system and create a more timely adjudication process. Water law cases are complex and require large amounts of time that judges may not have due to their demanding schedule.
 - ♦ Chief Justice Hardesty explained that rural District Court judges hear every case type brought before them. An extensive Water Law case can be taxing for judges especially because they only have one law clerk to evaluate the case.
 - ♦ Chief Justice Hardesty suggested the possibility of increasing support systems that help the judges.
- Judge Gonzales suggested evaluating the historic volume of water law cases among the various judicial districts along with the projected volume of cases are for the future.
 - ♦ A statewide procedure is preferred over a different approach in each judicial district.
- Associate Chief Justice Parraguirre commented the Commission should be looking for predictability, consistency, and efficiency.

IX. Future Meetings

- June 25, 2021 at 1:00 pm
- August 27, 2021 at 1:00 pm
- A poll will be conducted for meeting following August 27th.

X. Public Comment

- Mr. Patrick Donnelly, Nevada State Director at the Center for Biological Diversity, offered the following comments: "This is Patrick Donnelly, the Nevada State Director at the Center for Biological Diversity. Um, just a couple of thoughts from today. We've heard some speculation about much can be done without the involvement of the Legislature and you know, in many ways, uh, the folks on this Commission represent a broad swath of water interests. Particularly from the rural parts of the state. But if you look around the Zoom call, you will note that this Commission looks really nothing like the people of the State of Nevada. Demographically, socioeconomically, geographically, in many other ways this commission only represents a very small slice of Nevada. Now, of course, you don't want dozens more people joining the Commission but you don't need to, we have a dually elected Legislature which is intended to represent the will of the people. This Commission should determine the best path forward, but if that involves significant deviation from the current

procedure, the Commission should actively be seeking the involvement of the Legislature to confer the legitimacy of the representation of the people of Nevada on the actions that result from this Commission. There may be skepticism at the end result if the perception had that the Legislature was actively cut out of a process that resolves in significant changes to the adjudication of water and, you know, I think a good example is, they're in session right now so none of them could be here, but I'm sure there are a couple of Legislatures who would like to have a seat at this table. Although I don't in any way speak for them. Uh, second, I would also point out that the environmental community is underrepresented on this Commission. I'm a board member of the Great Basin Water Network, and I have the utmost faith in Mr. Roerink but the network, the water network represents, as Mr. Roerink said, ranchers, farmers, rural communities and conservations. As such there is no group represented on this Commission right now that represents purely environmental interests. Now this could sound like a self-serving comment, and I wouldn't mind being added, but mine is not the only environmental group with a history of water litigation in the state. There are several that could be chosen from to ensure the environmental interests could be properly represented by groups with litigation experience on this commission. I thank you for hearing my comments today."

XI. Adjournment

- There being no further discussion, the meeting was adjourned at 3:46 p.m.