

WATER COURT AND WATER COURT DISTRICTS PROPSAL

Context:

At the April 16, 2021 Supreme Court Commission meeting I provided comments/suggestions regarding a proposed water court for Nevada. I have been asked to memorialize my proposal in a memorandum.

To that end, the following are suggestions for consideration by the Commission. I have also provided a map showing 5 distinct water court districts to be included as part of this proposal.

Proposal: The court should consist of 5 judges assigned to 5 distinct districts. The judges are to reside (live in) their assigned districts. Hearings (litigation) are to be conducted within the district boundary.

Rationale: There is a common thread of concern that should a water court be created, and (for example) all Judges reside and hear cases in a centralized location; rural Nevada will have no representation (not to mention it takes a full day to drive across Nevada from east to west). This provides for equitable representation for both metropolitan and rural areas. Please refer to the district map provided as part of this proposal.

Proposal: The Judges are to be appointed by the Supreme Court, are lifetime appointments, and can only be removed or replaced by the Supreme Court.

Rationale: The goal is to provide Judges with extensive knowledge of water law that will remain in office for extended periods (decades). The water court body can petition the Supreme Court for removal of one of the judges.

Proposal: The Judge assigned to a district will provide the burden of research and preside over the proceedings. However, all decisions will be considered, and voted on, by the full body of the court and as such will require at least 3 judges to be in agreement with any given decision coming out of the court.

Rationale: This provides for peer review and will lend itself to consistent application of water law.

Proposal: All decisions made by the proposed water court are appealable to the Nevada Supreme Court.

Rationale: This proposal does not exclude the Nevada Supreme Court from considering and providing final decisions with respect to Nevada water law.

Notes: There are many complex issues that will be discussed associated with the creation of a water court. This proposal is presented in good faith to begin a discussion regarding the most basic of frameworks for such a court that provides for; a judicial body that can focus its sole attention on water litigation, provide consistent application of water law, provides a judicial body with the necessary education experience and tenure, and provides representation for both metropolitan and rural areas.

Presented by O. Wichman, member of Supreme Court Commission created to study adjudication of water law cases – October 2021