

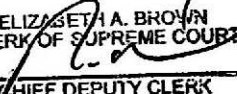


February 23, 2021

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FILED

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

Via Electronic Mail nvscclerk@nvcourts.nv.gov
Elizabeth A. Brown
Nevada Supreme Court Clerk
201 S. Carson Street
Carson City, Nevada 89701

Re: **In the Matter of the Creation of a Commission to Study the Adjudication of Water Law Cases, In the Supreme Court of the State of Nevada, ADKT 0576**

Dear Ms. Brown:

These comments on the Petition filed by Chief Justice Hardesty in the referenced matter are submitted pursuant to the Order entered in that matter on February 8, 2021.

I am a member of the law firm of Woodburn and Wedge in Reno, Nevada. I am, and for nearly all of the years of my legal career, have been a practicing water law attorney in Nevada. My current clients related to water matters include the Truckee Meadows Water Authority, the Walker River Irrigation District, Edgewood Companies, Edgewood Water Company, and various ranchers. My work has involved matters before the Nevada State Engineer, California State Water Resources Control Board, committees of the Nevada Legislature, and state and federal trial and appellate courts.

The Focus of the Study

Based upon my participation in various virtual meetings arranged by the Division of Water Resources, it is my understanding that the Petition arises as a result of a proposal to make the Nevada Court of Appeals the court which reviewed State Engineer decisions pursuant to N.R.S. 533.450, rather than Nevada district courts. That proposal would have required an amendment to the Nevada Constitution. I note this because not all issues decided by the State Engineer are reviewed under N.R.S. 533.450. For example, State Engineer Orders of Determination in adjudications are considered *de novo* by a district court under N.R.S. 533.170 and suits to adjudicate water rights may be brought directly in a district court under N.R.S. 533.240, *et seq.*

There may be a need to further define or refine the scope of the study. There are many facets to water law which give rise to litigation, and it is not clear which facet or facets are to be considered: water adjudications, many of which are already completed on major Nevada stream systems, changes to water rights, groundwater issues, water importation and exportation, surface and groundwater interconnection, and/or future vested water rights adjudications, to name a few.

For whatever reason, Nevada, the driest state in the nation, had a significant headstart on water rights adjudications over other western states, at least on major stream systems. In western Nevada, the Walker, Truckee and Carson Rivers are the subject of federal court decrees issued

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on the Walker in 1936, the Truckee in 1944, and the Carson in 1980. The Humboldt River is also the subject of a state court decree issued in the 1930s, and there are others. State Engineer decisions involving water rights adjudicated under any of those decrees are reviewed by the courts which issued the decrees. On the Walker, Truckee and Carson Rivers, the review is in the federal court. In the state court adjudications, the review is by the state court or courts which issued those decrees.

I do not suggest that there will be no more adjudications, or that there are not now or will not be many other water law cases to be decided going forward. There will be more adjudications and there will be many other issues in the future, including those which I suspect will be further complicated by climate change.

Participants in the Study

Depending on the scope of the study, there may be a need to add to or subtract from the membership of the Commission. For example, consideration perhaps should be given to the addition of small municipal water purveyors, other agricultural and rural interests, including from Lyon, Churchill and/or Elko County, inclusion of interests which may be impacted by interstate issues, *i.e.*, interests on the California, Oregon, Idaho and Utah borders, for example. Moreover, and in any event, consideration should be given to including a participant or participants from the United States government and from Nevada's Indian tribes.

Schedule

Given the uncertainty of the scope of the issues to be addressed by the Commission, the current and continuing pandemic, and the fact that the 2021 Legislature is in session and many of the likely participants here will also need to participate in matters before the Legislature, it is my judgment that the schedule proposed in the Petition for a report and recommendations no later than September 30, 2021 may be too ambitious. I suggest that consideration be given to a timeline for the Commission to provide its report and recommendations by no later than August 31, 2022, in time for any needed action from the 2023 session of the Nevada Legislature. I reference the 2023 Legislative Session because, depending on the scope of issues to be addressed, the tools available to the judiciary and recited in the Petition for addressing them may not be adequate, and legislative assistance may be needed.

Finally, nothing in these comments is intended to suggest that steps not be taken as soon as possible to improve the education, training, specialization, timeliness and efficiency of Nevada district courts and district court judges with respect to issues involving water. I intend to participate in the hearing on March 3, 2021.

Respectfully,

A handwritten signature in black ink, appearing to read 'Gordon H. DePaoli'.
Gordon H. DePaoli