

Proposal to create state water court gets broad support

By

Jeniffer Solis

-

March 4, 2021

The Nevada Supreme court held a public hearing Wednesday to consider the creation of a commission to study the adjudication of water law cases, with an eye toward creating a water law specialty court.

The [petition](#) was filed by Chief Justice James Hardesty, who believes the study is “warranted to improve the education, training, specialization, timeliness, and efficiency” of the court’s approach to water law.

Water law cases frequently involve the assessment of lengthy records, specific scientific concepts, conflicting expert testimony, and years of relevant Nevada history, Hardesty noted in his petition.

Cases can take years to adjudicate, adversely delaying final water law decisions in the state. State water regulators say there’s been an increase in [frivolous claims and unnecessary litigation](#) over the past 10 years.

“While water law is a challenging, complex, and infrequently agreed upon subject in our law, what was a consistent theme in all the conversations I had

was the perceived benefits of a study that would look at how the judicial system adjudicated water law matters in the future,” Hardesty said during the hearing.

The commission would consider the creation of water courts, giving the chief justice of the Supreme Court the authority to assign trained District Court judges to serve on water cases throughout Nevada.

Water regulators have looked into studies and approaches other states use to adjudicate water law cases.

According to a survey by the Division of Water Resources, four western states — Colorado, Idaho, Montana, and New Mexico — have created some kind of specialty court to handle water cases.

All states with water courts have also provided specialized education and training for judges who serve on water cases.

“We believe an understanding of the law and precedent is not only required but important to the ability and the desire to make sense of the technical-scientific data,” said Micheline Fairbank, deputy administrator for the Nevada Division of Water Resources.

Climate change and Nevada’s growing population and economy make the creation of the commission a priority for the division said Fairbank.

“Decisions of the state engineer are often highly technical and specialized,” said acting State Engineer Adam Sullivan, Nevada’s top water regulator. “Our division recognizes the need for the study to provide expedient judicial review of water cases, well into the future.”

Sullivan called for diverse and broad representation on the commission to represent the interests of all Nevadans, including Tribal Nations.

Representatives for the Truckee Meadows Water Authority also spoke in favor of the commission, as did several attorneys who specialize in water and natural resources law.

Attorney Paul Taggart said water cases have become a regular part of his firm's work.

"Many many times I have seen judges very interested in what other judges have done in similar cases," Taggart said. "If you had a panel of judges who were the ones who heard water cases I think they would already be aware of that and found some regularity there."

Conservationists also support the creation of a specialty water court.

"The better we are all able to come to the table on water law-making decisions the more well thought out those decisions will be and maybe ultimately will result in less litigation," said Patrick Donnelly, Nevada state director of the Center for Biological Diversity.

No action was taken on the proposal during Wednesday's hearing.