

STUDY OF THE LAWS,
REGULATIONS AND POLICIES RELATING TO
WATER AND WASTE WATER RESOURCES
IN NEVADA



Bulletin No. 91-8

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

NOVEMBER 1990

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LEGISLATIVE COUNSEL BUREAU
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SENATE CONCURRENT RESOLUTION NO. 24

Senate Concurrent Resolution No. 24—Senators Smith, Getto, Rawson, O'Connell, Beyer, Coffin, Hickey, Horn, Jacobsen, Joerg, Malone, Mello, Neal, O'Donnell, Raggio, Rhoads, Shaffer, Titus, Townsend, Vergiels and Wagner

FILE NUMBER.192.

SENATE CONCURRENT RESOLUTION—Directing the Legislative Commission to conduct an interim study of the laws, regulations and policies relating to water and waste water resources of this state.

WHEREAS, The effective use of the water and waste water resources in this state are essential for the state's continued growth and prosperity; and

WHEREAS, The demand for water in this state continues to grow each year; and

WHEREAS, Many parts of the state have experienced severe drought conditions for several years; and

WHEREAS, The neighboring state of California has experienced similar growth in population and depletion of its water resources; and

WHEREAS, The State of Nevada and the State of California should develop long-term comprehensive plans for the use and conservation of water; and

WHEREAS, The laws and regulations concerning the state's water and waste water resources have been revised for many years without a comprehensive review of the policies concerning those revisions; and

WHEREAS, The need for a comprehensive study of the laws, regulations and policies concerning water and waste water resources becomes more important as the state continues to grow; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the Legislative Commission is hereby directed to conduct a comprehensive study of the laws, regulations and policies relating to water and waste water resources of this state; and be it further

RESOLVED, That the legislative commission is hereby directed to appoint three advisory committees with members from both the public and private sectors to provide information and make recommendations on issues concerning water which affect Clark County, Washoe County and the other areas of the state; and be it further

RESOLVED, That the legislative commission is hereby directed to appoint the members of the study and designate one member as chairman and three members to serve as vice chairmen, each of whom must be assigned to chair one of the advisory committees appointed by the commission pursuant to this resolution; and be it further

RESOLVED, That the study include, but not be limited to:

1. An assessment of the water resources of this state, including a determination of the per capita consumption of water resources in the various areas of the state;

2. An evaluation of the policies of this state concerning water, including an assessment of the state and local programs for the conservation of water and waste water resources in this state;

3. The feasibility of interbasin and interregional transfer or exchange of water and waste water resources within this state and between this state and other states;

4. An evaluation of the intergovernmental cooperation concerning the treatment, delivery and allocation of water and waste water resources of this state;

5. An analysis of the available methods used by the state, local governments and private suppliers to balance the supply and demand for water in this state;

6. The planning and development of water resources and an analysis of the available methods for balancing the supply and demand for water in this state; and

7. Proposals for the storage of water;
and be it further

RESOLVED, That the Legislative Commission report the results of its study and any recommended legislation to the 66th session of the Nevada Legislature.

REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 66TH SESSION OF THE NEVADA LEGISLATURE:

The following report is submitted in compliance with Senate Concurrent Resolution No. 24 (File No. 192, Statutes of Nevada 1989, pages 2369 through 2371). The resolution directs the Legislative Commission to conduct a comprehensive study of the laws, regulations and policies relating to water and waste water in Nevada.

LEGISLATIVE SUBCOMMITTEE

In order to conduct the study, the Legislative Commission appointed a subcommittee consisting of the following 10 legislators:

Assemblyman Joseph E. Dini, Jr., Chairman

Clark County (Southern Nevada)

Assemblyman Danny L. Thompson, Vice Chairman
Senator Raymond C. Shaffer
Senator R. Hal Smith
Assemblyman Jim Schofield

Rural Nevada

Assemblyman John W. Marvel, Vice Chairman
Assemblyman Ernest E. Adler
Assemblyman Joseph E. Dini, Jr.

Washoe County (Northern Nevada)

Senator Eric Beyer, Vice Chairman
Senator Virgil M. Getto
Assemblyman James A. Gibbons

TECHNICAL ADVISORY COMMITTEES

Three Technical Advisory Committees (TACs) with members from the public and private sectors were also appointed to provide information and recommendations affecting the various geographical portions of the state. In order to ensure continuity and understanding of the basic materials,

members of the Legislative Subcommittee also served on the relevant Technical Advisory Committees. The Legislative Subcommittee wanted to express its sincere appreciation to the nonlegislators who provided such crucially valuable assistance during the course of the study.

Following is a list of the members who served on the Technical Advisory Committees:

CLARK COUNTY/SOUTHERN TAC

Assemblyman Danny L. Thompson, Vice Chairman
(TAC Chairman)
Senator Raymond C. Shaffer
Senator R. Hal Smith
Assemblyman Jim Schofield
Steve Ainsworth, Transcontinental Properties
W. Philip Conway, Howard Hughes Properties
Alan Gove, City of Boulder City
Paul Henderson, City of Mesquite
John Hess, Desert Research Institute
Gary Holler, City of North Las Vegas
Richard Holmes, Clark County
Robert Kaufmann, MARK Group, Engineers & Geologists,
Inc., and Aquavision
David H. Malpass, Howard Hughes Properties
Patricia Mulroy, Las Vegas Valley Water District
Allison Newlon, Aquavision
Tom Peot, City of Las Vegas
Irene E. Porter, Southern Nevada Home Builders
Association
Kurt Segler, City of Henderson
Jack L. Stonehocker, Colorado River Commission

RURAL TAC

Assemblyman John W. Marvel, Vice Chairman
(TAC Chairman)
Assemblyman Ernest E. Adler
Assemblyman Joseph E. Dini, Jr.
Matt Benson, Nevada Cattlemen's Association
Gilbert Cochran, Desert Research Institute
Barbara Curti, Nevada Farm Bureau
Gennty Etcheverry, Nevada League of Cities
Myron Goldsworthy, Lovelock
Tom Grady, Nevada League of Cities
Robert S. Hadfield, Nevada Association of Counties
Ben Hodges, Pershing County Water Conservancy District
Tom Irwin, Nevada Mining Association
Lyman F. McConnell, Truckee-Carson Irrigation District

Dale Porter, Nevada Association of Counties
Ira Rackley, Carson Water Subconservancy District
Dave Tyler, Nevada Mining Association
Geraldine B. Tyson, Water Rights Specialist
Jim Weishaupt, Walker River Irrigation District
Keith Whipple, Lincoln County Commissioner

WASHOE COUNTY/NORTHERN TAC

Senator Erik Beyer, Vice Chairman (TAC Chairman)
Senator Virgil M. Getto
Assemblyman James A. Gibbons
Janet Carson, Sierra Pacific Power Company/Westpac
Bob Firth, Water Specialist
John Fordham, Desert Research Institute
Bob Jones, Builders Association of Northern Nevada
Lyman F. McConnell, Truckee-Carson Irrigation District
Steven Mack, Regional Water Planning and Advisory Board
of Washoe County
Don Mahin, Washoe County
Alan Oppio, Nevada Farm Bureau
George Peek, Nevada Association of Realtors
David R. Roundtree, City of Sparks
Ali Shahroody, Pyramid Lake Paiute Indian Tribe
Laura Tuttle, City of Reno

STAFF SUPPORT

Legislative Counsel Bureau staff services for the study were provided by Fred W. Welden of the Research Division (principal staff), Kimberly Ann Morgan of the Legal Division (legal counsel) and Ellen R. Nelson of the Research Division (study secretary).

HEARINGS AND RECOMMENDATIONS

A total of 14 hearings were held in association with the study. Each Technical Advisory Committee participated in four hearings within its local area, and the Legislative Subcommittee met twice.

Forty-five recommendations were adopted by the Legislative Subcommittee. In addition to discussions of each recommendation individually, the report contains short histories of Western and Nevada water law as well as a summary of current

Nevada water laws and procedures. All supporting documents and minutes are on file in the Legislative Counsel Bureau's Research Library.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
September 1990

* * * * *

LEGISLATIVE COMMISSION

Assemblyman John E. Jeffrey, Chairman
Assemblyman Robert M. Sader, Vice Chairman

Senator Charles W. Joerg	Assemblyman Louis W. Bergevin
Senator William R. O'Donnell	Assemblyman Joseph E. Dini, Jr.
Senator Raymond C. Shaffer	Assemblyman James W. McGaughey
Senator Randolph J. Townsend	Assemblyman Danny L. Thompson
Senator John M. Vergiels	

SUMMARY OF RECOMMENDATIONS

Following is a summary of the recommendations approved by the Legislative Commission's Subcommittee to Study Water and Waste Water Resources in Nevada.

I. MANAGEMENT OF INTERSTATE GROUND WATER BASINS

1. Authorize the Director of the State Department of Conservation and Natural Resources and the State Engineer to enter into agreements with neighboring states or their political subdivisions concerning cooperative management of ground water basins shared between the states. Include a policy statement indicating that it is the policy of the State of Nevada to encourage and support interstate cooperation in the management of shared ground water basins if the adjoining state has an entity that is capable of managing the water resource adequately. (BDR 48-325)

II. ADDITIONAL SOURCES OF WATER/BALANCE OF SUPPLY AND DEMAND

A. Deep Carbonate Aquifers

2. Include in the final report a statement expressing support for the field testing (stressing) of the carbonate aquifers through development and pumping of wells in order to gather specific information concerning the carbonate aquifers' hydrologic dynamics and the effects of pumping on the alluvial and volcanic aquifers. (The regional systems are comprised of the carbonate, alluvial and volcanic aquifers.)
3. Include in the final report a statement acknowledging the values associated with and expressing support for additional research to determine the extent and hydrologic characteristics of the regional carbonate aquifers. (The original study was designed as a three-phase project. Only the first phase covering southern Nevada was completed.)

B. Transfers of Water - Interstate Transfers

4. Include in the final report a statement encouraging the State of Nevada (through its various agencies) to be proactive in seeking additional water for interstate transport into the state to meet the needs of its citizens.
5. Include in the final report a statement encouraging the Colorado River Commission to continue to be proactive in seeking amendments to the "Law of the River" which could benefit the State of Nevada.

C. Transfers of Water - Relevant Additional Studies

6. Appropriate \$200,000 to the State Department of Conservation and Natural Resources to finance thorough examinations of the water resource potentials of undeveloped and partially developed basins in the state. (BDR S-326)

D. Conservation

7. Direct each county, city, district which supplies water, and private water company regulated by the Public Service Commission of Nevada (PSCN) to adopt a water conservation plan by July 1, 1992, based on its respective climate and living conditions. (BDR 58-327)
8. Include in the final report a request that the state's Division of Water Planning review the existing statutory requirements relative to water conservation, as well as applicable standards which are generally accepted nationally, and provide this information and any relevant recommendations to the 1991 session of the Legislature.
9. Direct the PSCN to consider, in addition to the "least-cost" option, the public values associated with possible savings of water in making decisions about the types of construction or expansion of power generation plants to be approved. (BDR 58-327)
10. Direct, by resolution, the Director of the State Department of Conservation and Natural Resources to study and develop a program whereby "credit" for water saved through conservation efforts may be granted to the water right holders associated with the efforts. (BDR R-328)

III. WATER QUALITY AND WASTE WATER MANAGEMENT GENERALLY

A. Administrative Responsibilities and Coordination

11. Direct, by resolution, the state's Health Division and Division of Environmental Protection to take such steps as are necessary, including entering into interagency agreements, to avoid duplication of effort and review regarding water quality and waste water management. (BDR R-329)

B. Water Quality Monitoring

12. Express support, by resolution, for additional staff positions and an increase in operating budget in the Division of Environmental Protection for statewide water quality monitoring activities, and urge the State Environmental Commission to increase the related permit processing and annual service fees in order to finance the additional staff and operating budget. (BDR R-330)
13. Express support, by resolution, for establishment of a joint office of the Division of Environmental Protection and the Division of Water Resources in Clark County, and urge the divisions to provide funds for the commensurate increases in staff positions and operating expenses through increases in fees and assessments. (BDR R-331)

C. Appropriation of Effluent and Artificial Recharge

14. Provide, by statute, that the State Engineer has sole authority for permitting:
 - a. Effluent appropriations; and
 - b. Injection of Colorado River waters that ultimately mix with natural ground waters and are subject to appropriation under the recharge recovery permit process. (BDR 48-332)

D. Reuse of Effluent

15. Adopt, by statute, a policy statement which expresses support for and promotes the use and reuse of effluent, where appropriate. (BDR 48-332)

IV. REGULATION OF INDIVIDUAL DOMESTIC WELLS
AND SEPTIC TANKS

16. Amend Nevada Revised Statutes (NRS) 278.462 relative to requirements which may be imposed upon parcel maps by local governments by authorizing the local governments to require water quality, water supply and sewerage provisions as are reasonably necessary. (Transfer these items from Subsection 2 to Subsection 1 of NRS 278.462). (BDR 22-334)
17. Require approval of the state's Health Division (or a local agency acting on its behalf), the Division of Environmental Protection, and the Division of Water Resources (as currently required for subdivisions pursuant to NRS 278.377) for parcel maps not within the service area of a water system created as a general improvement district, owned or created by a county or city, or regulated by the PSCN. (BDR 22-335)
18. Direct the Division of Water Resources to adopt regulations by July 1, 1992, establishing the water right credit to which a public water system (as defined in NRS 445.376) is entitled when a customer is added to the system and thereby ceases to use a domestic well which pumped water from the same basin which supplies water to the system. Provide that the State Engineer may require "plugging" of the domestic wells in these situations. (BDR 48-333)

V. IMPLEMENTATION OF THE FEDERAL SAFE DRINKING WATER ACT

A. Maintaining "Primacy" at the State Level and
Administration of the Program

19. Enact legislation containing the following elements:
 - a. "Whereas clauses" which:
 - Refer to enactment of the federal Safe Drinking Water Act.
 - Highlight the ability of the state to retain primary enforcement authority (primacy) for the Public Water System Supervision Program which is authorized under the federal act.

- Explain that retaining primacy allows the state to act with a degree of discretion in establishing water quality monitoring schedules, approving variances and exemptions, and conducting other activities allowed under the federal act.
 - Point out the need for the state to provide technical assistance to water suppliers and laboratory facilities for use within the state.
 - Acknowledge the need for continuing support of the state program.
 - State that safe drinking water is important to the health of all Nevada citizens and the visitors to the state.
- b. A policy statement expressing the Legislature's conclusion that primacy for the Public Water System Supervision Program should remain at the state level and that Nevada's program should include provisions for technical assistance to water suppliers and laboratory facilities for use within the state. (BDR R-336)
20. Include in the final report a statement expressing support for:
- a. An appropriation of \$263,500 to Nevada's Health Division for fiscal year 1992-1993 for partial payment of staffing and operational expenses. (The remainder of the costs are to be paid through fees.)
 - b. A one-time appropriation of \$460,000 for laboratory equipment for fiscal year 1991-1992.
 - c. A one-time appropriation for facility expansion at the Nevada State Health Laboratory. (Expansion of the facility has been recommended to the State Public Works Board for inclusion in its 1991-1993 biennial budget.)
21. Send a letter to the Nevada Legislature's Interim Finance Committee expressing support for the Health Division's proposal to:

- a. Increase fees to generate approximately \$300,000 for fiscal year 1990-1991 to finance maintenance of primacy for the safe drinking water program at the state level and administer the program; and
- b. Increase the staff in Nevada's Health Division and local health districts by six positions for the same purpose.

B. Financial Assistance for Small Water Systems

22. Urge, by resolution, the United States Congress and the President:

- a. To enact legislation which provides financial support for small water systems in meeting the requirements of the federal Safe Drinking Water Act; and
- b. To provide additional funds through existing programs such as Community Development Block Grants and Section 501 of Title V of the Federal Disaster Assistance Act of 1989.

Refer to the various legislative proposals being considered by Congress relative to this topic. (BDR R-337)

23. Establish a matching grant program administered by the State Board to Finance Water Projects to provide, at the board's discretion, financial assistance for capital improvements required of noninvestor-owned community and nontransient public water systems which are in existence at the time of passage and approval of the legislative act.

- a. Direct the board to give preference to small water companies in distributing funds through the program.
- b. Direct the board to adopt regulations establishing a sliding scale from 75 percent to 15 percent matching requirements based upon average household income, demonstration of economic hardship, imminent risk to public health, and other relevant factors.
- c. Provide that grants may include costs associated with consolidation or regionalization of

systems, and may include costs associated with the transfer and connection of an investor-owned system to a noninvestor-owned system.

- d. Authorize issuance of \$25 million in state general obligation bonds to furnish funds for the program, and provide that the bonds are to be repaid through property taxes. (BDR 30-338)
24. Establish, if constitutional, a revolving loan fund administered by the State Board to Finance Water Projects to provide, at the board's discretion, low-interest loans for capital improvements required of community water systems.
- a. Direct the board to give preference to small water companies in approving loans through the fund.
 - b. Specify that the money obtained through such a loan cannot be used as the local matching portion in order to obtain a grant through the state grant program.
 - c. Authorize the State Board to Finance Water Projects to administer any federal funds which are made available for this type of program.
 - d. Authorize issuance of \$100 million in state general obligation bonds to furnish funds for the program, and provide that the bonds are to be repaid as appropriate for the program.
 - e. Amend Section 9 of Article 8 of the Constitution of the State of Nevada to provide that:

 Sec: 9. The State shall not donate or loan money, or its credit, subscribe to or be, interested in the Stock of any company, association, or corporation, except for a public purpose or to corporations formed for educational or charitable purposes. (BDR 30-339 and BDR C-340)
25. Appoint the Administrator of Nevada's Health Division, or his/her designee, as a nonvoting advisory member of the State Board to Finance Water Projects; and direct the board to request the comments and recommendations of the Health Division when reviewing applications relating to drinking water. (BDR 30-341)

C. Other Related Recommendations

26. Require that the operators of community water systems which are designated surface water systems or community water systems serving 100 or more persons must be certified through a program administered by Nevada's Health Division.
 - a. Define "operator" as the person in charge, on a day-to-day basis, of the operation of the water system.
 - b. Specify that a certified operator does not necessarily have to be on site at the water system.
 - c. Specify that a certified operator may operate more than one system.
 - d. Establish an advisory board appointed by the Governor and consisting of one member who has at least 3 years of experience as an operator of a public water system, one member who is an operator of a public water system certified at the highest level, one member who represents a municipality which employs an operator, and one member who represents an area with a population of less than 5,000 people which is served by a public water system. Specify that the duty of the board is to advise the Health Division concerning the procedures used in the certification process, but it does not have any responsibilities relative to the certification of specific operators. (BDR 40-342)
27. Modify the provisions of NRS 445.2521 through NRS 445.2529 concerning package sewer treatment plants to be applicable to approval of new water systems other than public utilities and systems owned by public utilities. (BDR 40-343)
28. Urge, by resolution, counties and cities to establish "well-head protection zones" to protect the quality of community drinking water sources through their planning and zoning powers as provided in NRS 278.020, NRS 278.150, NRS 278.160, and NRS 278.250.
 - a. Refer to the federal Safe Drinking Water Act which requires monitoring of the quality of drinking water sources.

- b. Highlight that the Safe Drinking Water Act also allows the designated state agency (Nevada's Division of Environmental Protection) to modify the frequency of required monitoring based upon assessments of the sources' vulnerability to pollution.
 - c. State that establishment of "well-head protection zones" may be considered in determining the vulnerability of water sources to pollution and thus may be considered as factors in determining the frequency of required monitoring activities. (BDR R-344)
- 29. Add willful violation of a regulation adopted by the State Board of Health pursuant to NRS 445.381 to the list of violations for which a water supplier is subject to a civil penalty of not more than \$5,000 per day as provided in NRS 445.397; and authorize the State Board of Health to impose an additional administrative fine of not more than \$5,000 per day for the willful violations listed in NRS 445.397. (BDR 40-345)
- 30. Include in the final report an expression of the subcommittee's support for the concept of appropriating money to Nevada's Health Division to prepare an inventory of the quality of Nevada's 440 community public water systems (a cooperative project with the United States Geological Survey).
- 31. Make a one-time appropriation of \$300,000 to Nevada's Health Division to prepare an inventory of the quality of Nevada's 440 community public water systems (a cooperative project with the United States Geological Survey), including an assessment of the projected needs of the systems to comply with the requirements of the federal Safe Drinking Water Act. (BDR S-346)
- 32. Specify that no supplier of water or sewer services which is subject to regulation by the PSCN may dispose of or encumber any of its property which is necessary or useful in the performance of its duties to the public without first securing from the PSCN an order authorizing it to do so; and declare that any such action made other than in accordance with the order is void. (BDR 58-347)

VI. CUMULATIVE IMPACTS OF PROPOSED ACTIONS ON THE
TRUCKEE RIVER SYSTEM

33. Express, by resolution, the Legislative Subcommittee's support for a negotiated settlement of issues associated with the Truckee and Carson River systems. (BDR R-348)
34. Include in the report a statement expressing support for the objectives, efforts and achievements associated with legislation being considered by the U.S. Congress relative to a negotiated settlement of the issues associated with the Truckee and Carson River systems, but also highlighting the following points recommended for inclusion in the bill:
 - a. Specify that any proposals to change the point-of-diversion or point-of-use of water in the Truckee River System (regardless of the ownership of the water rights) are subject to approval or denial by Nevada's State Engineer as provided in state law.
 - b. Include guarantees of mitigation and compensation for any degradation of ground water aquifers resulting from the transfer of water from irrigation or changes in the operation of the river system.
 - c. Provide mechanisms for resolution of all of the relevant litigation associated with the Truckee River system.
 - d. Include language to ensure preservation and enhancement of the recreational investments in the Lahontan Reservoir.
35. Include a statement in the report expressing the subcommittee's understanding that any quantity of effluent whose final application is shifted from the Truckee River to land/wetland must be replaced by an equivalent amount of water being returned to the river.

VII. DITCHES IN THE TRUCKEE MEADOWS

36. Direct, by resolution, the Regional Water Planning and Advisory Board of Washoe County, or its successor, to work with the ditch companies in developing agreements between these entities and the

relevant local governments concerning the future of the ditches in the Truckee Meadows.

Specify that the agreements must include:

- a. Provisions addressing the benefits and financial responsibilities associated with:
 - Ditch maintenance.
 - Liability insurance.
 - Use of ditches for storm drainage.
 - Other factors as agreed by the parties.
- b. Provisions that protect the existing property rights of the ditch companies and allow the ditch companies to continue to operate the ditches.
- c. Consideration of alternative uses, consolidation, and/or retirement of ditches. (BDR R-349)

VIII. REGIONAL EFFORTS TO IMPROVE WATER AND WASTE WATER SERVICES

37. Include in the final report a statement expressing support for regional efforts to improve water and waste water services in accordance with an adopted regional plan. Acknowledge that legislative action may be necessary to enable implementation of regional approaches, and recommend that the Legislature give positive consideration to these types of proposals.

IX. WETLANDS DESIGNATIONS

38. Adopt a resolution urging Congress, the President and the relevant Federal Government agencies to support:
 - a. A definition of "wetlands" which means a naturally occurring area of predominantly hydric soils that presently supports hydrophytic vegetation not common to cultivated land or farming practices and incorporates the following further definitions:

- "Hydric soils" are soils which are consistently wet enough to maintain an anaerobic condition that supports primarily hydrophytic vegetation.
 - "Hydrophytic vegetation" means plants which grow in water or in soils made deficient of oxygen due to excessive water content and generally considered to be a swamp or bog.
- b. A definition of "wetlands" which specifically exempts:
- Land previously converted to farming.
 - Small acreages below a specified limit.
 - Areas which meet the definition of "wetlands" but were created artificially by irrigation and which would no longer meet the definition if the irrigation practices ceased, unless these wetlands were created specifically in order to replace other wetlands which were taken out of this category.
- c. A "wetlands" program which:
- Protects private property rights as defined in federal Executive Order No. 12630, including water rights.
 - Does not consider farming practices such as common land leveling and laser leveling as being in the category of "dredge and fill."
- d. Recognition of unique conditions prevalent nationwide, and provision of flexibility when implementing the national "no net loss" wetlands policy. (BDR R-350)

X. ROLE OF THE STATE'S DIVISION OF WATER PLANNING

39. Add a provision within the legislative declaration of state policy concerning water planning, as outlined in NRS 540.011, stating that the Legislature recognizes the relationship between water quantity and water quality and the necessity for planning to consider both factors simultaneously; and add a provision to the duties of the Division of Water

Planning (NRS 540.051) directing that the division include factors associated with water quality and water quantity in its planning. Highlight, however, that the State Environmental Commission and the Division of Environmental Protection retain full responsibility for water quality management duties. (BDR 48-351)

40. Direct, by resolution, the state's Division of Water Planning to update and reevaluate the "Alternative Plans for Water Resource Use" prepared for the six river basin areas within the state as part of previous state water planning efforts, and compile "water resource management plans" for each of the areas.
 - a. Include a policy statement acknowledging the values of areawide water resource management planning and highlighting intensified competition for the use of water resources.
 - b. Specify that the division is to seek local input through means including, but not limited to, public hearings and working directly with the local political jurisdictions. (BDR R-352)
41. Direct, by resolution, the Division of Water Planning to emphasize the provision of technical assistance to local governmental entities in their local planning efforts. (BDR R-353)
42. Include within the duties of the Division of Water Planning (NRS 540.051) the analysis of potential sites for development of upstream storage facilities in the state. (BDR 48-351)

XI. REVIEW OF STATE WATER LAWS AND PROGRAMS GENERALLY

43. Amend NRS 533.375 so that it also authorizes the State Engineer, in the case of multiple applications whose cumulative diversions for a single project total more than 10 cubic feet per second of water, to require the statement of facts concerning the identity and financial capability of the applicant that is currently authorized in the section. (BDR 48-355)

44. Include in the final report a statement reaffirming the state's position that all applications for water permits and changes of water rights are subject to the jurisdiction of the State Engineer, whether the applicants are governmental entities (federal, state, or local) or private parties.
45. Include in the final report a statement expressing support for continuation of weather modification programs designed to augment water supplies in the Western United States.

REPORT TO THE 66TH SESSION OF THE NEVADA LEGISLATURE
BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO
STUDY WATER AND WASTE WATER RESOURCES
IN NEVADA

I. INTRODUCTION

The 1989 Nevada Legislature adopted Senate Concurrent Resolution No. 24 (File No. 192) which directed the Legislative Commission to conduct a comprehensive study of the laws, regulations and policies relating to water and waste water resources in Nevada.

The Legislative Commission appointed a subcommittee consisting of ten legislators to compile the study. Three Technical Advisory Committees with members from the public and private sectors were also appointed to provide information and recommendations on issues which affect Southern Nevada (primarily Clark County), Northern Nevada (primarily Washoe County) and the rural portions of the state, respectively.

A total of 14 hearings were held in association with the study. Each Technical Advisory Committee participated in 4 hearings within its local area, and the Legislative Subcommittee met twice. The subcommittee adopted a total of 45 recommendations addressing a broad range of issues associated with water and waste water resources in the state.

The final report of the subcommittee contains short histories of Western and Nevada water law, a summary of current Nevada water laws and procedures, discussions of each recommendation individually, a bibliography of suggested readings, and relevant appendices.

II. HISTORY OF WESTERN WATER LAW

Through history, two distinct philosophies for the management of surface water resources have been developed. Both of these approaches have influenced the water laws in the Western United States.

The Riparian Water Rights Doctrine

The riparian water rights doctrine was developed in England and the Eastern United States where the climate is humid and water is relatively abundant. The basic principle of the riparian doctrine is that each person owning land along a surface water body (a riparian owner) is entitled to a "reasonable use" of water from that source. Each riparian owner has an equal right to use water, and no priority system exists to allocate water during times of decreased flow. The riparian right exists perpetually, even without use, while the land remains adjacent to the water source. Riparian rights are not limited to a fixed quantity of flow or volume; and, therefore, no administrative system was incorporated into the doctrine.

The Doctrine of Prior Appropriation

The appropriation doctrine, or the doctrine of prior appropriation, was developed in the semi-arid Western States which were unsuited to the riparian doctrine. Early large-scale uses of water in the West were mining and irrigation. Minerals and irrigable land were not necessarily located near surface water bodies. Thus, water had to be diverted and used away from the source. In addition, much of the activity took place on public lands, and therefore modified the land ownership concept associated with the riparian doctrine. The prior appropriation doctrine was developed over the years to address these special water problems in the arid West.

The most significant principles of the appropriation doctrine are:

1. Beneficial use is the basis of the right.
2. The rule of priority controls in times of shortage.

In all Western States, the waters are declared to be the property of the public or state. Under the appropriation doctrine, most states employ a permit system through which water may be appropriated for beneficial use based upon

availability of unappropriated water and nonimpairment of existing rights. Once the water has been put to beneficial use, a water right is granted to the user. This right is a real property right which can be defined, sold, transferred, mortgaged, or bequeathed.

The cornerstone of water allocation under the appropriation doctrine is that "beneficial use is the basis and measure of the right to use water." In order to use water, it must be taken for a beneficial purpose, and the amount of water actually used for this beneficial purpose defines the limit and extent of the right. Under this concept, nonuse of the water leads to loss of the right.

In disputes over water, the early westerners applied the rule of "first in time, first in right." The courts later adopted the rule, and it also was adopted as a primary principle of the appropriation doctrine. Under this concept, the holders of earlier rights have a senior priority for use of water in times of shortage, and their rights are filled in total before junior appropriators get any water.

Application of Water Rights Doctrines in Western States

Each of the 17 Western States has adopted the doctrine of prior appropriation. The following less arid Western States also apply the riparian doctrine to lands adjacent to surface water bodies: California, Kansas, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, and Washington.

Ground water legislation occurred much later than surface water doctrines. This was due in part to adequacy of surface water supplies, lack of economically efficient technology to produce ground water, and lack of knowledge about ground water supplies. Most of the Western States adopted ground water laws which incorporated the basic provisions of the appropriation doctrine. However, the specifics of management of the supplies continue to vary considerably among the states, and some states (most notably California) have never adopted a ground water law.

III. HISTORY OF THE NEVADA WATER LAW

Except for a very short period between 1872 and 1885, Nevada water law has always been based upon the appropriation doctrine. Statutes relating to water were enacted by the Nevada Legislature as early as 1866. The act of 1866 allowed any person or persons to divert the waters of a river or stream and run the water through any ditch or flume, and it also provided for the right-of-way through the lands of others. Court decisions provided the guidelines which were used to attempt to bring some order out of the chaos created by early mining booms and irrigation development in the semi-arid state. A law designed to adjudicate water rights through the courts was tried in Nevada in the early 1890's. The law proved a failure. The determination of water rights through the courts was unsatisfactory, as well as being a long, expensive, and tedious process. Thus the fundamental idea in creating the office of State Engineer was to avoid this delay and expense.

The background concept of the present Nevada water law was developed from the Irrigation Act of 1903. The primary purpose of the act of 1903 creating the office of State Engineer was to provide a method by which the existing rights to water might be defined. The act declared that all natural water courses and natural lakes, and the waters thereof which were not held in private ownership, belong to the public and are subject to appropriation for a beneficial use. It also stated that the right to the use of water so appropriated for irrigation would be appurtenant to the land to be irrigated, and beneficial use would be the basis, the measure and the limit of the right.

In 1913, the water law was rewritten, and this 1913 law provides the basic principles that have remained in the state's water law through the succeeding years. The 1913 act included an early provision for the conservation of underground water in the State of Nevada. By this act, underground water was fully recognized, "The waters of all sources of water supply within the boundaries of the state, whether above or beneath the surface of the ground, belong to the public." A declaration was made that beneficial use of water is a public use; and therefore, the right of eminent domain may be exercised. Regulations as to the abandonment of rights were set forth, and provision was made for rotation in the use of water. A more substantial code for the determination of vested water rights was established, and regulations were set forth concerning reservoir permits.

The 1939 Legislature provided a great many additions to meet the rapidly growing demands for water. For the first time, the Legislature declared that all underground waters were subject to appropriation under the state laws relating to appropriation. Thus, percolating water was included under the water laws. This provision expanded the statute of 1913 which required that water from an artesian or definable aquifer be subject to the state law regarding appropriation. Domestic wells not exceeding 2 gallons per minute (2,880 gallons per day) were declared exempt from the water code.

It is to be noted that the State of Nevada was one of the early states to develop a ground water law.

IV. SUMMARY OF CURRENT NEVADA WATER LAWS AND PROCEDURES

There are two ways to acquire a water right in the State of Nevada. One is by the adjudication of right beneficially used prior to the enactment of the water law. The other is by filing an application to appropriate the public water in accordance with statutory procedures. Administration of these procedures may be described within the following three categories:

1. Adjudication;
2. Distribution; and
3. Appropriation.

Adjudication

Surface water rights initiated by applying water to beneficial use prior to March 1, 1905, and which have been perpetuated or continuously used through the years are known as vested water rights. Nevada Revised Statutes 533.090 through 533.320 provide the procedure by which the limit and extent of vested water rights are determined by the district court. In addition to defining the nature and extent of vested rights, the water law provides for systematic state control over the distribution of water under these rights.

The 1939 Ground Water Act (Statutes of Nevada 1939, Chapter 178) defined vested rights as applied to water from wells. Such a vested right is a right to the use of underground water acquired from an artesian well or from a definable aquifer prior to March 22, 1913, and an underground water right on percolating water, the course and boundaries of which are incapable of determination, acquired prior to March 25, 1939.

The law provides that any water user on a stream system or any claimant of a vested underground water right may petition the State Engineer to begin an adjudication of the water rights, or without such petition, the State Engineer may initiate such proceedings on any stream. The various steps followed in the adjudication procedure may be summarized as follows:

1. After a field investigation, the State Engineer, enters an order granting the petition for adjudication, if he deems an adjudication to be appropriate.
2. The State Engineer gives notice of the pending proceedings.

3. A notice and order for taking proofs of appropriation (claims of vested rights) is published in a local newspaper in the county where the stream is located, and a period of not less than 60 days for taking proofs is established.
4. Following the period for taking proofs, the State Engineer prepares an abstract of all claims filed and a preliminary order of determination.
5. A period for inspection of proofs is set for at least 20 days.
6. The State Engineer next sets a time and place for the hearing of objections to his preliminary order of determination.
7. Following the hearing, the State Engineer prepares the final order of determination and files this with the district court, together with all other evidence in connection with the adjudication proceedings.
8. When the court sets the time and place for hearing of exceptions to the order of determination, the State Engineer gives notice of the pending court hearing.
9. The court then hears the exceptions to the order of determination.
10. The findings of fact, conclusions of law, and decree are entered by the district judge.

As noted, the adjudication procedure applies both to surface water and to ground water. A large number of surface water systems have been adjudicated by this procedure in Nevada. Currently, adjudications are being conducted on a basinwide basis, including surface and ground waters.

Distribution

The State Engineer, pursuant to NRS 533.270 through 533.320, has primary responsibility for distribution of all adjudicated waters in Nevada except federally decreed stream systems. Stream systems which have been adjudicated are distributed by water commissioners in accordance with the decree. These water commissioners are appointed by the State Engineer, subject to confirmation by the court, and are supervised by the State Engineer through the supervising water commissioner.

Nevada Revised Statutes 533.300 provides authority for the creation of water districts. In areas where an irrigation district has been formed, the water is distributed within the district by their personnel. However, in accordance with NRS 533.305, the State Engineer retains the responsibility for proper distribution. On interstate streams, a federal Water Master is designated by the court having jurisdiction, and he distributes the water under the federal decree.

In the case of intrastate streams where distribution is required, the State Engineer is required to set up a distribution budget as provided under NRS 533.280. In most cases, the court decree specifies the quantity of water that is allocated to various parcels of land included in the decree. All costs of distribution (water commissioners' wages, transportation, stream measurement and related items) are included in the budget. The particular stream budgets are based on the total acre-feet owned by each user so that each will be assessed a just and proportionate share of costs.

Chapter 534 of NRS provides that in the event investigations by the office of the State Engineer show the need for the supervision of the ground water within any basin, the State Engineer is responsible for employing well supervisors and other necessary assistants required for the proper administration of that basin. If a ground water basin has been adjudicated and vested ground water rights determined, those adjudicated rights are included within the distribution of the waters of the basin. Authority exists under NRS 534.040 for the county commission to levy a special tax to provide finances to administer the ground water basin.

Appropriation

Nevada Revised Statutes 533.325 through 533.435 provides the complete procedure for appropriation of the public waters of the state, whether above or beneath the surface of the ground. A discussion of the procedure as outlined by statute is as follows:

1. The person who desires to use water files his application, accompanied by a map prepared by a licensed water rights surveyor, with the Division of Water Resources.
2. A summary of the application is noticed in the newspaper.

3. A 30-day period exists for interested parties to file protests.
4. The State Engineer may hold field investigations and hearings relative to the application, if he deems these necessary.
5. The State Engineer grants or denies the application based upon availability of supply, relationship to existing rights, and the public interest. Any aggrieved party may appeal the decision to the district court.
6. The State Engineer issues a permit to appropriate a specific amount of water at a specified point of diversion and use the water at a specified location. The permit also contains additional conditions and information, including the date of priority.
7. The permittee must file within specified time limits:
 - a. Proof of completion of the works of diversion; and
 - b. Proof of placement of the water to beneficial use.
8. Upon request, the State Engineer may grant extensions of time.
9. After all proofs have been filed and compliance with the other terms of the permit has been shown, the State Engineer records a certificate of the water right in his office and sends a copy to the permit holder.

In Nevada, reviews of applications to appropriate water (as well as applications to change existing permits) are based upon three statutory criteria. The State Engineer (pursuant to subsection 3 of NRS 533.370) is directed to reject an application where:

- No unappropriated water is available;
- Conflicts with existing rights are present; or
- Approval of the application "threatens to prove detrimental to the public interest."

The general policy of the State Engineer is to limit ground water withdrawals from a basin to the average annual recharge to the ground water basin or its "perennial yield." "Perennial yield" of a ground water basin may be defined as the maximum amount of natural discharge that can be salvaged

each year over the long-term by pumping without bringing about some undesired result. An example of an undesirable result would be a decline in the static water level beyond a reasonable limit or degradation of water quality beyond usable limits.

Under NRS 534.030, the State Engineer is given the authority to "designate" a ground water basin if he determines that the basin is "in need of administration." The criterion which he typically employs as a guide for determining when to designate a basin is the time that the use of water approaches the annual recharge. In designated basins where the ground water is being depleted, the State Engineer is authorized to make such rules, regulations or orders as are deemed essential for the welfare of the area involved, and he is directed to designate preferred uses of water. In designated basins, he may also: (1) issue temporary well permits which are revocable when water can be furnished by a municipality or water district, (2) prohibit the drilling of domestic wells where water can be provided by an entity engaged in furnishing water, (3) limit the depth of domestic wells, and (4) deny application to appropriate ground water for any purpose in an area served by an entity that furnishes water. A list of the basins which are designated as of August 1990 is contained in Appendix A. The Las Vegas Artesian Basin is the only designated ground water basin in which temporary permits have been issued.

Several additional Nevada statutes deal with specific elements within the water appropriation procedures. Some of the most significant are as follows:

- Nevada Revised Statutes 533.440 provides for primary and secondary permits to store water in a reservoir.
- Section 534.180 of NRS states that Chapter 534 does not apply to wells for domestic purposes where the water use does not exceed 1,800 gallons per day.
- Nevada Revised Statutes 534.090 provides that if a holder of a right fails for 5 successive years to use beneficially all or part of his permitted underground water, he forfeits the right to use that water to the extent of the nonuse.
- Chapter 534A of NRS makes geothermal water and steam subject to appropriation under NRS Chapters 533 and 534, and provides for confidentiality of information associated with geothermal drilling.

Additional Duties of the State Engineer

The law prescribes several additional duties for the State Engineer and the Division of Water Resources which he administers.

Chapter 535 of NRS makes the State Engineer responsible for the safety of dams within the state. It provides that any person or entity wishing to build or reconstruct a dam which will impound more than 10 acre-feet of water or which will rise more than 10 feet from the channel bottom must obtain a permit. Inspection and final approval of the dam are required before water may be impounded in the reservoir.

The National Dam Safety Program (Public Law 92-367) calls for inspection of dams where the potential for a high loss of life or property exists if the dam were to fail. In Nevada, the Division of Water Resources is responsible for inspecting 33 such dams. In addition, the division is required to visit and gather information on all other privately owned dams which are more than 25 feet in height or which impound more than 50 acre-feet of water. There are approximately 350 dams in Nevada which fall within these parameters.

Under provisions of Chapter 278 of NRS, the State Engineer is required to approve water availability for new subdivisions. Within 15 days of receipt of a tentative map, the State Engineer must recommend approval, conditional approval or disapproval of the tentative map. His signature is also required on the final subdivision map.

Nevada Revised Statutes 534.140 provides for licensing of well drillers through the Division of Water Resources, and NRS 533.080 provides for licensing of water right surveyors.

A water right is a property right, and transfer of ownership of a water right is binding only between the parties until a copy of the instrument of transfer, certified by the county recorder, is filed with the State Engineer. Upon checking for proper chain of title, the State Engineer makes the "assignment" of the water right a matter of record.

Also among his duties, the State Engineer sits on the Nevada Commission of the California-Nevada Interstate Compact Commission, the Nevada Commission of the Columbia Basin Interstate Compact Commission, the State Environmental Commission, and the Review Board for Public Lands, as well as functioning as a technical advisor to the Board for Financing Water Projects.

V. DISCUSSION OF SUBCOMMITTEE RECOMMENDATIONS

As previously highlighted, the Legislative Subcommittee which conducted the interim study was assisted by three Technical Advisory Committees. These advisory committees consisted of members from the public and private sectors whose duty was to provide information and recommendations concerning issues affecting Southern Nevada (primarily Clark County), Northern Nevada (primarily Washoe County) and the rural portions of the state, respectively.

Each Technical Advisory Committee held four hearings within its local area and submitted recommendations to the Legislative Subcommittee. The subcommittee adopted a total of 45 recommendations.

Following is a concise discussion of each adopted recommendation.

A. Management Of Interstate Ground Water Basins

Ground water basins do not tend to adhere to political boundaries. The State of Nevada shares ground water basins with the states of California, Idaho, Oregon and Utah.

As pressures on these basins increase, the need for joint management of the resource is magnified. In addressing the issues associated with interstate management of ground water basins, the subcommittee requested a legal opinion concerning legislative authorization within the Nevada statutes and the need for Congressional ratification of such agreements. The conclusion of the Principal Deputy Legislative Counsel's opinion reads as follows:

In conclusion, it is the opinion of this office that, given specific legislative authorization to do so, the State Engineer or the Director of the State Department of Conservation and Natural Resources may enter into a narrowly drawn agreement with the State of California regarding the appropriation and management of shared groundwater basins without the need for Congressional approval of the agreement.

The full text of the opinion is contained in Appendix B.

The shared basins which are receiving the most attention at the present time are those on the boundary between California and Nevada. The California Legislature has established ground water management districts for Honey Lake Valley and Long Valley in the northeastern portion of the

state. These local jurisdictions have been given powers which are similar to those exercised by the State Engineer in Nevada. It should also be noted that the states of Idaho and Utah have water laws that are relatively similar to the Nevada statutes.

Testimony from Nevada officials indicated that authorization to enter into these types of interstate agreements would provide a valuable management tool.

Based upon these factors, the subcommittee adopted the following recommendation:

- Authorize the Director of the State Department of Conservation and Natural Resources and the State Engineer to enter into agreements with neighboring states or their political subdivisions concerning cooperative management of ground water basins shared between the states. Include a policy statement indicating that it is the policy of the State of Nevada to encourage and support interstate cooperation in the management of shared ground water basins if the adjoining state has an entity that is capable of managing the water resource adequately. (BDR 48-325)

B. Additional Sources Of Water/Balance Of Supply And Demand

One of the significant areas of consideration for the subcommittee involved existing and potential water shortages in various portions of the state. Discussion centered upon the search for additional sources of water and efforts to balance supply and demand.

The topic took on special importance in light of the fact that Nevada is the driest state in the Nation.

Deep Carbonate Aquifers

Relatively deep carbonate aquifers, consisting of thick sequences of fractured limestone and dolomite rocks, underlie most of the mountains and valleys in eastern and southern Nevada. For a number of years, the question of whether this series of deep carbonate aquifers could provide a significant source of water has been voiced.

In 1985, the State of Nevada entered into a cooperative effort with the United States Department of the Interior for the study and testing of these aquifers. The studies have been an on-going effort since that time.

Technical work has been carried out by the U.S. Geological Survey (USGS), the Desert Research Institute and the U.S. Bureau of Reclamation (BOR) with funding provided by the State of Nevada, Las Vegas Valley Water District, City of North Las Vegas, the USGS and BOR. Studies have focused on southern Nevada and primarily addressed three basic questions:

1. Where, in the carbonate rock aquifers, is there significant water that is potentially available for development;
2. How much water can potentially be drawn from these aquifers; and
3. What impacts are anticipated following short-term and long-term development of the aquifers as water sources?

The activities undertaken to date have included basic hydrologic data collection, geologic mapping, geophysical measurements, geochemical sampling of wells and springs, and some well drilling and testing. The Las Vegas Valley Water District plans to enter into a more extensive program of testing (stressing) the aquifers through development and pumping of test wells.

Based upon this information and testimony from technical experts in the field, the subcommittee adopted the following recommendations:

- Include in the final report a statement expressing support for the field testing (stressing) of the carbonate aquifers through development and pumping of wells in order to gather specific information concerning the carbonate aquifers' hydrologic dynamics and the effects of pumping on the alluvial and volcanic aquifers. (The regional systems are comprised of the carbonate, alluvial and volcanic aquifers.)
- Include in the final report a statement acknowledging the values associated with and expressing support for additional research to determine the extent and hydrologic characteristics of the regional carbonate aquifers. (The original study was designed as a three-phase project. Only the first phase covering southern Nevada was completed.)

Transfers of Water - Interstate Transfers

Southern Nevada is extremely dependent upon the interstate agreement associated with the Colorado River for its current water supply. The state has also expressed interest at various times in long-range proposals to import water from the Pacific Northwest or Canada. For example, the 1989 Legislature adopted Senate Joint Resolution No. 17 which urges the U.S. Congress to authorize "interregional" transfers of water and Senate Concurrent Resolution No. 21 which requests that the Western States Water Council study "interregional" water transfers.

As part of the interim legislative study, the subcommittee expressed support for the following two recommendations:

- Include in the final report a statement encouraging the State of Nevada (through its various agencies) to be proactive in seeking additional water for interstate transport into the state to meet the needs of its citizens.
- Include in the final report a statement encouraging the Colorado River Commission to continue to be proactive in seeking amendments to the "Law of the River" which could benefit the State of Nevada.

Transfers of Water - Interbasin Transfers

The topic of interbasin transfers of water received a great deal of attention from the Technical Advisory Committees and the Legislative Subcommittee. The subject was especially controversial at a time when applications have been made and others are being contemplated to transfer water from basins in the rural portions of the state to the more populated urban centers.

After a considerable amount of analysis and debate, the subcommittee determined not to adopt a specific recommendation relative to interbasin transfers. The members did, however, approve the following policy statement as expressed by the Chairman:

We have heard many times during this study how the state water law has served the best interests of Nevada's citizens for several decades. Under existing law, the State Engineer evaluates the "public interest" as part of reviewing all applications.

We have debated this general law now for 14 meetings, based upon a couple of very specific examples, and not reached a consensus. Rather than changing the water law in ways that may have unknown effects in the future, I would suggest that we let the law work the way it was designed to. I would recommend that we leave the existing law alone in this area.

If individual legislators would like to do the additional work to make any of the proposals viable, I would suggest that they bring them forward during the 1991 session.

Transfers of Water-Related Additional Studies

Discussions of potential interbasin transfers of water within the State of Nevada highlighted the fact that additional information will often be needed to assess relevant applications. While a great deal of reconnaissance-level information has been compiled in recent years concerning water basins in the state, additional data will clearly be necessary as competition for the scarce resources increases.

The State Engineer advised the subcommittee that these types of studies are generally conducted in cooperation with the USGS, noting that the analyses usually require on-going efforts for a period of 4 to 5 years. Thus, it will be necessary to approve funding during more than one legislative session in order to complete a set of studies. He also pointed out that the Division of Water Resources in the State Department of Conservation and Natural Resources has recently been receiving \$150,000 per year through the regular budget process for compiling these types of analyses.

After reviewing the relevant testimony, the subcommittee concluded that state funding for the more detailed water resource studies should be increased to a total of \$350,000 per year (\$150,000 through the agency budget process and \$200,000 per year by special appropriation). The following recommendation was, therefore, adopted:

- **Appropriate \$200,000 to the State Department of Conservation and Natural Resources to finance thorough examinations of the water resource potentials of undeveloped and partially developed basins in the state. (BDR S-326)**

Conservation

Conservation of water resources may be viewed as an "additional" source of supply or as a mechanism to forestall the necessity of developing additional sources. In either case, the concepts associated with conservation are vital to water resource evaluations in an arid state like Nevada.

As part of the interim study, a considerable amount of general information was compiled relative to conservation of water. Appendix C contains a memorandum prepared at the request of Assemblyman Adler which highlights several local conservation programs in the United States, conservation techniques which have been implemented in various jurisdictions, potential actions at the state level, and a list of the conservation-oriented provisions in the Nevada statutes. The list of "Suggested Readings" in Section VII of this report also contains references to general publications addressing the topic of water conservation.

Based upon discussion of these broader, general approaches to water conservation, the following two recommendations were adopted:

- Direct each county, city, district which supplies water, and private water company regulated by the Public Service Commission of Nevada (PSCN) to adopt a water conservation plan by July 1, 1992, based on its respective climate and living conditions. (BDR 58-327)
- Include in the final report a request that the state's Division of Water Planning review the existing statutory requirements relative to water conservation, as well as applicable standards which are generally accepted nationally, and provide this information and any relevant recommendations to the 1991 session of the Legislature.

The subcommittee also received testimony concerning a couple of specific conservation issues. The group discussed the manner in which the Public Service Commission of Nevada (PSCN) reviews proposed power generation plants. These types of facilities often use significant quantities of water, and the amount of water used is sometimes affected by the type and design of the plant being contemplated.

Testimony indicated that, in its electric resource planning, the PSCN uses a "least-cost planning" approach which assesses the availability and cost of water - but purely in

economic terms. The subcommittee concluded that a broader approach to this analysis (incorporating the additional public value of water conservation) would be best for the citizens as a whole, and the following recommendation was adopted:

- Direct the PSCN to consider, in addition to the "least-cost" option, the public values associated with possible savings of water in making decisions about the types of construction or expansion of power generation plants to be approved.
(BDR 58-327)

Relative to another specific conservation issue, the subcommittee considered the question of who benefits from "extra" water which is conserved. In general concept, a water right is limited to the amount actually used. Thus, the holder of the right has little incentive to conserve water if the "excess" will simply be returned to the overall "pot" of water that is available for appropriation by another potential user. The concept of a "credit" for conserved water was discussed, but the complicated character of such a program was beyond the time limits of the interim study.

For this reason the following recommendation was approved:

- Direct, by resolution, the Director of the State Department of Conservation and Natural Resources to study and develop a program whereby "credit" for water saved through conservation efforts may be granted to the water right holders associated with the efforts. (BDR R-328)

C. Water Quality And Waste Water Management Generally

Realizing that water quantity and water quality are interdependent, the Legislative Subcommittee was directed to address both aspects of the overall water situation in the state. Thus, the subject of water quality and waste water management received a considerable amount of attention.

Administrative Responsibilities and Coordination

The topic of administrative coordination was discussed in some depth. The roles of local entities as related to state programs were reviewed, as were the relationships among the various local agencies. In the area of water quality management, however, coordination between state agencies received the most attention.

In the public's view, there are two major entities whose programs appear to exhibit overlapping responsibilities and a need for increased coordination--the Consumer Health Protection Service Section of the Health Division in the Department of Human Resources and the Division of Environmental Protection in the Department of Conservation and Natural Resources. The areas of specific concern were highlighted as:

1. Subdivision review;
2. Regulation of individual sewage disposal systems; and
3. Complaint investigation in these two areas.

There was also some discussion of the potential for overlapping responsibilities as the federal Safe Drinking Water Act is further implemented.

Based on the subcommittee's inquiries, administrators of the two state agencies submitted a memorandum reviewing the areas of concern and proposed a cooperative approach to increasing coordination. A copy of the memorandum is included as Appendix D.

Following the general approach proposed in the joint agency memorandum, the subcommittee adopted the following recommendation:

- Direct, by resolution, the state's Health Division and Division of Environmental Protection to take such steps as are necessary, including entering into interagency agreements, to avoid duplication of effort and review regarding water quality and waste water management. (BDR R-329)

Water Quality Monitoring

Among its responsibilities, the state's Division of Environmental Protection implements the requirements of the federal Clean Water Act and regulates both "point" and "non-point" sources of pollution that may contaminate either ground water or surface water.

The agency has monitored surface water quality on the major rivers in Nevada since 1967. Approximately 60 stations are located on the major systems--Truckee, Carson, Humboldt and Colorado Rivers. These stations are monitored routinely for conventional pollutants. The purpose of this effort is to ensure that water quality standards are being met and that beneficial uses are protected.

In addition to fixed-station routine monitoring, selected stream segments are subjected annually to an intensive survey. Aquatic life, sediment, and water samples are collected and tested for toxic elements such as herbicides, organic compounds, pesticides and toxic heavy metals. The agency has also recently initiated monitoring studies on several major lakes and reservoirs in the state.

In the area of ground water quality, representatives of the division highlighted the need for a greater ability to monitor and regulate those activities which affect water quality, such as mining and other operations which discharge to the ground waters. Testimony from the division indicated that, in order to meet the increasing responsibilities associated with water quality monitoring, additional financial resources and approximately 10 new staff positions will be required in the surface and ground water programs. It is anticipated that funds for the staff augmentation will be generated through increases in various permit and service fees. It was further noted that the associated request will be included in the division's budget recommendations for the 1991 legislative session.

In a related matter, representatives of the Division of Environmental Protection and the Division of Water Resources discussed the economies which could be attained by the sharing of office space and support staff in Clark County. The Division of Water Resources projects the need to expand the staff in its current office in Clark County, and the Division of Environmental Protection proposes to open a similar office. Because the two divisions operate within the same state department and the water resource is fundamental to each agency's responsibilities, establishment of a joint office in Southern Nevada appeared to deserve the subcommittee's support.

Based upon this background information, the subcommittee approved the following two recommendations:

- Express support, by resolution, for additional staff positions and an increase in operating budget in the Division of Environmental Protection for statewide water quality monitoring activities, and urge the State Environmental Commission to increase the related permit processing and annual service fees in order to finance the additional staff and operating budget. (BDR R-330)
- Express support, by resolution, for establishment of a joint office of the Division of Environmental Protection and the Division of Water Resources in

Clark County, and urge the divisions to provide funds for the commensurate increases in staff positions and operating expenses through increases in fees and assessments. (BDR R-331)

Appropriation of Effluent and Artificial Recharge

Appropriation of effluent and artificial recharge waters proved to be a significant issue in Clark County. Because of the use of water from the Colorado River and the ability to receive return-flow credits under the Colorado River Compact, the situation is different in Clark County than in other portions of the state.

A controversy has arisen in this regard between the State Engineer as administrator of the State's Division of Water Resources and the Colorado River Commission as the primary state agency responsible for management of the Colorado River Compact. The State Engineer claims sole responsibility for appropriations of effluent in the State of Nevada, while the Colorado River Commission contends that joint responsibility exists for appropriation of effluent that is composed of water originally diverted from the Colorado River.

At the center of the issue is interpretation of subsection 2 of NRS 533.372 which reads as follows:

The state engineer shall not approve any application or issue any permit to appropriate the waters of the Colorado River held in trust by the Colorado River Commission except after approval of the application by the commission. The commission and the state engineer may adopt such joint regulations as may be necessary for the purpose of carrying out the provisions of this subsection.

Attorney General Opinion Nos. 88-16 and 107 are cited as relevant to this issue. Copies are included as Appendix E.

The State Engineer recommended that the statutes be modified to clearly reflect that his office has sole authority for permitting of effluent and recharge. Representatives of the Colorado River Commission recommended that the state law remain as it is with special reference to the joint regulations for which the statute provides.

The subcommittee chose to support the State Engineer's position and adopted the following recommendation:

- Provide, by statute, that the State Engineer has sole authority for permitting:
 - a. Effluent appropriations; and
 - b. Injection of Colorado River waters that ultimately mix with natural ground waters and are subject to appropriation under the recharge recovery permit process. (BDR 48-332)

Reuse of Effluent

The use and reuse of effluent has become a significant topic of discussion in the arid portions of the western United States. Effluent is recognized as a valuable resource that can be reused beneficially and should not be wasted. At the present time, several Nevada communities use effluent to enhance wetlands and to irrigate golf courses, parks, crops, and pasture land.

Because a potential for ground water contamination exists if effluent is not used properly, the state's Division of Environmental Protection has been given responsibility for regulation of reuse. Testimony indicated that the division is attempting to encourage reuse of effluent while simultaneously ensuring protection of the public health and environment.

The subcommittee concluded that a specific statement of public policy should be included in the statutes; and therefore, the following recommendation was approved:

- Adopt, by statute, a policy statement which expresses support for and promotes the use and reuse of effluent, where appropriate.
(BDR 48-332)

D. Regulation Of Individual Domestic Wells And Septic Tanks

The degree and manner of regulation for individual domestic wells and septic tanks has been debated for several years in Nevada.

Pursuant to NRS 534.180, a permit is not required for a domestic well which draws a maximum of 1,800 gallons of water per day. Testimony indicated that between 1,000 and 1,500 new domestic wells are being developed in Nevada each year. In a growing number of instances, these wells are becoming clustered enough to have negative effects on the related ground water aquifers. Water quantity is affected

when the water table begins to be lowered, thus causing well owners to have to deepen their existing wells or drill new wells.

As water quantity and quality are often interrelated, a reduction in the quantity of water in an aquifer may also have the effect of concentrating the existing pollutants and degrading the water quality. When a proliferation of septic tanks is added to this situation, the probability of creating water quality problems and resultant public health risks is enhanced significantly.

In Nevada, land division through the use of parcel maps has often been associated with developments which incorporate utilization of single family wells and septic tanks. Under existing Nevada law, approval of the state agencies which review subdivisions is not required for parcel maps. There is also a question about the types of water quality, water supply and sewerage provisions which may be required by local governments when they approve parcel maps.

The subcommittee concluded that local governments should be allowed to require water and sewer provisions as are reasonably necessary for all parcel maps. The members also determined that the state agencies which review and approve subdivisions should also have approval authority for parcel maps which are not within the service area of a major water system. Thus, the following two recommendations were adopted:

- **Amend Nevada Revised Statutes (NRS) 278.462 relative to requirements which may be imposed upon parcel maps by local governments by authorizing the local governments to require water quality, water supply and sewerage provisions as are reasonably necessary. (Transfer these items from Subsection 2 to Subsection 1 of NRS 278.462). (BDR 22-334)**
- **Require approval of the state's Health Division (or a local agency acting on its behalf), the Division of Environmental Protection, and the Division of Water Resources (as currently required for subdivisions pursuant to NRS 278.377) for parcel maps not within the service area of a water system created as a general improvement district, owned or created by a county or city, or regulated by the PSCN. (BDR 22-335)**

Testimony also supported development of a mechanism whereby a community water system which acquires a domestic well user as a customer can be credited with the amount of water formerly allocated to the well. An illustration was discussed in which it might be determined that an area which is served by domestic wells should develop a community water system. If the area happens to be located in a designated basin which is fully allocated, the new community water system would have no immediate source of water rights unless credits were granted for the domestic wells which will no longer be used when the system is completed. Likewise, this type of credit program would provide an incentive for existing community systems to seek to provide service to owners of domestic wells.

Thus, the subcommittee adopted the following recommendation:

- Direct the Division of Water Resources to adopt regulations by July 1, 1992, establishing the water right credit to which a public water system (as defined in NRS 445.376) is entitled when a customer is added to the system and thereby ceases to use a domestic well which pumped water from the same basin which supplies water to the system. Provide that the State Engineer may require "plugging" of the domestic wells in these situations. (BDR 48-333)

E. Implementation Of The Federal Safe Drinking Water Act

In 1986, Congress passed major amendments to the federal Safe Drinking Water Act. The most significant impacts will be observed in the Public Water System Supervision Program which is administered at the federal level by the U.S. Environmental Protection Agency (EPA) and at the state level by Nevada's Health Division.

The amendments authorize EPA to establish standards for maximum contaminant levels and monitoring requirements for 86 contaminants of drinking water by 1992 and an additional 25 every 3 years thereafter. The amendments also authorize EPA to establish treatment requirements such as filtration and disinfection in lieu of standards. Public water systems are responsible for the monitoring and treatment of their water if it exceeds the standards.

It is anticipated that regulations relative to the following four areas will have the greatest impacts on water systems in the State of Nevada:

- Surface water treatment generally;
- Lead/copper corrosion;
- Disinfection; and
- Radionuclides.

The National Conference of State Legislatures has initiated a Safe Drinking Water Project designed to assist state legislatures with information and technical assistance relative to implementation of the federal Safe Drinking Water Act. A copy of the initial newsletter prepared as a part of this project is included as Appendix F. The newsletter contains good discussions of the basic requirements of the 1986 amendments to the federal law, retention of "primacy" at the state level, funding for administration and capital improvements, and relevant activities in several states.

Maintaining "Primacy" at the State Level and Administration of the Program

Under Section 1413 of the federal Safe Drinking Water Act, primary enforcement authority ("primacy") for administration of the Public Water System Supervision Program may be delegated from EPA to an appropriate state agency. Nevada's Health Division has been so designated since 1978.

As the primacy agency, the Health Division is responsible for ensuring that the 750 public water systems in the state comply with the federally mandated monitoring and treatment requirements.

The current Nevada program includes review of plans for construction of facilities, ensuring the provision of drinking water in emergency conditions, submitting reports to EPA, and undertaking enforcement actions when necessary. The Health Division also provides laboratory services to public water systems at a minimal cost and technical assistance. According to testimony before the subcommittee, the program has been administered with a minimum of federal intervention, and the Health Division has been afforded maximum flexibility to prioritize implementation of regulations.

In order to maintain primacy at the state level under the 1986 amendments to the federal Act, the Health Division must meet the following conditions:

1. Adopt regulations no less stringent than the EPA standards;
2. Adopt and implement adequate procedures for enforcement;
3. Maintain records and make regular reports to EPA;
4. Issue variances and exemptions under conditions no less stringent than those approved by EPA; and
5. Adopt and be capable of implementing a plan for the provision of safe drinking water under emergency situations.

Based upon public testimony and indications that organizations such as the Western States Water Council support retention of primacy at the state level, the subcommittee concluded that the State of Nevada should seek to retain primacy for implementation of the Public Water System Supervision Program. The members also expressed support for the Health Division's activities in the areas of providing technical assistance and laboratory facilities. The subcommittee highlighted the values of administering the program in-state so that the citizens and water suppliers will have ready access to the regulatory mechanism. Likewise, it was pointed out that retaining primacy in Nevada allows the state to act with a degree of discretion in establishing water quality monitoring schedules, approving variances and exemptions, and conducting other general activities associated with the federal act.

Thus, the subcommittee approved the following recommendation:

- Enact legislation containing the following elements:
 - a. "Whereas clauses" which:
 - Refer to enactment of the federal Safe Drinking Water Act.
 - Highlight the ability of the state to retain primary enforcement authority (primacy) for the Public Water System Supervision Program which is authorized under the federal act.
 - Explain that retaining primacy allows the state to act with a degree of discretion in establishing water quality monitoring

schedules, approving variances and exemptions, and conducting other activities allowed under the federal act.

- Point out the need for the state to provide technical assistance to water suppliers and laboratory facilities for use within the state.
 - Acknowledge the need for continuing support of the state program.
 - State that safe drinking water is important to the health of all Nevada citizens and the visitors to the state.
- b. A policy statement expressing the Legislature's conclusion that primacy for the Public Water System Supervision Program should remain at the state level and that Nevada's program should include provisions for technical assistance to water suppliers and laboratory facilities for use within the state. (BDR R-336)

In order to maintain primacy and retain the technical assistance and laboratory functions, increased staffing will be required in the state's Health Division. Funding for the program presently consists of federal grants with a minimum 25 percent state and local match. The state and local matching funds are derived from appropriations, fees for services, and fees for annual operating permits.

Relatively detailed projections of funding and staff needs for the next several years were reviewed. Testimony indicated that authorization to spend additional money generated from increased fees is to be sought from the Interim Finance Committee in order to support expanded efforts during fiscal year 1990-1991. Likewise, the Health Division will seek increases for the 1991-1993 biennium through the regular budget process and the State Public Works Board's capital improvements program.

Based upon this information, the subcommittee adopted the following two recommendations:

- Include in the final report a statement expressing support for:

- a. An appropriation of \$263,500 to Nevada's Health Division for fiscal year 1992-1993 for partial payment of staffing and operational expenses. (The remainder of the costs are to be paid through fees.)
 - b. A one-time appropriation of \$460,000 for laboratory equipment for fiscal year 1991-1992.
 - c. A one-time appropriation for facility expansion at the Nevada State Health Laboratory. (Expansion of the facility has been recommended to the State Public Works Board for inclusion in its 1991-1993 biennial budget.)
- Send a letter to the Nevada Legislature's Interim Finance Committee expressing support for the Health Division's proposal to:
 - a. Increase fees to generate approximately \$300,000 for fiscal year 1990-1991 to finance maintenance of primacy for the safe drinking water program at the state level and administer the program; and
 - b. Increase the staff in Nevada's Health Division and local health districts by six positions for the same purpose.

Financial Assistance for Small Water Systems

The financial resources needed for Nevada's public water systems to comply with the new federal standards are extremely significant. Although final regulations have not been adopted and detailed analyses of Nevada's water systems have not been undertaken, it is estimated that capital improvements in excess of \$250 million will be required to meet the requirements which are currently being contemplated.

While the larger water systems can spread their costs over a broader rate base, the small systems appear to be facing the greatest financial problems on a per capita basis. Approximately 335 of Nevada's 360 community water systems are categorized as "small" (serving less than 3,300 people), and about 200 of these systems are defined as being "very small" (serving less than 500 customers). In addition to the absence of financial and technical ability to comply with the new federal requirements, many of the smaller water

systems are rural and therefore cannot implement regionalization or consolidation programs.

Relative to financial assistance, several types of measures are being considered at the Congressional level. Additional appropriations for existing programs are being discussed, but most attention is being directed toward new programs such as financial assistance for states which create revolving loan or matching grant mechanisms.

Nevada's State Board to Finance Water Projects administers a program pursuant to NRS 349.935 through 349.961 which might be able to provide some assistance for water systems. Possibly of greater significance, however, the board has developed the expertise necessary to administer new programs which would be more directly relevant.

Based upon the clear need for state and federal action in this area and the capabilities inherent in the existing State Board for Financing Water Projects, the subcommittee adopted the following four recommendations:

- Urge, by resolution, the United States Congress and the President:
 - a. To enact legislation which provides financial support for small water systems in meeting the requirements of the federal Safe Drinking Water Act; and
 - b. To provide additional funds through existing programs such as Community Development Block Grants and Section 501 of Title V of the Federal Disaster Assistance Act of 1989.

Refer to the various legislative proposals being considered by Congress relative to this topic. (BDR R-337)

- Establish a matching grant program administered by the State Board for Financing Water Projects to provide, at the board's discretion, financial assistance for capital improvements required of noninvestor-owned community and nontransient public water systems which are in existence at the time of passage and approval of the legislative act.
 - a. Direct the board to give preference to small water companies in distributing funds through the program.

- b. Direct the board to adopt regulations establishing a sliding scale from 75 percent to 15 percent matching requirements based upon average household income, demonstration of economic hardship, imminent risk to public health, and other relevant factors.
 - c. Provide that grants may include costs associated with consolidation or regionalization of systems, and may include costs associated with the transfer and connection of an investor-owned system to a noninvestor-owned system.
 - d. Authorize issuance of \$25 million in state general obligation bonds to furnish funds for the program, and provide that the bonds are to be repaid through property taxes. (BDR 30-338)
- Establish, if constitutional, a revolving loan fund administered by the State Board for Financing Water Projects to provide, at the board's discretion, low-interest loans for capital improvements required of community water systems.
 - a. Direct the board to give preference to small water companies in approving loans through the fund.
 - b. Specify that the money obtained through such a loan cannot be used as the local matching portion in order to obtain a grant through the state grant program.
 - c. Authorize the State Board for Financing Water Projects to administer any federal funds which are made available for this type of program.
 - d. Authorize issuance of \$100 million in state general obligation bonds to furnish funds for the program, and provide that the bonds are to be repaid as appropriate for the program.
 - e. Amend Section 9 of Article 8 of the Constitution of the State of Nevada to provide that:

Sec: 9. The State shall not donate or loan money, or its credit, subscribe to or be, interested in the Stock of any company, association, or corporation, except for a public

purpose or to corporations formed for educational or charitable purposes. (BDR 30-339 and BDR C-340)

- Appoint the Administrator of Nevada's Health Division, or his/her designee, as a nonvoting advisory member of the State Board for Financing Water Projects; and direct the board to request the comments and recommendations of the Health Division when reviewing applications relating to drinking water. (BDR 30-341)

Other Related Recommendations

The subcommittee also considered several additional recommendations which should have positive ramifications on the safe drinking water programs.

Operator Certification --

The new monitoring requirements, especially as they relate to taking and handling of samples, will make it necessary for operators of water systems to maintain a level of technical capabilities which is greater than previously needed. Likewise, the additional investments required to meet the new water quality standards will highlight the need for efficient operation and maintenance of the systems.

During recent sessions, the Legislature has experienced difficulty in crafting an "operator certification program" which would apply effectively on a statewide basis. The members of the subcommittee, however, determined that the new requirements and sizable financial investments dictate that efforts be made to work out the difficulties and develop a usable operator certification program. Thus, the following recommendation was approved:

- Require that the operators of community water systems which are designated surface water systems or community water systems serving 100 or more persons must be certified through a program administered by Nevada's Health Division.
 - a. Define "operator" as the person in charge, on a day-to-day basis, of the operation of the water system.
 - b. Specify that a certified operator does not necessarily have to be on site at the water system.

- c. Specify that a certified operator may operate more than one system.
- d. Establish an advisory board appointed by the Governor and consisting of one member who has at least 3 years of experience as an operator of a public water system, one member who is an operator of a public water system certified at the highest level, one member who represents a municipality which employs an operator, and one member who represents an area with a population of less than 5,000 people which is served by a public water system. Specify that the duty of the board is to advise the Health Division concerning the procedures used in the certification process, but it does not have any responsibilities relative to the certification of specific operators.
(BDR 40-342)

Package Water Systems --

The subcommittee also expressed concern about the proliferation of very small water systems. As previously mentioned, the requirements associated with the federal Safe Drinking Water Act will make it necessary for the operators of small systems to maintain higher levels of technical expertise.

The financial strains which will be placed upon small systems that are not properly maintained were also discussed. The local governments' responsibilities and the Public Service Commission of Nevada's role in instances of failure by small systems that are inadequately operated was a topic of significant concern.

Testimony indicated that the procedures provided through the existing law relating to approval of package sewer treatment plants (NRS 445.2521 through 445.2529) have been effective in curbing problems associated with utilization of inadequate treatment plants. The subcommittee concluded that a modification of these procedures to make them applicable to package water systems would be advantageous. After reviewing the basic elements which would be included in such a program (Appendix G), the subcommittee approved the following recommendation:

- Modify the provisions of NRS 445.2521 through NRS 445.2529 concerning package sewer treatment

plants to be applicable to approval of new water systems other than public utilities and systems owned by public utilities. (BDR 40-343)

"Well-Head Protection" Zones --

Federal law and regulations emphasize the need to protect the quality of water sources - rather than depending solely on treatment approaches. In fact, the Safe Drinking Water Act provides for varying the frequency of monitoring activities based upon assessments of the sources' vulnerability to pollution.

"Well-head protection" programs have been shown to be cost-effective means for many public water systems to protect their sources from pollution. The state's Division of Environmental Protection is currently contracting with the Desert Research Institute to develop the parameters that can be used to evaluate well-head protection areas and their effectiveness. The results of this effort will provide guidelines that may be used to regulate the types of developments which may be allowed within certain distances of wells in order to protect the water systems.

Nevada's planning and zoning laws provide the basic tools for local governments to protect their water sources. Rather than advocating new state legislation, the subcommittee concluded that active use of the local planning and zoning laws for "well-head protection" would be a preferable approach. Thus, the following recommendation was adopted:

- Urge, by resolution, counties and cities to establish "well-head protection zones" to protect the quality of community drinking water sources through their planning and zoning powers as provided in NRS 278.020, NRS 278.150, NRS 278.160, and NRS 278.250.
 - a. Refer to the federal Safe Drinking Water Act which requires monitoring of the quality of drinking water sources.
 - b. Highlight that the Safe Drinking Water Act also allows the designated state agency (Nevada's Division of Environmental Protection) to modify the frequency of required monitoring based upon assessments of the sources' vulnerability to pollution.

- c. State that establishment of "well-head protection zones" may be considered in determining the vulnerability of water sources to pollution and thus may be considered as factors in determining the frequency of required monitoring activities. (BDR R-344)

Willful Violation of Agency Regulations --

As the designated primacy agency responsible for administration of the Public Water System Supervision Program, the state's Health Division is required to enforce the law and its associated regulations. Under existing Nevada law, willful violation of a drinking water standard, emergency health order, condition of a variance or exemption, or a public notification is subject to a civil penalty. However, willful violation of other relevant statutory provisions or agency regulations is subject to criminal penalty as a misdemeanor, rather than civil penalties. Likewise, the Health Division is not authorized to levy administrative fines for willful violation of its regulations.

District courts most often have full schedules, and criminal penalties may not be sufficient to deter a willful violation. Thus, testimony indicated that the division needs the civil penalty and power to levy administrative fines in order to effectively administer the provisions of the program. Representatives of the division indicated that the amounts of administrative fines are generally adopted as agency regulations and set forth in an incremental format based upon the severity of the infractions. It was also stated that the Health Division would always make initial efforts to bring inadequate water systems into compliance through intermittent monitoring and technical assistance. The administrative fine would be used when recalcitrant owners or operators willfully violate the agency's regulations.

Based upon this input, the subcommittee approved the following recommendation:

- Add willful violation of a regulation adopted by the State Board of Health pursuant to NRS 445.381 to the list of violations for which a water supplier is subject to a civil penalty of not more than \$5,000 per day as provided in NRS 445.397; and authorize the State Board of Health to impose an additional administrative fine of not more than \$5,000 per day for the willful violations listed in NRS 445.397. (BDR 40-345)

Inventory of Water Systems --

The Health Division has accumulated a considerable amount of information about the water systems operating in the state. The subcommittee was interested, however, in relatively detailed statistics which have yet to be compiled concerning potential costs of compliance with the new regulations. Finances to support this detailed level of inventory have not been available.

The subcommittee concluded that a baseline of information, especially concerning the quality of Nevada's water systems and needs related to compliance with drinking water regulations, is important. This type of data is especially significant in light of the fact that substantial public funding for capital improvements will apparently be required. Thus, the members approved the following recommendations:

- Include in the final report an expression of the subcommittee's support for the concept of appropriating money to Nevada's Health Division to prepare an inventory of the quality of Nevada's 440 community public water systems (a cooperative project with the United States Geological Survey).
- Make a one-time appropriation of \$300,000 to Nevada's Health Division to prepare an inventory of the quality of Nevada's 440 community public water systems (a cooperative project with the United States Geological Survey), including an assessment of the projected needs of the systems to comply with the requirements of the federal Safe Drinking Water Act. (BDR S-346)

Disposal or Encumbrance of Property --

As previously mentioned, the financial impacts of the new requirements associated with amendment of the federal Safe Drinking Water Act will be most pronounced for small water systems with limited customer bases and restricted access to capital. In the recent past, several small water systems in Nevada have gotten into a situation in which they were unable to continue to provide adequate service. Testimony indicated that more such instances can be expected in the future because the financial requirements placed upon marginal systems in order to meet the new regulations will be significant.

For systems which are regulated by the Public Service Commission of Nevada and fall into this situation, efforts

are made to provide technical assistance to correct the problem and then attempts are made to effect a consolidation which will ensure a continuation of service. As a last resort, the systems are placed in receivership. Problems have been encountered, however, when the owner of the water system has sold essential assets prior to the utility going into receivership. In such cases, the receiver cannot provide service because of the missing facilities.

The State of California has a law which is designed to avoid this type of sale or transfer of essential utility property by requiring review of these transactions by the regulatory body. Based upon this model, the subcommittee adopted the following recommendation:

- Specify that no supplier of water or sewer services which is subject to regulation by the PSCN may dispose of or encumber any of its property which is necessary or useful in the performance of its duties to the public without first securing from the PSCN an order authorizing it to do so; and declare that any such action made other than in accordance with the order is void.
(BDR 58-347)

F. Cumulative Impacts Of Proposed Actions On The Truckee River System

The Truckee River System has played an integral role in the history of Northwestern Nevada since the beginning of the area's recorded development. Controversies over use of the water resource have existed for well over 100 years. Some of the major debates have involved:

- Allocation of Truckee River water between the States of Nevada and California;
- Use of Truckee River water for municipal and industrial expansion in the Reno-Sparks area;
- Historical uses of Truckee River water for irrigation in the Truckee Meadows;
- Use of water to support irrigated agriculture in the Fallon area after construction of the Newlands project;
- Preservation of the fishery associated with Pyramid Lake and the wetlands at Stillwater;
- Use of Truckee River water to preserve the recreational asset at Lahontan Reservoir; and

- Use and reuse of effluent as related to water quality standards for the Truckee River.

Actions in any one of these areas has ramifications in the other areas. The controversies have, therefore, fostered a great number of lawsuits - some of which have been litigated for years.

The subcommittee received a great deal of testimony concerning the cumulative impacts of proposed actions on the Truckee River System and the potential that a "negotiated settlement" could resolve many of the long-standing issues. Most of this testimony centered upon legislation being considered by the United States Congress at the time. According to its summary, the measure's approval would, among other things:

1. Ratify and implement water settlements involving the Pyramid Lake Paiute Tribe, the States of California and Nevada, and other parties;
2. Provide for the enhancement of endangered and threatened species; and
3. Preserve valuable wetlands.

Based upon the considerable amount of testimony, the subcommittee approved the following three recommendations:

- Express, by resolution, the Legislative Subcommittee's support for a negotiated settlement of issues associated with the Truckee and Carson River systems. (BDR R-348)
- Include in the report a statement expressing support for the objectives, efforts and achievements associated with legislation being considered by the U.S. Congress relative to a negotiated settlement of the issues associated with the Truckee and Carson River systems, but also highlighting the following points recommended for inclusion in the bill:
 - a. Specify that any proposals to change the point-of-diversion or point-of-use of water in the Truckee River System (regardless of the ownership of the water rights) are subject to approval or denial by Nevada's State Engineer as provided in state law.

- b. Include guarantees of mitigation and compensation for any degradation of ground water aquifers resulting from the transfer of water from irrigation or changes in the operation of the river system.
- c. Provide mechanisms for resolution of all of the relevant litigation associated with the Truckee River system.
- d. Include language to ensure preservation and enhancement of the recreational investments in the Lahontan Reservoir.

(Note: After completion of the subcommittee's deliberations, the federal legislation was enacted. A copy of the final version of the measure is included as Appendix H of this report.)

- Include a statement in the report expressing the subcommittee's understanding that any quantity of effluent whose final application is shifted from the Truckee River to land/wetland must be replaced by an equivalent amount of water being returned to the river.

G. Ditches In The Truckee Meadows

Because of its agricultural beginnings, the Truckee Meadows was once crisscrossed by many irrigation ditches. Four major ditches are still used to supply water for agricultural or commercial purposes. The remaining ditches have basically lost their identity as agricultural ditches, but some are used for storm drainage. The ditches are individually controlled by a variety of owners including mutual ditch companies, water users' associations, public utilities and local governments.

Fewer agricultural users are available to finance maintenance of their ditches as the urban areas grow and farmland is converted into urban uses. The urban development also heightens problems associated with increased use of agricultural ditches for storm drainage, filling of ditches with debris, inadequate easements to allow ditch cleaning and maintenance, reconstruction of ditches after "breakouts" during storms, and insurance for flood hazards.

An interim legislative study relative to this subject was conducted in 1982. The conclusions and recommendations of the study were printed in Legislative Counsel Bureau

Bulletin No. 83-11, entitled "Ditches and Drainage in the Truckee Meadows." A copy of the text of the report and the bill which was enacted in response to the study, Assembly Bill 612 (Chapter 564, Statutes of Nevada 1983, pages 1660 through 1661) are included as Appendix I.

Because the basic issues were not resolved as a result of the 1982-1983 actions, the subcommittee determined that a regional approach to coordination of the efforts would be valuable and adopted the following recommendation:

- Direct, by resolution, the Regional Water Planning and Advisory Board of Washoe County, or its successor, to work with the ditch companies in developing agreements between these entities and the relevant local governments concerning the future of the ditches in the Truckee Meadows.

Specify that the agreements must include:

- a. Provisions addressing the benefits and financial responsibilities associated with:
 - Ditch maintenance,
 - Liability insurance,
 - Use of ditches for storm drainage,
 - Other factors as agreed by the parties;
- b. Provisions that protect the existing property rights of the ditch companies and allow the ditch companies to continue to operate the ditches; and
- c. Consideration of alternative uses, consolidation, and/or retirement of ditches.
(BDR R-349)

H. Regional Efforts To Improve Water And
Waste Water Services

As the issues associated with water quantity and water quality become more complicated, governmental entities are going to need a full array of tools to address the challenges. In several instances, it appears that increased cooperation and communication will be essential to produce efficiently planned and managed services.

The subcommittee received testimony concerning potential advantages of regional approaches to planning and management. In response to these discussions, the members approved the following recommendation:

- Include in the final report a statement expressing support for regional efforts to improve water and waste water services in accordance with an adopted regional plan. Acknowledge that legislative action may be necessary to enable implementation of regional approaches, and recommend that the Legislature give positive consideration to these types of proposals.

I. Wetlands Designation

Approximately 95 million acres of wetlands currently exist in the lower 48 states of the Nation. Historically, governmental policies have fostered draining, filling or altering wetlands. In recent years, however, Federal policies have been reversed to favor the preservation of wetlands.

The wetlands topic developed as a concern for the Legislative Subcommittee. Testimony indicated that the national wetlands preservation policies have created significant problems, especially for the agricultural industry. Major issues include:

1. The lack of a sufficient definition for "wetlands";
2. The question of whether wetlands must be of natural origin, or whether human-made areas should be classified as wetlands; and
3. How a national policy of "no net loss" should be implemented.

Of greatest concern was the definition of "wetlands." Most of the people who testified before the subcommittee felt that an adequate definition would eliminate many of the problems of interpretation and implementation. Wetlands are defined by the EPA, the Army Corps of Engineers, the Soil Conservation Service, and the Fish and Wildlife Service as:

those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands

generally include swamps, marshes, bogs, and similar areas. (33 C.F.R. Sec. 328.3(b)[1989])

This "legal" definition of wetlands is used in administration of Section 404 of the Federal Water Pollution Control Act of 1972 and the Clean Water Act of 1977.

For purposes of ecological studies and inventories, the U.S. Fish and Wildlife Service's definition is generally used:

Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water * * * Wetlands must have one or more of the following three attributes: (1) At least periodically, the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

The subcommittee received testimony concerning the elements which should be included and excluded from the definition of "wetlands." The members also agreed that basic private property rights and common agricultural practices should be protected as the program is implemented. In addition, the subcommittee expressed support for the resolution adopted by the Western States Water Council which urges the federal administration to recognize unique conditions prevalent nationwide and provide flexibility when implementing its national "no net loss" wetlands policy. A copy of this resolution is included as Appendix J.

For these reasons, the subcommittee adopted the following recommendation:

- Adopt a resolution urging Congress, the President and the relevant Federal Government agencies to support:
 - a. A definition of "wetlands" which means a naturally occurring area of predominantly hydric soils that presently supports hydrophytic vegetation not common to cultivated land or farming practices and incorporates the following further definitions:
 - "Hydric soils" are soils which are consistently wet enough to maintain an anaerobic condition that supports primarily hydrophytic vegetation.

- "Hydrophytic vegetation" means plants which grow in water or in soils made deficient of oxygen due to excessive water content and generally considered to be a swamp or bog.
- b. A definition of "wetlands" which specifically exempts:
- Land previously converted to farming.
 - Small acreages below a specified limit.
 - Areas which meet the definition of "wetlands" but were created artificially by irrigation and which would no longer meet the definition if the irrigation practices ceased, unless these wetlands were created specifically in order to replace other wetlands which were taken out of this category.
- c. A "wetlands" program which:
- Protects private property rights as defined in federal Executive Order No. 12630, including water rights.
 - Does not consider farming practices such as common land leveling and laser leveling as being in the category of "dredge and fill."
- d. Recognition of unique conditions prevalent nationwide, and provision of flexibility when implementing the national "no net loss" wetlands policy. (BDR R-350)

J. Role Of The State's Division Of Water Planning

Water planning has been conducted at the state level in Nevada for a number of years--both informally and formally.

Formal water planning activities were initiated in 1969 when the Legislature authorized four professional staff positions and one clerical support position for a new water planning section within the Division of Water Resources. In 1977, the Legislature created a separate Division of Water Planning and added Chapter 540 entitled "Planning and Development of Water Resources" to the statutes. The division functioned until 1983 when financial constraints made it necessary for the State Engineer to assume administrative

responsibility for the division and the one remaining staff position to be reassigned to the Division of Water Resources.

At the culmination of its efforts in 1983, the Division of Water Planning had compiled a series of specific water planning reports and "Alternative Plans for Water Resource Use" related to each of the six major regions of the state. Water planning activities on more of a special project basis were continued between 1983 and 1989.

Acknowledging that the issues relative to water resources in the state are becoming even more complicated, the 1989 Legislature reinstituted funding for the Division of Water Planning. At full complement, the staff will consist of an administrator, two engineers, an economist and a clerical position.

As part of the interim study, the subcommittee reviewed the duties and authorities of the Division of Water Planning. Three sections of NRS outline the following elements:

1. According to NRS 540.051, the division shall:
 - Provide political subdivisions and private enterprises in arid regions with information, alternatives and recommendations bearing upon regional shortages of water including feasible selections or courses of planning and action for acquiring additional water or for conserving water now available, or both.
 - Include in its planning the investigation of new sources of water such as desalinization, importation and conservation, and means of transporting existing water.
 - Develop forecasts of supply and demand for future needs.
 - Advise the state department of conservation and natural resources and the legislature concerning economic and social effects of water policy.
 - Suggest changes in water policy which may be necessary to meet new requirements of law or of the people of the state.
 - Cooperate with the state engineer in dealings with the Federal Government and other states, but the state engineer is solely responsible for litigation.

- Provide the board for financing water projects and the director of the department of commerce with necessary technical and clerical assistance in financing water projects.
2. Based upon NRS 540.061 through NRS 540.091, the division is to maintain reports of "projects" approved by local governments which require the use of 5 acre-feet or more of water per year (other than publicly owned projects and those associated with the division of land or planned unit developments).
 3. Subject to NRS 540.101, the administrator of the division may develop plans for the use of water resources which affect a specified region, the area within the jurisdiction of a local government, or the state. A water plan developed pursuant to this provision, however, must be approved by the Legislature before it is implemented.

In summarizing the future efforts of the division, the Director of the Department of Conservation and Natural Resources highlighted the following activities:

1. Update the data base;
2. Provide information about availability of water to governmental agencies and private interests;
3. Update and/or distribute copies of background materials previously developed;
4. Provide clerical and technical assistance to the State Board for Financing Water Projects;
5. Review and evaluate anticipated plans, proposals and reports addressing the state's water needs; and
6. Assist the State Engineer's Office in updating and maintaining inventories of the 232 ground water basins in Nevada.

After deliberating on this information and testimony concerning the most significant roles for the Division of Water Planning, the subcommittee approved the following four recommendations:

- Add a provision within the legislative declaration of state policy concerning water planning, as outlined in NRS 540.011, stating that the Legislature recognizes the relationship between water quantity

and water quality and the necessity for planning to consider both factors simultaneously; and add a provision to the duties of the Division of Water Planning (NRS 540.051) directing that the division include factors associated with water quality and water quantity in its planning. Highlight, however, that the State Environmental Commission and the Division of Environmental Protection retain full responsibility for water quality management duties. (BDR 48-351)

- Direct, by resolution, the state's Division of Water Planning to update and reevaluate the "Alternative Plans for Water Resource Use" prepared for the six river basin areas within the state as part of previous state water planning efforts, and compile "water resource management plans" for each of the areas.
 - a. Include a policy statement acknowledging the values of areawide water resource management planning and highlighting intensified competition for the use of water resources.
 - b. Specify that the division is to seek local input through means including, but not limited to, public hearings and working directly with the local political jurisdictions. (BDR R-352)
- Direct, by resolution, the Division of Water Planning to emphasize the provision of technical assistance to local governmental entities in their local planning efforts. (BDR R-353)
- Include within the duties of the Division of Water Planning (NRS 540.051) the analysis of potential sites for development of upstream storage facilities in the state. (BDR 48-351)

K. Review Of State Water Laws And Programs Generally

The subcommittee also investigated a variety of issues which were general in character and thus did not fit conveniently within any of the previously discussed categories.

One topic of consideration centered upon the type of information which is made available to the State Engineer for reviews of applications for major water diversions. Under NRS 533.375, the State Engineer is authorized to require additional information concerning the identity and financial capability of the applicant when an application proposes to

divert more than 10 cubic feet per second of water. The subcommittee concluded that this authority also should apply when the State Engineer receives multiple applications whose cumulative diversions for a single project total more than 10 cubic feet per second. Thus, the following recommendation was approved:

- Amend NRS 533.375 so that it also authorizes the State Engineer, in the case of multiple applications whose cumulative diversions for a single project total more than 10 cubic feet per second of water, to require the statement of facts concerning the identity and financial capability of the applicant that is currently authorized in the section. (BDR 48-355)

It has been a long-standing tenet of Nevada water law that all applications for permits or changes in water rights are subject to the jurisdiction of the State Engineer. This principle has been supported regardless of whether the applicants are governmental entities or private parties. The doctrine has also been upheld as it relates to the various levels of government - local, state or federal.

Testimony identified concerns about the degree to which some of the federal agencies recognize this principle. Although federal agencies in Nevada traditionally have functioned within the state's system of water law, enough questions were raised that the subcommittee deemed it prudent to reaffirm its support for the basic doctrine. For this reason, the following recommendation was adopted:

- Include in the final report a statement reaffirming the state's position that all applications for water permits and changes of water rights are subject to the jurisdiction of the State Engineer, whether the applicants are governmental entities (federal, state, or local) or private parties.

The subcommittee also received testimony about efforts to increase water supplies in the arid Western United States through weather modification programs. The Atmospheric Resources Division of the United States Bureau of Reclamation was identified as being a leader in the science of weather modification, and it was noted that 10 Western States have expressed their intent to undertake cooperative programs with the federal agency.

In April of 1990, the Western States Water Council adopted a resolution urging Congress and the national administration to support continued funding for the federal program. A copy of the resolution is included with this report as Appendix K.

Based upon this information, the subcommittee approved the following recommendation:

- Include in the final report a statement expressing support for continuation of weather modification programs designed to augment water supplies in the Western United States.

VI. CONCLUSION

The Legislative Subcommittee and three Technical Advisory Committees invested a great deal of time and effort in analyzing Nevada's laws and programs associated with water and waste water resources. The hearings were well attended and participation by all interested parties was good.

Because Nevada is the most arid state in the Nation, its citizens and governmental entities will always face water-related issues. Management of the vital resource may be expected to become even more crucial as the population of the state increases. The subcommittee concluded, however, that Nevada's water laws are among the best in the Western United States. The basic principles and policies have served the state well for many years. Although the laws and programs will require review and modification during future years, wholesale revamping of the statutory system is not anticipated.

The subcommittee proposed its recommendations in a conscious attempt to preserve the basic integrity of the state's water laws, while updating and upgrading the statutory provisions and programs. The members recognized, however, that a continuing legislative effort in this dynamic and critical field will be essential to the state's future well-being.

VII. BIBLIOGRAPHY AND SUGGESTED READINGS

Following is a listing of relevant bibliographic references and suggested readings. Although the list is not comprehensive, the selections were based upon materials that were provided to the subcommittee and research information which appeared to be of special interest. The documents are categorized under the headings - General and/or Conceptual Documents, Documents Specifically Related to Nevada, Conservation of Water, Federal Safe Drinking Water Act, and Wetlands.

General and/or Conceptual Documents

- "Area-Of-Origin Protection In Transbasin Water Diversions: An Evaluation of Alternative Approaches," Lawrence J. MacDonnell and Charles W. Howe, University of Colorado Law Review, Vol. 57, 1986.
- "Enhancing Water Values: Proposed Legislation for Western Water Use," Larry Morandi, National Conference of State Legislatures, Denver, Colorado, November 1988.
- "Financing Water Quality: Nonpoint Source Legislative Options," Larry Morandi and Tony Hutchison, National Conference of State Legislatures, State Legislative Report, Vol. 14, No. 12, September 1989.
- "Instream Flow Protection in the West," edited by Lawrence J. MacDonnell, Teresa A. Rice, and Steven J. Shupe, Natural Resources Law Center, University of Colorado School of Law, University of Colorado at Boulder, 1989.
- "Reallocating Western Water: Equity, Efficiency and the Role of Legislation," Larry Morandi, National Conference of State Legislatures, Denver, Colorado, October 1988.
- "State/federal relations in water resources management," A water policy seminar sponsored by the Western States Water Council, Washington, D.C., April 30, 1987.
- "State Ground Water Protection Policies: A Legislator's Guide," Larry Morandi, edited by Sharon Schwoch, National Conference of State Legislatures, Denver, Colorado and Washington, D.C., May 1989.

- "State Water Laws And Federal Water Uses: The History Of Conflict, The Prospects For Accommodation," Compiled and Edited by D. Craig Bell, Executive Director and Norman K. Johnson, Legal Counsel, Western States Water Council, January 5, 1990.
- "The Doctrine Of Prior Appropriation And The Changing West," Norman K. Johnson, Legal Counsel, A Report by the Staff of the Western States Water Council, 1987.

Documents Specifically Related to Nevada

- "Alternative Plans for Water Use" (series covering six major areas of Nevada), Nevada Division of Water Resources, 1973-1974.
- "Hydrographic Basin Statistical Summary-Ground Water Basins 001-232," State of Nevada Department of Conservation And Natural Resources, Division Of Water Resources And Water Planning, November 1988.
- "Nevada Water Supply and Use," in "National Water Summary, 1987-Water Supply and Use: Nevada," U.S. Geological Survey Water Supply Paper 2350.
- "1989 Colorado River Water Budget," State of Nevada, Colorado River Commission.
- "Regional Water Resource Plan," Final Report, Regional Water Planning And Advisory Board, Reno-Sparks and Washoe County, July 1990.
- "The State of Nevada Role in Water Planning: Past - Present - Future," State Of Nevada, Department Of Conservation And Natural Resources, Division Of Water Resources And Water Planning, November 1988.
- "Water for Nevada" (series of water planning reports and special information reports), Nevada Divisions of Water Resources and Water Planning, 1971-1974.

Conservation of Water

- "Survey of Water Conservation Programs in the Fifty States, Model Water Conservation Program for the Nation," Brent Blackwelder and Peter Carlson, Environmental Policy Institute, Washington, D.C., August 1982.

- "Water Conservation in Nevada," Nevada Division of Water Planning, Water Planning Report Series, Report No. 1, August 1979.
- "Water Conservation: The Hidden Supply," A Report by the New York State Senate Research Service Task Force on Critical Problems, Barrett Russell, William S. Nechamen and Jerry Sandau, Albany, New York, September 1986.

Federal Safe Drinking Water Act

- "A Guide to Water Supply Management in the 1990's," Metcalf and Eddy, November 1989.
- "Compliance With the Safe Drinking Water Act: State Legislative Options," Larry Morandi and Barbara Foster, National Conference of State Legislatures, State Legislative Report, Vol. 15, No. 7, February 1990.
- "Protecting Our Drinking Water," EPA Journal, Vol 12, No. 7, September 1986.
- "Safety On Tap, A Citizen's Drinking Water Handbook," League of Women Voters Education Fund, League of Women Voters of the United States, Washington, D.C., 1987.
- "The Impact of the Safe Drinking Water Act Amendments of 1986 on the State of Nevada," Nevada Health Division (Report available January 1991).

Wetlands

- "National Wetlands Policy Forum, Recommendations for Comprehensive State Wetlands Programs," The Conservation Foundation, October 1989.
- "Wetlands Protection And The States," Gordon Meeks, Jr. and L. Cheryl Runyon, edited by Karen Hansen, National Conference of State Legislatures, Denver, Colorado and Washington, D.C., April 1990.

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APPENDIX A

Designated Ground Water Basins

APPENDIX A

DESIGNATED GROUND WATER BASINS

STATE ENGINEERS ORDER NUMBER AND HYDROGRAPHIC AREA NAME AND NUMBER
Supplemental Index to Designated Ground Water Basins Map of Nevada

ORDER			HYDROGRAPHIC AREA			ORDER			HYDROGRAPHIC AREA			ORDER			HYDROGRAPHIC AREA		
NO.	DATE		NAME	NO.		NO.	DATE		NAME	NO.		NO.	DATE		NAME	NO.	
175	(1941)		Las Vegas Valley	13-212		778	(1982)		Elko Segment	4-49							
182	(1944)					782	(1982)		Elko Segment	4-49							
189	(1946)					787	(1982)		Long Valley	7-100A							
249	(1961)					790	(1982)		Colorado Valley	13-213							
275	(1964)					792	(1982)		Ivanpah Valley	1-164							
176	(1941)		Pahrump Valley	10-162		798	(1982)		Lower Moapa Valley	13-220							
193	(1948)					799	(1982)		Boulder Flat and	4-61							
205	(1953)								Whirlwind Valley	4-60							
245	(1960)		Smith Valley	9-107		803	(1982)		Lower Meadow Val.	13-205							
276	(1964)		Antelope Valley	4-57					Wash								
			Middle Reese River V.			815	(1983)		Diamond Valley	10-153							
277	(1964)		Diamond Valley	10-153					(Amendment)								
280	(1964)					816	(1983)		Kobeh Valley	10-139							
285	(1965)		Quinn River Valley	2-33		821	(1983)		Steptoe Valley	10-179							
			Silver State Valley	2-32		823	(1983)		Walker Lake Valley								
369	(1969)		Lovelock V.						Whiskey Flat-								
370	(1969)		(A) Oreana Subarea	4-73(A)					Hawthorne Subarea	10-110							
391	(1971)		Lemmon Valley	7-92					(C)								
392	(1971)		Muddy River Springs			824	(1983)		Soda Spring Valley	10-121							
			Area			825	(1983)		Gabbs Valley	10-122							
408	(1971)		Paradise Valley	4-69		826	(1983)		Long Valley	7-100A							
424	(1972)		Eagle Valley	8-104		627	(1983)		Big Smoky Valley	10-137							
464	(1972)		Grass Valley	4-71					Northern Park	(B)							
			Winnemucca Segment	4-70		828	(1983)		Big Smoky Valley	10-137							
487	(1973)		Dayton Valley	8-103					Tonopah Flat	(A)							
533	(1975)		Spanish Springs			831	(1983)		Pine Forest Valley	2-29							
			Valley	6-85		832	(1983)		Paradise Valley	4-69							
534	(1975)		Winnemucca Segment	4-70		833	(1983)		Las Vegas Valley	13-212							
535	(1975)		Desert Valley	2-31		837	(1984)		Marys River	4-42							
536	(1975)		Kelly Creek Area	4-66		838	(1984)		Marys River	4-42							
606	(1977)		Cold Springs Valley	7-100					(Preferred Use)								
607	(1977)		Warm Springs Valley	6-84		839	(1984)		Lwr. Reese Rvr. Val.	4-59							
627	(1977)		Mason Valley	9-108					Boulder Flat	4-61							
684	(1977)		Carson Valley	8-105					Clovers Area	4-64							
688	(1977)		Dayton Valley (Ext.)	8-103		841	(1984)		Pilot Creek Valley	11-191							
689	(1977)		Churchill Valley	8-102		842	(1984)		Goshute Valley	10-187							
699	(1977)		Fernley Area	5-76		848	(1984)		Dixie Creek-								
700	(1977)		Clovers Area	4-64					Tenmile Creek Area	4-48							
701	(1978)		Mesquite Valley	10-163		849	(1985)		Honey Lake Valley	7-97							
702	(1978)		Inlay Area	4-72		850	(1985)		Clover Valley	10-177							
704	(1978)		Fish Lake Valley	10-117		852	(1985)		Big Smoky Valley	10-137							
705	(1978)		Tracy Segment	6-83					Northern Part	(B)							
706	(1978)		Truckee Canyon Sgmt.	6-91					(Corrected)								
707	(1978)		Washoe Valley	6-89		853	(1985)		Thousand Springs	11-189							
708	(1978)		Truckee Meadows	6-87					Valley	A.B.							
			Sun Valley	6-86						C.D							
709	(1978)		Pleasant Valley	6-88		862	(1985)		Pine Valley	4-53							
711	(1978)		Pine Forest Valley	2-29		863	(1985)		Maggie Creek Area	4-51							
712	(1978)		Pender Valley	10-170		864	(1985)		Elko Segment	4-49							
714	(1978)		Antelope Valley	9-106		865	(1985)		Huntington Valley	4-47							
715	(1978)		Dixie Valley	10-128		866	(1985)		Susie Creek Valley	4-50							
			Fairview Valley	10-124		867	(1985)		Starr Valley Area	4-43							
			Stingaree Valley	10-125		868	(1985)		Marys Creek Area	4-52							
			Cowick Valley	10-126		869	(1985)		Lampille Valley	4-45							
			Eastgate Valley	10-127		870	(1985)		South Fork Area	4-46							
			Pleasant Valley	10-130		871	(1985)		Ruby Valley	10-176							
			Jersey Valley	10-132		872	(1985)		Marys Creek	4-52							
716	(1978)		White Plains	4-74					Haggie Creek	4-51							
			Carson Desert	8-101					Susie Creek	4-50							
			Packard Valley	8-101A					Elko Segment	4-49							
718	(1978)		Antelope Valley	7-93					(Preferred Use)								
			Bedell Flat	7-94		873	(1985)		Independence Valley	10-188							
			Red Rock Valley	7-99					(Pequop Valley)								
720	(1978)		Stone Cabin Valley	10-149		874	(1985)		Eagle Valley	8-104							
724	(1979)		Amargosa Desert	14-230					(Extended)								
725	(1979)		Big Smoky Valley			904	(1985)		Carson Valley	8-105							
			(A) Tonopah Flat	10-137		905	(1985)		Coyote Spring Valley	13-210							
				(A)					(Preferred Use)								
726	(1979)		Lake Valley	10-133		915	(1986)		Brady's Hot Springs	5-75							
728	(1979)		Indian Springs Valley	10-161					Area								
731	(1979)		Steptoe Valley	10-179		955	(1986)		Pahrump Valley	10-162							
732	(1979)		Buena Vista Valley	10-129					(Curtailement - Amendment								
734	(1980)		Panaca Valley	13-203					of Order 381)								
736	(1980)		Salmon Falls Creek			956	(1987)		Lake Tahoe	6-90							
			Area	3-40		961	(1988)		Piute Valley	13-214							
739	(1980)		Lower Reese River V.	4-59		965	(1988)		Eldorado Valley	10-167							
740	(1980)		Kings River Valley	2-30		966	(1988)		Jean Lake Valley	10-165							
741	(1980)		Oasis Valley	14-228		967	(1988)		Hidden Valley (South)	10-166							
742	(1980)		Ralston Valley	10-141		999	(1989)		Sarcobatus Flat	10-146							
744	(1980)		North Fork Area	4-44		1011	(1989)		Fernley Area	5-76							
745	(1980)		Three Lakes Valley	13-211					(Preferred Use)								
746	(1980)		San Emidio Desert	2-22		1018	(1989)		Black Mountains Area	13-215							
753	(1980)		Virgin River Valley	13-222		1021	(1990)		Las Vegas Valley	212							
754	(1980)		Steptoe Valley	10-179					Groundwater Basin								
755	(1981)		Crescent Valley	4-54													

APPENDIX B

Letter, dated February 28, 1990,
to Senator Erik Beyer
from Lorne J. Malkiewicz,
Legislative Counsel,
concerning interstate agreements

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU APPENDIX B

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



LEGISLATIVE COMMISSION (702) 687-6800
JOHN E. JEFFREY, *Assemblyman, Chairman*
Steven J. Watson, *Acting Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 687-6821
WILLIAM J. RAGGIO, *Senator, Chairman*
Daniel G. Miles, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

STEVEN J. WATSON, *Acting Director*
(702) 687-6800

JOHN R. CROSSLEY, *Legislative Auditor* (702) 687-6815
ROBERT E. ERICKSON, *Research Director* (702) 687-6825
LORNE J. MALKIEWICH, *Legislative Counsel* (702) 687-6830

February 28, 1990

Senator Erik Beyer
1274 St. Alberts Drive
Reno, Nevada 89503

Dear Senator Beyer:

At the previous meeting of the Technical Advisory Committee for the S.C.R. 24 Water Study the issue of cooperative agreements with the State of California was raised. You have asked whether the State Engineer or the Director of the State Department of Conservation and Natural Resources may enter into an agreement with the State of California regarding the management of ground water basins that are located in California and Nevada.

Interstate compacts and agreements are addressed in section 10 of article 1 of the United States Constitution, which reads in pertinent part:

* * * No State shall, without the Consent of Congress,
* * * enter into any Agreement or Compact with
another State * * *.

Although the provision appears on its face to prohibit entry into any state compact or agreement without the consent of Congress, three decisions of the United States Supreme Court have consistently limited application of the prohibition to instances in which the compact or agreement would tend to enhance the political power of the states in any sense that threatens the supremacy of the Federal Government. Virginia v. Tennessee, 148 U.S. 503

(1893), New Hampshire v. Maine, 426 U.S. 363 (1976) and United States Steel Corp. v. Multistate Tax Comm., 434 U.S. 452 (1978). Thus, the terms of any such agreement between the State of California and State of Nevada must be drafted to avoid encroachment on federal supremacy. The areas patently apparent which must be avoided are the regulation of interstate bodies of surface water and the control of pollution, because these areas are already regulated by Congress. Although the U.S. Supreme Court acknowledged in Sporhase v. Nebraska ex rel. Douglas, 458 U.S. 951, 955 (1982) that "Groundwater overdraft is a national problem and Congress has the power to deal with it on that scale", our research indicates that Congress has not yet attempted to regulate the management of groundwater, except as it relates to the control of pollution. Therefore, a narrowly drafted agreement regarding the appropriation and management of interstate groundwater is arguably permissible without Congressional approval because such an agreement could reasonably be seen as having a minimal effect on federal supremacy. If a future Congress undertakes to enact legislation regarding groundwater overdraft, Nevada and California could urge Congress to include an exception for areas regulated by state agreement. That would constitute the requisite Congressional approval, since nothing prevents retroactive approval. Another precautionary action would be to include within the agreement a provision which states that if Congress adopts legislation that would preempt state control of groundwater overdraft, the agreement expires by limitation unless Congress approves the agreement.

An additional hurdle in the adoption of such an interstate agreement involves the need for specific legislative authority. Several sections of NRS authorize interstate agreements and activities. See for example, NRS 532.170 (Agreements concerning use and development of water resources) and NRS 532.180 (Cooperation with United States and California relative to waters of Lake Tahoe and adjacent areas). However, none specifically address the appropriation and management of groundwater. By the familiar rule of statutory construction that the expression of one thing excludes others not mentioned, this precludes an interstate agreement on the appropriation and management of groundwater without additional legislative authorization.

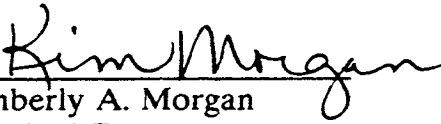
In conclusion, it is the opinion of this office that, given specific legislative authorization to do so, the State Engineer or the Director of the State Department of Conservation and Natural Resources may enter into a narrowly

Senator Erik Beyer
February 28, 1990
Page 3

drawn agreement with the State of California regarding the appropriation and management of shared groundwater basins without the need for Congressional approval of the agreement.

Very truly yours,

Lorne J. Malkiewich
Legislative Counsel

By 
Kimberly A. Morgan
Principal Deputy

APPENDIX C

Memorandum, dated May 22, 1990,
entitled "Water Conservation in Municipal Areas"

APPENDIX C

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710
Fax No.: (702) 687-5962

LEGISLATIVE COMMISSION (702) 687-6800
JOHN E. JEFFREY, *Assemblyman, Chairman*
John R. Crossley, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 687-6821
WILLIAM J. RAGGIO, *Senator, Chairman*
Daniel G. Miles, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*



JOHN R. CROSSLEY, *Director*
(702) 687-6800

Wm. GARY CREWS, *Legislative Auditor* (702) 687-6815
ROBERT E. ERICKSON, *Research Director* (702) 687-6825
LORNE J. MALKIEWICH, *Legislative Counsel* (702) 687-6830

May 22, 1990

MEMORANDUM

TO: Assemblyman Ernest E. Adler
FROM: Fred Welden, Chief Deputy Research Director
SUBJECT: Water Conservation in Municipal Areas

You asked me to supply background information covering water conservation practices in municipal areas. The following four sources have been used in compiling the response to your request:

- "Conserving Water: The Untapped Alternative," Sandra Postel, Worldwatch Institute, Paper 67, September 1985.
- "Water Conservation: An Update of Federal Activity," United States General Accounting Office, April 22, 1983.
- "Water Conservation in Nevada," Information Series Water Planning Project 1, State Division of Water Planning, August 1979. (copy enclosed)
- "Water Conservation--The Hidden Supply," New York State Senate Research Service, September 1986. (copy enclosed)

INTRODUCTION

In areas experiencing water shortages, conservation is considered to be a source of additional water supply. Conservation programs have been implemented at local and state government levels, as well as being incorporated in the programs of private and public water suppliers.

This research effort highlights activities associated with municipal areas. Thus, conservation techniques relating to

agricultural practices are not included, and conservation programs concerning other industrial enterprises are only mentioned briefly. Emphasis is placed upon potential local and state government activities.

OVERVIEW OF LOCAL CONSERVATION MEASURES

Most conservation programs are actually implemented at the local level through actions of the local governments or the water suppliers.

Selected Examples of Community Conservation Programs

Almost all communities have implemented water conservation practices of some type. The following examples provide descriptions of programs which appear to have been especially successful:

- In Tucson, Arizona, hefty water price increases caused an initial dramatic drop in the city's per capita use between the middle and late seventies. In June 1977, the city initiated its "Beat the Peak" program, aimed at cutting outdoor water use. Each summer, residents are not to water more than every other day, and never between the hours of 4 p.m. and 8 p.m. Desert landscaping is promoted as a replacement for green lawns. Largely because of altered outdoor water use patterns, the city's peak day pumpage dropped by 26 percent in less than a decade--from nearly 568,000 cubic meters in 1976 to 420,000 cubic meters in 1984. Moreover, year-round average demand fell by 27 percent, to about 570 liters per person per day--still high by many nations' standards, but low for a western U.S. city. Besides helping to slow the depletion of its aquifers, Tucson's comparatively modest investment in conservation allowed it to defer \$45 million in capital costs that would have been needed to meet an otherwise unmanaged demand.
- El Paso, Texas, gets most of its fresh water from an aquifer expected to be depleted in 30 to 60 years. While pursuing replacement sources, the city is working to extend the aquifer's useful life through conservation and by substituting more expensive, but renewable river supplies. Its efforts have reduced annual pumping from the aquifer by an estimated 74 million cubic meters, enough water to supply about 280,000 residents. Moreover, conservation has allowed planners to adjust the expected per person demand downward by 17 percent in their projections of future water supply needs.

- The Washington Suburban Sanitary District in Maryland began a multi-faceted conservation program in 1971 in order to reduce waste water flows. The program included mailing water-saving handbooks, organizing water-saving workshops for property owners, developing and distributing handbooks for garden and lawn care, broadcasting public service announcements on radio and television, distributing toilet tank inserts and low-flow shower heads, passing a revised plumbing code, decreasing pressures in selected areas and revising the water pricing structure. Household water use has decreased by 25 percent.
- The East Bay Municipal Utility District in Oakland, California, reduced total demand through a public education program, pricing structure changes, and system leak detection. The level of reduction has fluctuated, although the leak detection survey is credited with saving 3 million gallons a day (MGD). While 3 MGD represents only 1.5 percent of previous system demand, this saving has been accomplished at a cost of only 1 cent per 1,000 gallons saved.
- The Chicago, Illinois, suburb of Elmhurst has reduced maximum daily consumption by 30 percent through a program combining public education, outdoor water use restrictions, rate changes and plumbing retrofit.

Discussion of Potential Local Conservation Techniques

Proponents of conservation indicate that there is no "ready-made" package of techniques that will prove effective and economically feasible for every community. They contend, however, that successful efforts to permanently curb per capita demand usually include a combination of water-saving technologies, economic incentives, regulatory actions, and consumer education. These approaches are mutually reinforcing and are most effective when implemented jointly.

The following discussion highlights several water conservation techniques and programs which may be considered for implementation at the local level:

• Retrofitting of Plumbing Fixtures

Many devices are available to reduce water use of toilets and showers in existing residences without impairing the function of these fixtures. Dams, bricks, bottles and bags can be installed to reduce the amount of water used to flush a toilet. Special shower heads and restrictors reduce shower

flow. Several documents provide statistics relative to potential water savings.

The method of distribution for retrofitting devices appears to affect the success of the program dramatically. While mass distribution by mail or door-to-door (relying on consumer installation) may achieve 20 to 35 percent installation rates, providing aid for installation can raise the rate of use to as much as 90 percent. A retrofitting program conducted by the Sierra Pacific Power Company in the Truckee Meadows in 1975 achieved about 90 percent success rates by providing assistance for installation of devices.

• Plumbing Fixtures in New Construction

Installation of water-saving fixtures in new construction is a proven conservation technique. Savings are direct and significant, as outlined in Table 1.

Table 1

Potential Water Savings with Available Water-Efficient Household Fixtures in the United States

<u>Fixture</u>	<u>Water Use</u>	<u>Water Savings Over Conventional Fixtures</u> (percent)
Toilets	(liters/use)	
Conventional	19	—
Common low-flush	13	32
Washdown	4	79
Air-assisted	2	89
Showerheads	(liters/minute)	
Conventional	19	—
Common low-flow	11	42
Flow-limiting	7	63
Air-assisted	2	89
Clothes Washers	(liters/use)	
Conventional	140	—
Wash recycle	100	29
Front-loading	80	43
Faucets	(liters/minute)	
Conventional	12	—
Common low-flow	10	17
Flow-limiting	6	50

Sources: "Residential Water Conservation Projects," U.S. Department of Housing and Urban Development, 1984, and "Journal of the American Water Works Association," July 1983.

Traditionally, installation of water-saving plumbing fixtures in new construction is required by local ordinances/building codes.

- Hot Water Pipe Insulation

Insulation of hot water pipes promotes conservation because users do not have to let the water tap run as long before hot water is available. The California Department of Water Resources estimates that pipe insulation can result in residential water-use reduction of 1 to 4 percent.

- Landscape Irrigation

In many western cities, landscape watering accounts for 40 to 50 percent of residential water use and contributes greatly to high peak demands. Likewise, the efficiency of typical landscape irrigation techniques has been estimated at 50 to 80 percent, with 50 percent being the generally accepted figure in Nevada. Based upon these statistics, it is evident that reducing outdoor water use provides the best opportunity to relieve the demand on water supply systems in dry climates.

Methods which may be implemented in order to reduce the effects of landscape watering include:

1. Installing drip or automatic sprinkler systems;
2. Encouraging or requiring planting of drought resistant landscaping.
3. Reducing size of lawns in relationship to other design features; and
4. Limiting water use by ordinances which provide fines for waste through runoff, "odd-even" watering days, and/or hours for watering to conserve evaporation and lower peak demand.

- Water Reuse

Reuse of water, especially treated effluent, is becoming a more acceptable conservation technique. In the semi-arid southwestern states, reuse has been implemented especially for golf courses and other landscape watering.

Reuse is a relatively expensive procedure and requires a considerable amount of planning and design effort.

- Water Meters

Most water resource planners consider meters to be a pre-requisite for implementation of other forms of conservation. Metering fosters equitable customer charges, water use accounting and leak detection. In addition, meters provide consumers with feedback relative to their water use.

As an information, planning and pricing tool, meters are critical. Evidence also indicates that reduction in water demand figures are correlated with installation of full metering.

- Public Education

All direct forms of conservation which rely on voluntary consumer action virtually require public education. In order to obtain commitment to conservation measures, the consumer must understand the water supply situation/demands and the potential savings. Educational materials should make direct connections between conservation activities and monetary savings--to the consumers and the suppliers.

Some of the methods of public education include:

1. Providing public service media announcements;
2. Developing citizen involvement through public interest groups;
3. Creating speakers' bureaus to make presentations to schools, businesses and service organizations;
4. Developing and distributing films or slide shows;
5. Promoting conferences, symposiums or seminars;
6. Developing public demonstration displays;
7. Encouraging restaurant tent cards which explain water use, for instance, for ice making, and filling and washing of a single glass of water; and
8. Enclosing water bill inserts, and distributing newsletters to noncustomer water users such as apartment dwellers.

• Water Pricing

Classical economic theory argues that when the price of using a commodity goes up, the volume of the commodity purchased decreases. When water is discussed, this theory becomes complicated for two reasons--water is a basic necessity of life and, therefore, a minimum usage is necessary; and the price of water in most of the United States is so low that most consumers do not consider the economics of water use. Nevertheless, various pricing structures have been designed and employed in attempts to decrease water usage. Traditional water pricing methods have included:

1. A set fee, which disregards volume used; or
2. Declining block rates, whereby the per unit cost decreases as volume used increases.

The rationale for declining block rates is that the per unit cost of serving large water users is less than that for smaller water users. Opponents of declining block rates argue that such rates are an incentive to waste water.

Several alternative pricing policies have been proposed and implemented in some areas:

1. Increasing block rates charge progressively higher unit rates as consumption increases;
2. Flat rates charge a constant per rate regardless of consumption;
3. Seasonal pricing sets a higher unit rate during warm weather months, when consumption increases and systems may be stressed; and
4. Excess use pricing places a surcharge on use above a specified "normal" use.

It is difficult to determine how much water can be saved by implementing various pricing strategies. However, most people agree that consumers will respond to conservation mechanisms which clearly affect them in a financial manner.

POTENTIAL ACTIONS AT THE STATE LEVEL

Water conservation has traditionally been considered to be a local concern. In recent years, however, states have initiated programs designed to assist and influence the local water conservation activities.

Although the actual content of the chart relative to each state's actions has probably changed since the 1982 survey date, Table 2 outlines the types of programs which have been implemented at the state level and highlights their status as of that date.

California and Florida Programs

Among states with programs for public water supply conservation, California is considered to have the most extensive effort. The state has an Office of Water Conservation with a relatively large staff. Among the components of the California state program are:

1. Distribution of residential water conservation kits to households;
2. A water conservation plumbing code;
3. Conservation conditions associated with approval of new water supply permits;
4. Conservation conditions attached to water supply grants;
5. Leak detection loans for small municipalities;
6. Technical assistance to other state agencies, municipalities and large private water users;
7. Technical bulletins and information brochures;
8. Conservation landscaping guidance; and
9. Public education.

The State of Florida also has a state level water conservation program. The activities are administered primarily through five state water management districts with a considerable staff assignment to the effort. District requirements vary, but they include:

1. Plumbing codes;

Table 2
Status of State Water Conservation Programs

	<u>Pub. Ed./Info.</u>	<u>Plumbing Code</u>	<u>Retrofitting</u>	<u>Metering</u>	<u>Leak Detection</u>	<u>Rate Structure</u>	<u>Contingency Planning</u>	<u>Reuse & Recycling</u>	<u>Outdoor Use</u>	<u>Groundwater Management</u>	<u>Industrial Use</u>	<u>Agricultural Use</u>	<u>Govt. Bldg./Grant Require.</u>
AL	////						////						
AK				////									
AZ	////			////									
AR													
CA												////	
CO				////						////		////	
CT													
DE											////		
FL	////										////	////	
GA		////								////			
HI		////											
ID		////								////			
IL							////						////
IN				////									
IA													
KS								////		////			
KY													
LA										////			
MA	////					////	////			////			////
ME			////		////		////	////					////
MI												////	
MN								////	////		////	////	
MO													
MS	////						////					////	
MT													
NB										////			
NC							////						
ND	////			////				////		////			
NH													
NJ			////						////	////			
NM				////								////	
NV	////							////					
NY													
OH													
OK			////				////		////	////			
OR													
PA					////	////				////			////
RI	////									////			
SC	////		////										
SD													
TN	////						////			////			
TX	////							////				////	
UT	////									////		////	
VA							////			////			
VT										////			
WA							////					////	
WI	////												
WV	////												
WY		////		////			////						

State

 State Enacted Program
  Enacted Study Proposed Plan
  Partial State Program
  No State Program

Source: "Survey of Water Conservation Programs in the Fifty States. Model Water Conservation Program for the Nation" Environmental Policy Institute, August 1982.

2. Conditions placed upon water use permits;
3. Bans on declining block rate pricing structures; and
4. Public information functions.

Examples of Potential Actions at the State Level

As there are activities which traditionally are implement at the local level, several types of conservation-related functions are possible at the state level. Highlights of some of these potential actions are as follows:

- Information Gathering and Dissemination

In some instances, information gathering and dissemination can play a direct role in water conservation, and sometimes the function fosters programs at the local level. Basic information concerning the characteristics of water use furthers all conservation efforts. Assistance to local entities in the areas of public information, as well as statewide conferences and public school programs, can also be effective.

- Direct Aid and Assistance

Several states offer monetary aid and/or technical managerial assistance to water suppliers for conservation plans and programs. Some state programs provide financing for specific activities, such as distributing water conserving fixtures. Other programs offer financial aid while allowing localities to design programs. Still other programs provide state or professional personnel to train local water supply managers in conservation techniques.

For example, the State of Pennsylvania provides technical assistance primarily to small water suppliers in the areas of leak detection, water meter management, the development of conservation pricing structures, and the design of public education programs. Several states loan leak detection equipment to local systems, and California has a grant program available to selected water utilities.

- Conditions Attached to State Actions

Most states require approval of new water supplies and expansion of existing systems. A growing number of states are expanding their authority over water uses, and many

require the development of some form of conservation program as part of the approval process.

A more voluntary approach is to subject grant and aid applications to conservation requirements. Such grants or aid may be for any activity affecting water supply. In some states, although conservation plans are not expressly required, they are awarded points in competitions for grant money.

- Direct Requirements

A more direct method of obtaining local water conservation efforts is to require them of water suppliers or customers. Mechanisms used in some states include requiring meters and bill standardization, requiring price rate structures that are conservation oriented, directing that conservation plans be prepared, adopting conservation-related plumbing and building codes, and establishing performance standards to be met by local water suppliers and consumers.

- Management of State Facilities

As a consumer, the state can directly conserve water in public facilities. Government office buildings, educational institutions, prisons, state hospitals, state tourist facilities and other state buildings may be retrofitted with low water use plumbing fixtures. Such programs exist in Arizona, California, Florida, and Pennsylvania. State landscaping programs may also be oriented to water conservation.

WATER CONSERVATION IN NEVADA

Water conservation activities have been implemented over the past several years at the local and state levels.

Water Conservation Programs at the Local Level

Local water purveyors and governmental entities have taken the lead in conservation programs. More aggressive efforts are currently being planned in the Las Vegas and Reno metropolitan areas.

A survey of local water conservation programs is being conducted by the Nevada League of Cities and the Nevada Association of Counties. A compilation of the results will be forwarded when it is available.

State Division of Water Planning's "Water Conservation in Nevada"

As previously mentioned, the State Division of Water Planning published a report in August 1979, entitled "Water Conservation in Nevada" (Information Series Water Planning Report 1). The document addresses the state's water demand, methods of water conservation, institutional and legal factors affecting conservation, and evaluations of water conservation practices. In addition to municipal water supplies, the report discusses water conservation activities associated with self-supplied industry, electric power generation, rural areas, and irrigated agriculture.

The document also provides the following recommendations relative to public (municipal) water supplies:

1. Improvements in New Construction

Consider revision of local building and plumbing codes to provide for 3-1/2-gallon-per-flush toilets, 3-gallon-per-minute shower heads, hot water pipe insulation, and pressure regulation in all new construction.

2. Sales of New Appliances

Consider revisions to state law to assure that water efficient appliances are sold in Nevada. This recommendation could be extended to include replacement shower heads and toilets.

3. Retrofit Plumbing

Encourage water distributing agencies to pursue a continuous program to retrofit all existing water users with toilet dams and shower flow restrictors, to provide replacement devices in the future as needed, and to periodically evaluate owner maintenance and need for replacement.

4. Public Education

The state should assist water agencies in development and dissemination of information on practices to reduce residential interior water use, landscape irrigation, and water use by specific commercial and industrial users.

5. Metering

The state should encourage the operators of unmetered systems to compare the benefits with the problems and costs of metering. Where such metering would benefit other users, the potential for their funding such studies should be considered.

6. Pricing

The state should encourage review with the possibility of replacement of existing flat and declining block water rate schedules with uniform and inclining block rates which encourage water conservation, provided that the total cost paid by each user reflects the projected cost of service.

7. Industrial Cooling

The state should encourage water reuse by providing information on the recycling of cooling water and the potential for use of reclaimed waste water or drainage by industrial users.

8. Demonstration Projects

The state should consider demonstration projects to determine the feasibility and benefits of selected conservation practices. Projects could include:

- (a) The potential for energy and water savings from reduction of the interior use of water, particularly hot water, through installation of low flow shower heads, hot water pipe insulation, and water efficient appliances. This could be a joint project involving selected residential areas to be conducted by the Division of Water Planning, Department of Energy, and Office of Community Services.
- (b) Determining the feasibility and public acceptability of techniques for reducing outside residential water use. This joint state/local project could be for selected areas and should study scheduling of even-odd calendar day landscape irrigation, the practicability of conversion to alternative landscaping with low water use plants, and more effective irrigation techniques including drip irrigation and use of moisture testing.

Conservation-Oriented Provisions in State Law

Several provisions of the current state law may be considered to serve a water conservation function. These references, in the order of their appearance in the Nevada Revised Statutes (NRS), are as follows:

- NRS 244.3665 County authorization to prohibit waste of water.
- NRS 244.3667 County authorization to impose restrictions on water consumption of toilets.
- NRS 268.411 City authorization to prohibit waste of water.
- NRS 268.4115 City authorization to impose restrictions on water consumption of toilets.
- NRS 278.385 Installation of water meters in new subdivisions.
- NRS 416 Governor's authority to plan for, designate and adopt regulations relative to emergency water conservation measures.
- NRS 445.017 Restrictions on water consumption of showers.
- NRS 533.460 Unauthorized waste of water.
- NRS 533.530 Unauthorized diversion or waste of water.
- NRS 534.070 Prohibition against waste of water from artesian wells.
- NRS 534.120 Regulation of uses in designated ground water basins.
- NRS 539.233 Authorization of irrigation district to compel installation of measuring and regulating devices.
- NRS 543.360 Authorization of flood control district to conserve water.
- NRS 318.1445,
 NRS 541.207,
 NRS 704.667 Provision that water need not be furnished to a manmade lake or stream where the use of water is prohibited or restricted by county or city ordinance.

CONCLUDING COMMENTS

I trust that this background information will fulfill your needs. A great deal of additional information is available on the subject, and supplemental details can be compiled relative to most of the topics highlighted in this research. I would be pleased to provide any additional assistance that I can.

It might also be relevant to note in passing that if water rates are increased in accordance with some estimates of the needs to implement the amendments to the Federal Safe Drinking Water Act, water conservation practices will probably become an absolute necessity for most suppliers and consumers.

FW/sla:W89-2133,05
Encs.

APPENDIX D

Memorandum, dated May 22, 1990,
entitled " Division of Health and Division
of Environmental Protection Responsibilities

APPENDIX D

May 22, 1990

MEMORANDUM

To: Fred Welden, Chief Dep. Research Director
Research Division, LCB

From: Lew Dodgion, Administrator
Division of Environmental Protection

Myla C. Florence, Administrator
Division of Health

Re: Division of Health and Division of Environmental Protection
Responsibilities

During the public hearing of the rural subcommittee, concerns were raised by some members of the work group regarding what is seen as overlapping responsibilities between the Division of Health and Division of Environmental Protection (DEP) in the following areas:

- A. Subdivision review;
- B. Individual sewage disposal systems;
- C. Complaint investigation related to the above.

These overlapping responsibilities may be perceived as a duplication of effort and a burden on the regulated community.

The following are the major areas of responsibility for which interaction of the two agencies on like programs exists:

- A. Subdivisions

Health Division

- 1. Review plans prior to construction:
 - a. water supply for consumption
 - b. sewage disposal by ISDS
 - c. lot size
 - d. site characteristics (flood zone, etc.)
- 2. Follow-up inspections.

3. Consultation with developers and engineers.
4. Meet with county planning departments.

Division of Environmental Protection

1. DEP reviews subdivision plans for water pollution and sewage disposal.
2. Follow-up inspections.
3. Consultation with developers and engineers.
4. Meet with county planning departments.

B. Individual Sewage Disposal Systems

Health Division

1. Review plans prior to construction.
2. Inspection conducted on new construction.
3. Consumer complaints investigated.
4. Enforce health codes.

Division of Environmental Protection

1. Water pollution control concerns primary responsibility of DEP whether method of sewage disposal is an ISDS, other category of septic tank system or packaged treatment plant.
2. DEP issues discharge permit for systems greater than 5,000 gallons.
3. Contracts with the Health Division for operation and maintenance inspections of existing small facilities.
4. Contracts with the Health Division for review of small sewage systems other than ISDS with capacities up to 5,000 gallons per day.

C. Complaint Investigation

Health Division

1. Complaints occur primarily after a subdivision is developed and center around ISDS failures and water supply problems.
2. Individual failures are investigated by Health Division; large volume failures in a subdivision are also referred to DEP.

Division of Environmental Protection

1. Investigate complaints where ground water pollution may be impacted.

The Health Division and Division of Environmental Protection recognize there are certain areas where overlap of responsibility may exist on a limited basis and duplication of effort may occur. The two agencies have taken or plan to take the following actions to minimize the impact on those who are regulated:

A. Subdivisions

1. Both agencies must explain to the subdivider the role of the other when plans are submitted for review. Both agencies will develop a simple checklist of information that the other agency will require, i.e. number of copies.
2. A memorandum of agreement will be developed as to exact areas of review by each agency to preclude one agency from indicating approval of an entire plan or any aspect of a plan that is the statutory responsibility of the other.

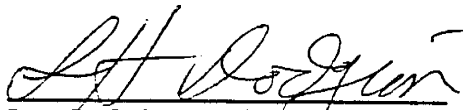
B. Individual Sewage Disposal Systems

1. Refine definition of ISDS.
2. Outline specific areas of responsibility between ISDS, septic tank systems and package treatment plants.
3. Provide written guidance to clients as to which agency represents the other under contractual arrangements.

C. Complaint Investigation

1. The only time a problem appears to exist is if the Health Division is investigating a complaint for DEP. Individuals may be cited (receive copy of report) by the Health Division but DEP then issues the enforcement action (landfills, etc.).
2. MOU needs to be developed regarding 444.630 (i.e., sewage garbage) as to who has the enforcement authority when referrals are made. By statute, both agencies currently have the authority to investigate complaints.
3. Division of Health field personnel investigate sanitation sewage complaints and pollutant spills. Some of this is done under contract to DEP, while other areas are strictly under Health Division authority. Some instances may result in both Division of Health and DEP enforcement actions, leading to a complaint of double jeopardy. These have been minimized by cooperation and communication between the two agencies. A formal MOU could establish procedures to determine which agency would take the lead in a specific action.

In conclusion, it is not recommended that any transfer of functions be initiated at this time.


Lew Dodgion, Administrator
Division of Environmental Protection

5/23/90
Date


Myla C. Florence, Administrator
Division of Health

5/22/90
Date

RL/11
a:depdiff

APPENDIX E

Letter, dated December 13, 1988,
entitled "Opinion No. 88-16" and
Attorney General's Opinion No. 107

APPENDIX E



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

BRIAN McKay
Attorney General

Capitol Complex
Carson City, Nevada 89710
(702) 885-4170

December 13, 1988

OPINION NO. 88-16

WATER--STATE WATER PERMITS--COLORADO
RIVER COMMISSION--SOUTHERN NEVADA

WATER SYSTEM: State water permits are not legally required for original appropriation of Colorado River water under federal law. Nor are such permits required for entities having water delivery contracts with the Colorado River Commission. The Colorado River Commission is authorized under NRS 533.372(2) and 538.171(2) to approve or disapprove applications for state permits for subsequent appropriations of Colorado River water.

Mr. Jack L. Stonehocker
Director
Colorado River Commission
1515 East Tropicana Avenue, Suite 400
Las Vegas, Nevada 89119

Dear Mr. Stonehocker:

You have requested the opinion of this office on various questions regarding the appropriation of Colorado River water under NRS 533.325 to 533.445, inclusive.

QUESTION ONE

Is the Colorado River Commission required to apply for and receive a permit from the State Engineer to appropriate Colorado River water under its contracts with the Secretary of the Interior?

ANALYSIS

A similar question was put to the Attorney General in 1972 by Mr. Roland D. Westergard, then State Engineer, and now director of the State Department of Conservation and Natural Resources. His question asked whether the United States Supreme Court opinion and decree in Arizona v. California, 373 U.S. 546 (1963), and 376 U.S.

340 (1964), eliminated the requirement that persons desiring to appropriate water from the Colorado River comply with the provisions of Nevada's water laws, NRS 533.325 to 533.435, inclusive. See Nev. Op. Att'y Gen. No. 107 (December 14, 1972). The Attorney General's answer to that question is relevant to our analysis today.

For over half a century--since 1935--the Colorado River Commission has been empowered to

. . . receive, protect and safeguard and hold in trust for the State of Nevada all water and water rights, and all other rights, interests or benefits in and to the waters of the Colorado River . . . held by or which may accrue to the State of Nevada under . . . any Act of Congress of the United States

NRS 538.171(1). In 1928 the Congress had enacted the Boulder Canyon Project Act, 43 U.S.C. §§ 617-617t, which allocated 300,000 acre-feet of Colorado River water per year to the State of Nevada for consumptive use within the state. On March 30, 1942, the Secretary of the Interior and the Colorado River Commission, acting pursuant to NRS 538.171(1), entered into a contract for the delivery of Nevada's share of the water. Since that time, portions of this share have been allocated to various initial users within southern Nevada under tri-party contracts signed by the Secretary of the Interior and the Colorado River Commission. See NRS 538.171(2). All of these contracts, including the commission's March 30, 1942, contract, as amended, were entered into by the Secretary of the Interior pursuant to section 5 of the Boulder Canyon Project Act.

Under NRS 533.325 any person who desires to appropriate any of the state's public waters--which includes water from the Colorado River--must obtain a permit from the State Engineer. With respect to Colorado River water, NRS 533.372(2) requires the approval of both the State Engineer and the Colorado River Commission before a permit may be issued. (See Question No. 3 below.) In his 1972 opinion to the State Engineer, the Attorney General found that a literal reading of "this broad discretionary authority in these two state agencies to approve or disapprove water appropriation from the Colorado River" would conflict directly with federal law. Nev. Op. Att'y Gen. No. 107 at 120 (December 14, 1972).

Reviewing the United States Supreme Court's opinion and decree in Arizona v. California, *supra*, the Attorney General pointed out that in section 5 of the Boulder Canyon Project Act, as interpreted by the Supreme Court, Congress gave full and complete authority to the Secretary of the Interior through his section 5 contracts "to effectuate the original division of [Colorado River] waters through the making of contracts for its delivery," and that in doing so, "the secretary is not bound by or required to follow state law."

Nev. Op. Att'y Gen. No. 107 at 120 (December 14, 1972). The Court had used strong and sweeping language in its conclusion: "But where the secretary's contracts, as here, carry out a Congressional plan for the complete distribution of water to users, state law has no place". 373 U.S. at 588. (Emphasis added.)

Several years after the Attorney General issued Opinion No. 107, the United States Supreme Court affirmed and clarified that conclusion:

In Arizona v. California, the States had asked the Court to rule that state law would control in the distribution of water from the Boulder Canyon Project, a massive multistate reclamation project on the Colorado River. After reviewing the legislative history of the Boulder Canyon Project Act, 43 U.S.C. § 615 et seq., the Court concluded that because of the unique size and multistate scope of the Project, Congress did not intend the States to interfere with the Secretary's power to determine with whom and on what terms water contracts would be made.

California v. United States, 438 U.S. 645, at 674, 675 (1978) (footnotes omitted).

In footnote 28, the Court recalled that the Special Master in Arizona v. California had agreed with the states' contention that the Boulder Canyon Project Act could not interfere with the rights they had at the time of its enactment "either to the waters within their borders or to adopt such policies and enact such laws as they deem necessary with respect to the appropriation, control, and use of waters within their borders." The Court, however, had disagreed with the Special Master and rejected the states' claim as it regarded the waters of the Colorado River. California v. United States, supra, at 675. The clarification comes in footnote 29 where the Court points out that even though it had concluded in Arizona v. California that the power of the states was so limited, it had noted in the case "the Project Act 'plainly allows the states to do things not inconsistent with the Project Act or with federal control of the river.' 373 U.S., at 588, 83 S.Ct., at 1491." California v. United States, supra, at 675. Thus, it is inconsistent state law that has no place "where the Secretary's contracts, as here, carry out a Congressional plan for the complete distribution of water to users. . . ." Arizona v. California, 373 U.S. at 588.

Would it be inconsistent with the Project Act or with federal control of the river for the State Engineer to require those who initially appropriate Colorado River water under a "section 5 contract" with the Secretary of the Interior to obtain a state water permit? In our opinion, it would be if that permit purported to authorize the diversion of Colorado River water or purported to

set terms and conditions for the diversion which added to or were inconsistent with the terms and conditions set out in the secretary's contracts. The essential element of a Nevada water permit is that it authorizes the permittee to divert water and put it to a beneficial use. The permit usually specifies the amount which may be continuously diverted and the place and priority of the diversion. In some instances the permit conditions the beneficial uses to which the water may be put. These same elements are covered by the "section 5 contracts." In those contracts, the Secretary of the Interior agrees to deliver Colorado River water to the contractor in quantities set by the secretary, at points of diversion approved by him and subject to a priority system and to limitations on use established by him. Under the contracts, the diversion is subject also to the provisions of various federal laws and generally to federal control over the river. Changes in the places or points of diversion, which NRS 533.325 require the State Engineer to approve, must be approved by the Secretary of the Interior. Under NRS 533.395 and 533.410, the State Engineer is required to cancel a permit under certain circumstances. The secretary's contracts are for "permanent service" and in them the United States has provided its own circumstances under which a contractor may be refused permission to divert the water. See, e.g., articles 5, 6, 11, 14 and 17 of the Contract for Delivery of Water between the United States Bureau of Reclamation and the Colorado River Commission, dated March 30, 1942, as amended. Clearly, the State Engineer could not, as we concluded in Opinion No. 107, deny a permit to a contractor, or impose additional or inconsistent terms and conditions on the diversion, without "interfer[ing] with the Secretary's power to determine with whom and on what terms water contracts would be made." California v. United States, *supra*, at 675. Even if the terms and conditions of the permit were identical to those of the contract, the permit would still interfere if it purported to authorize the diversion in the first place.

On October 22, 1965, Congress enacted the Southern Nevada Water Project Act, 43 U.S.C. § 616. Section 1 of the act authorized the Secretary of the Interior to construct, operate and maintain certain water diversion and distribution facilities "required to provide water from Lake Mead on the Colorado River for distribution to municipalities and industrial centers within Clark County, Nevada." 43 U.S.C. § 616ggg. (These "federal facilities" of the Southern Nevada Water Project are now known as the Robert B. Griffith Water Project. The water treatment plant is a "state facility" known as the Alfred Merritt Smith Water Treatment Facility; together the two facilities are known as the Southern Nevada Water System.) Section 3 of the act specifically authorized the secretary "to enter into a contract with the State of Nevada, acting through the Colorado River Commission of Nevada or other duly authorized state agency, for the delivery of water and for repayment of the reimbursable construction costs." 43 U.S.C. 616iii. The commission entered into this "section 3 contract" with the secretary on August 25, 1965, which was superseded and replaced

by a similar contract between them dated August 4, 1977 (hereinafter referred to as "the repayment contract").

The repayment contract is not a section 5, Boulder Canyon Project Act contract. Section 6 of the Southern Nevada Project Act, before its amendment in 1966, distinguishes "water supply contracts for the use of water in Nevada under this Act or section 5 of the Boulder Canyon Project Act. . . ." 43 U.S.C. § 616lll. (Emphasis added). As amended by P.L. 89-510 on July 19, 1966, section 6 speaks of "[t]he contract for delivery of water . . . required by section 3 of this Act" and the party [i.e. the Colorado River Commission] contracting pursuant to section 3 of this Act." 43 U.S.C. § 616lll. Nevertheless, section 5 of the act declares that "[t]he use of all water diverted for this project from the Colorado River system shall be subject to and controlled by the Colorado River compact, the Boulder Canyon Project Act, and the Mexican Water Treaty." 43 U.S.C. § 616kkk.

It is our opinion that a state water permit is not required for the commission to appropriate water under the repayment contract made with the Secretary of the Interior under section 3 of the Southern Nevada Water Project Act. The diversion and distribution of Colorado River water through the Southern Nevada Water System is itself a comprehensive congressional scheme under that act, and clearly part of Congress's overall comprehensive scheme for the apportionment of Colorado River water under the Boulder Canyon Project Act. The Colorado River water delivered through the project pursuant to the commission's "section 3" repayment contract is part of Nevada's allocation of Colorado River water which is already generally committed for delivery to Nevada by the secretary under the commission's "section 5 contract." Also, the use of project water under that contract was made expressly "subject to and controlled by the Boulder Canyon Project Act." See paragraph 10(a)(1) of the repayment contract.

Like the "section 5 contracts," the "section 3 repayment contract" provides for the diversion of Colorado River water and specifies the amount, place and priority of the diversion, among numerous other terms and conditions, some of which directly relate to specific federal statutes and to federal control of the river. For the reasons given above, a state permit which purported to authorize this same diversion would be inconsistent with the Project Act, even if its terms and conditions were identical to those of the contract.

The Attorney General stated in his 1972 opinion that the State Engineer could legally require "all water users who contract with the secretary to also apply for a state water permit after they have secured their federal contract where the purpose of such an application is merely to insure the records of the State Engineer reflect all the necessary information related to water use from the Colorado River which he may need in order to make intelligent and informed decisions concerning any subsequent allocations of these

waters after they come under state jurisdiction." Nev. Op. Atty Gen. No. 107 at 121 (December 14, 1972) (emphasis added). By this statement, this office did not mean to imply that an application for a state water permit must be required from a contractor with the secretary where all the necessary information had already been or was being supplied to the State Engineer. It was explained that the only necessity for obtaining a state water permit in addition to the secretary's contract was to provide the information the State Engineer needed to carry out the other important duties of his office. Our 1972 opinion did not suggest that that information could not be furnished by some perhaps more effective means other than an application for a state water permit.

It is our understanding that all necessary or requested information concerning the appropriation of Colorado River water by the commission and other entities under federal law has been and continues to be supplied to the State Engineer without the need to go through the process of obtaining a permit which the State Engineer has no discretion to deny. It follows as a corollary to our 1972 opinion on this point that a person who contracts with the Secretary of the Interior for Colorado River water is not legally required to apply for a state water permit merely for the purpose of providing information to the State Engineer, where that information already has been or is being timely supplied to him and where any additional information on the matter the State Engineer may need can be and is timely supplied upon request. If a specific procedure for supplying the necessary information outside the permit process needs to be identified, that may be accomplished in joint regulations which the commission and the State Engineer may adopt pursuant to subsection 2 of NRS 533.372.

CONCLUSION

The Colorado River Commission is not required to apply for and receive a state permit to appropriate Colorado River water under its congressionally-authorized water delivery contracts with the Secretary of the Interior. A state water permit is not required of the Colorado River Commission, as a party contracting with the Secretary of the Interior, merely for the purpose of gathering necessary information for the State Engineer's records to facilitate the administration of other water resources where the Colorado River Commission has already furnished and continues to timely furnish that information to the State Engineer, and where necessary additional information can be and is timely furnished to him upon request.

QUESTION NO. 2

Are the entities which have contracts with the Colorado River Commission for the delivery of Colorado River water through the Southern Nevada Water System required to obtain a permit from the State Engineer to appropriate that water or to establish their relative rights to that water under those contracts?

ANALYSIS

Section 3 of the Southern Nevada Water Project Act authorized the Secretary of the Interior to enter into a contract with the Colorado River Commission for the delivery of water and for the repayment of the reimbursable construction costs of the project. 43 U.S.C. §§ 616iii. As we noted above, the secretary and the commission entered into a section 3 repayment contract for the "first stage" of the project on August 25, 1967, and a similar repayment contract for the "second stage" of the project dated August 4, 1977, which superseded and replaced the 1967 contract. At the same time these repayment contracts were respectively executed, the commission entered into nearly identical water delivery contracts with four of the "project water users," defined in the repayment contract as "any entity contracting with the state . . . for delivery of Project water through Project works" See subarticle 4(g) of the repayment contract. The project water users are the Las Vegas Valley Water District and the cities of Boulder City, Henderson and North Las Vegas. Many of the provisions of these contracts, particularly the provision for calculating water entitlements, identify and treat these water users as a group. On January 8, 1969, and January 23, 1978, respectively, the commission contracted for the delivery of a fixed annual amount of project water with a fifth project water user, Nellis Air Force Base.

Although the secretary did not contract directly with the project water users, the language and legislative history of the Southern Nevada Water Project Act, and certain provisions of the repayment contract between the secretary and the commission and the water delivery contracts between the commission and the project water users, clearly evidence a comprehensive scheme to make potable water available to the residents of Clark County through these specific project water users. Section 1 of the project act noted that the principal features of the project were required to "provide water from Lake Mead on the Colorado River for distribution to municipalities and industrial centers with Clark County, Nevada." 43 U.S.C. § 616ggg. The intended recipients of project water were not named in the act, but they were well known to the Congress. During the hearings on the proposed legislation, they were repeatedly identified as the cities of Las Vegas, North Las Vegas, Henderson, Boulder City and Nellis Air Force Base. (See House Report No. 1011 accompanying H.R. 2020, dated September 16, 1965, at pp. 3 and 10; Senate Report No. 332 accompanying S. 32, dated June 15, 1965, at pp. 1 and 4.)

Article 6 of the repayment contract between the secretary and the commission provides that as a condition precedent to construction of the project:

The [commission] shall prepare amendatory project water user contracts for use of Project water. With the exception of the Nellis Air

Force Base contract, said contracts shall not be effective until approved in writing by the Contracting Officer and shall have been judicially confirmed.

These requirements reflect a central principle of Congress's scheme for the Southern Nevada Water System: The water must be sold to these project water users in order to generate the revenues necessary to repay the federal treasury for the reimbursable construction costs. The project water user contracts had to be adequate and valid for this purpose. For the same reason, under article 6, these contracts may not be amended or abrogated without the written approval of the federal contracting officer.

Article 10 of the repayment contract provides:

[T]he United States will . . . deliver to the state each year . . . such quantities of raw water . . . as may be reasonably required and beneficially used by the [commission] in fulfilling contracts entered into by it with water users for uses in Clark County, Nevada.

. . . .

This provision indicates that a purpose of the water delivery is the fulfillment of the commission's contracts with the project water users, and in fact conditions the amount of water to be delivered to the commission on the amount necessary to meet the commission's obligation under those contracts.

The United States Supreme Court opinion and decree in Arizona v. California, supra, determined that Congress, in implementing the Boulder Canyon Project Act, supra, intended to, and did, create its own "comprehensive scheme" for the apportionment of waters from the Colorado River. Both the repayment contract and the project water user contracts approved by the Secretary of the Interior are specifically made subject to the Boulder Canyon Project Act. It is our opinion, as noted above, that the provisions and legislative history of the Southern Nevada Water Project Act, and the provisions of the repayment contract between the secretary and the commission entered into pursuant to section 3 of the act and the individual water delivery contracts between the commission and the project water users, taken as a whole, clearly evince a comprehensive congressional scheme for the delivery and distribution of Colorado River water under the Southern Nevada Water Project Act that is also clearly part of Congress's overall scheme for the apportionment of Colorado River water under the Boulder Canyon Project Act. The State Engineer could not deny a project water user a permit to appropriate project water without seriously interfering with, if not defeating, Congress's comprehensive appropriation and distribution scheme under both acts.

Most of Nevada's allocation under the Boulder Canyon Project Act, we understand, is delivered through the Southern Nevada Water System. Moreover, as we pointed out above, even if the State Engineer did not impose additional or inconsistent terms and conditions on the permit, it would still interfere with the secretary's power to determine with whom and on what terms water contracts will be made if it purported to authorize the diversion in the first place. For these reasons we conclude, as did the Attorney General in his 1972 opinion:

[A]ny attempt by the State Engineer to interfere with the appropriation of water from the Colorado River by users who take their water directly from the river would be a violation of the U.S. Supreme Court decree which was subsequently issued in the case of Arizona v. California, 376 U.S. 340 (1964), whose Article III specifically enjoined the State of Nevada from in any way interfering with the execution of the Secretary of the Interior's duties under federal law.

Nev. Op. Att'y Gen. No. 107 at 121 (December 14, 1972).

A state water permit also could have no place consistent with both project acts in the adjudication of relative rights to Colorado River water. The rights of the project water users to Colorado River water plainly derive from their contracts with the Colorado River Commission. Article 6 of the project water user contracts specifies the methodology for determining each user's annual entitlement to project water. In our opinion, it is these contracts and not a state water permit that will be relevant in any adjudication of the relative rights of the project water users. Nevada's permit application proceeding, it has been held, is not considered to be an adjudication of relative rights; the permit is an administrative tool only for the use of the State Engineer in administering the state's waters. See Salmon River Canal Co., Ltd. v. Bell Brand Ranches, Inc., 564 F.2d 1244 (9th Cir. 1977), cert. denied, 436 U.S. 918 (1978).

Our conclusion to this question is consistent with the Nevada Legislature's own scheme for the administration of project waters within the Southern Nevada Water System. Under section 1.1 of chapter 167, Statutes of Nevada 1947, as last amended by chapter 398, Statutes of Nevada 1983, at page 972, the commission is responsible for administering the repayment contract and all other applicable contracts "to ensure the delivery of potable water of good quality to the parties entitled to the water, at the times and in the amounts required by those contracts." The commission plans and executes major capital improvements of the project works, collects money from the users of project water and prepares the budget for the Southern Nevada Water System in concert with the Las Vegas Valley Water District, which is responsible for the system's

operation and maintenance "as an agent of the State of Nevada, acting through the Colorado River Commission."

As we pointed out above, the purpose of the Southern Nevada Water Project Act was to provide Colorado River water "to municipalities and industrial centers within Clark County, Nevada." 43 U.S.C. § 616ggg. The project water users are the actual, initial users of the Colorado River water diverted, treated and distributed by the Colorado River Commission through the Southern Nevada Water System under the repayment contract. Subsequent uses of that water brings it within the purview of the state water law (see Nev. Op. Att'y Gen. No. 107 at 121 (December 14, 1972)), and, in the context of the Southern Nevada Water System, that appears to occur after the water is first used and then collected and treated within the sewage collection and treatment system. See subsection 3 of NRS 533.440.

The final matter we take up in this question is whether the project water users can be required to apply for a state water permit for the purpose of providing the State Engineer with the information he needs to make decisions concerning subsequent uses of Colorado River water. We understand that all necessary or requested information concerning the appropriation of Colorado River water under the project water user contracts has been and continues to be supplied to the State Engineer. It follows from our analysis above that a project water user contracting with the Colorado River Commission pursuant to the water distribution scheme contemplated by the Southern Nevada Water Project Act is not legally required to apply for a state water permit merely for the purpose of providing information to the State Engineer where that information already has been or is being timely supplied to him and where any additional information on the matter the State Engineer may need can be and is timely supplied upon request. Again, a specific procedure for supplying this information outside the permit process could be identified in joint regulations adopted by the commission and the State Engineer pursuant to subsection 2 of NRS 533.372.

CONCLUSION

The Las Vegas Valley Water District, Nellis Air Force Base, and the cities of Boulder City, Henderson and North Las Vegas are not required to apply for and receive from the State Engineer a permit to appropriate Colorado River water from the Southern Nevada Water System under their water delivery contracts with the Colorado River Commission. A state water permit would be irrelevant in any adjudication of their relative rights to Colorado River water under those contracts. The project water users need not apply for a permit merely for the purpose of supplying information to the State Engineer where that information has already been furnished and continues to be promptly furnished to the State Engineer and where necessary additional information can be and is timely furnished to him upon request.

The conclusions reached in Questions One and Two reflect our understanding of congressional policy expressed in federal laws as interpreted and applied by the United States Supreme Court in the cases cited herein; and while we do not necessarily endorse all of the underpinnings of that policy, we feel compelled by Section 2 of Article 1 of the Nevada Constitution to follow federal law, as so interpreted and applied, in order to render the best opinion we can in answering the questions asked of us.

QUESTION THREE

What is the statutory responsibility of the Colorado River Commission with respect to approval of permits for the subsequent appropriations or uses of Colorado River water?

ANALYSIS

Subsection 2 of NRS 533.372 provides:

The state engineer shall not approve any application or issue any permit to appropriate the waters of the Colorado River held in trust by the Colorado River commission except after approval of the application by the commission. The commission and the state engineer may adopt such joint regulations as may be necessary for the purpose of carrying out the provisions of this subsection. (Emphasis added.)

Subsection 2 of NRS 538.171 requires:

Applications to appropriate such waters [Nevada's share of Colorado River water described in subsection 1] must be made in accordance with chapter 533 of NRS and are subject to approval by the commission as set forth in NRS 533.370 [now an obsolete internal reference] and 533.372.

In his 1972 opinion, the Attorney General pointed out that a literal reading of the language of NRS 533.372(2) to include original appropriations of Colorado River water under federal water delivery contracts would be in "direct conflict with the authority granted by the Congress of the United States to the Secretary of the Interior under § 5 of the Boulder Canyon Project Act . . . as interpreted by the U. S. Supreme Court in Arizona v. California" Nev. Op. Att'y Gen. No. 107 at 120 (December 14, 1972). Likewise, under our opinion today NRS 533.372(2) could not encompass original appropriations of Colorado River water made pursuant to section 3 of the Southern Nevada Water Project Act.

For the sake of completeness we should mention that the original appropriation of Colorado River water made by the Big Bend

Water District does not, in our opinion, come under the purview of NRS 533.372(2); even though the district applied for and received a state water permit for that appropriation. The right of the Big Bend Water District to appropriate Colorado River water derives from its water delivery contract with the Colorado River Commission dated November 9, 1983. On the previous day, the commission's 1942 section 5 contract with the Secretary of the Interior for the delivery of Nevada's share of Colorado River water was amended to authorize the commission to subcontract for the delivery of 10,000 acre-feet of that water for use specifically within the area served by the Big Bend Water District. The district's water delivery contract with the commission is the subcontract contemplated and authorized by the Secretary of the Interior. It is clear that the allocation of Colorado River water to the Big Bend Water District through a subcontract with the commission is an integral part of the secretary's power to apportion that water under section 5 of the Boulder Canyon Project Act, and here, again, a permit purporting to authorize the diversion would be inconsistent with the subcontract and, hence, the Project Act. For this reason, we believe there was no legal requirement for the Big Bend Water District to obtain a state water permit to appropriate Colorado River water under its contract with the commission. And, as with the project water users, questions concerning the relative right of the district to that water will have to be resolved with reference to the priority scheme found in that contract (see article 3(f)) and not the state water permit. See generally Salmon River Canal Co., Ltd. v. Bell Brand Ranches, Inc., *supra*. We note a similar subcontractual arrangement was entered into with the Southern California Edison Company; it has the same legal effect.

We have seen that a state water permit is never legally required for the purpose of making original appropriations of Colorado River water pursuant to federal law. For that reason, NRS 533.372(2) requiring the commission's approval of applications to the State Engineer to appropriate Colorado River water cannot apply to those original appropriations. If the provision is to have any meaning or effect at all, it must apply to subsequent appropriations or uses of Colorado River water. Neither the language of NRS 533.372(2) itself, nor what little legislative history is available on the statute, offers any evidence that the provision was intended to apply only to original or initial appropriations of Colorado River water. To limit the scope of the statute to original or initial appropriations would render it meaningless and ineffective, ignore the broad nature of the words "any application," and "any permit," and would restrict the Colorado River Commission's ability to meet the substantial responsibility it shares with the State Engineer respecting the return flow of water to the river, which is crucial should Nevada users ever divert more than the 300,000 acre-feet per year allotted to the state by the Boulder Canyon Project Act. See Nev. Op. Att'y Gen. No. 107 at 121 (December 14, 1972).

Statutes are not to be interpreted so as to render them meaningless. The Nevada Supreme Court has consistently held that statutes must be construed to give effect to all their parts. State ex rel. List v. AAA Auto Leasing, 93 Nev. 483, 487, 568 P.2d 1230 (1977); Nevada State Personnel Division v. Haskins, 90 Nev. 425, 529 P.2d 795 (1974); Seaborn v. District Court, 55 Nev. 206, 29 P.2d 500 (1934). A reading of legislation which would render any part thereof redundant or meaningless, where that part may be given a separate substantive interpretation, should be avoided. Bd. of County Comm'rs v. CMC of Nevada, 99 Nev. 739, 744, 670 P.2d 102 (1983).

The phrase "any application or . . . any permit to appropriate the waters of the Colorado River held in trust by the Colorado River commission" can reasonably be read to encompass general permits issued under NRS 533.325 to 533.435, inclusive, and reservoir and secondary permits issued under NRS 533.440 for subsequent uses of Colorado River water. The latter permits are specifically made subject to the provisions of NRS 533.325 through 533.435 which, of course, include NRS 533.372(2). See NRS 533.440(1). The phrase "held in trust" implies a continuing responsibility--one that would extend beyond initial appropriations. We do not believe that the phrase "waters of the Colorado River held in trust by the Colorado River Commission" in NRS 533.372(2) should be interpreted to mean Colorado River water only when it is originally appropriated by the commission and not when it is subsequently appropriated. We believe the phrase describes a particular portion of water from a certain source, i.e., Nevada's share of water from the Colorado River, not a time when the water is appropriated. Water taken from the Colorado River can continue to be called Colorado River water for certain purposes no matter how many times it is reused. For example, Colorado River water in sewage effluent discharged into the Las Vegas Wash is identified and calculated as such in order to determine return flow credits. In our opinion, the phrase simply identifies Nevada's share of Colorado River water, even when subsequently appropriated.

The language in both NRS 538.171(2) and 533.372(2) regarding the approval by the commission of permits to appropriate Colorado River water was derived from S.B. 167 of the 1959 legislative session. The evident purpose of the legislation is set out in its title:

AN ACT to amend NRS section 533.370 [now NRS 533.372(2)] relating to approval and rejection of applications to appropriate public waters, and NRS section 538.170 [now NRS 538.171] relating to the duties of the Colorado River commission of Nevada with respect to waters of the Colorado River, by providing procedures relating to applications to appropriate waters of the Colorado River.

Chapter 362, Statutes of Nevada 1959, at p. 554.

In 1959 state water permits to appropriate Colorado River water, both initially and subsequently, were required. Later, as we have seen, the 1964 decision in Arizona v. California, *supra*, had the effect of removing any legal requirement that initial appropriators or users of Colorado River water under a contract with the Secretary of the Interior obtain a state water permit. That result was made clear by the Attorney General in his opinion of December 14, 1972. In 1965 the Congress enacted the Southern Nevada Water Project Act; later, well-publicized contracts were executed with project water users, and a massive water system for the Las Vegas Valley was constructed, partly with bond issues authorized by the legislature. It is important to note that the legislature revisited and made amendments to the language in NRS 538.171 on three occasions and reenacted the language of NRS 533.372 once since the decision in Arizona v. California, *supra*, and the enactment of the Southern Nevada Water Project Act. On those occasions the legislature chose not to amend or repeal the language giving the commission approval authority over permits to appropriate Colorado River water. Legislative language must be interpreted on the assumption that at the time of a statute's enactment the legislature was aware of existing statutes, rules of statutory construction and judicial decisions. Nev. Op. Att'y Gen. No. 232 (December 19, 1956). This assumption should also be made with regard to the time amendments to statutes are made. Latterner v. Latterner, 51 Nev. 285, 274 P. 194 (1929).

Apparently, the purpose of NRS 533.372(2) is to provide the Colorado River Commission with an effective tool with which it can carry out its substantial responsibilities under NRS 538.171(1) to "receive, protect and safeguard and hold in trust for the State of Nevada" Colorado River water and the state's rights to that water. It appears to us that when the legislature reenacted the language in NRS 533.372(2) in 1981 and amended NRS 538.171 in 1973, 1981 and 1983, it intended to leave that tool in place. If the will of the legislature is apparent, the language of an act should be construed to give it force and not nullify its purpose. Sheriff v. Lugman, 101 Nev. 149, 697 P.2d 107 (1985). Woofter v. O'Donnell, 91 Nev. 756, 542 P.2d 1396 (1975). The only construction of NRS 533.372(2) which promotes this legislative purpose is that the provision authorizes the Colorado River Commission to approve or disapprove applications for the only permits for the appropriation of Colorado River water which we have determined may now be issued by the State Engineer, i.e., general permits issued under NRS 533.325 through 533.435 and reservoir and secondary permits issued under NRS 533.440, to the extent they involve the subsequent appropriation or use of water originally appropriated from the Colorado River.

Our construction of NRS 533.372(2) and 538.171(2) is consistent with the substantial responsibility the Colorado River Commission shares with the State Engineer respecting return flow credits. As we have seen, under NRS 538.171(1), the commission is responsible for protecting Nevada's allotment of Colorado River water. The Boulder Canyon Project Act, *supra*, provided an

allocation to the State of Nevada of 300,000 acre-feet per year of water from the river. The Supreme Court in Arizona v. California, supra, made it clear that the 300,000 acre-feet allocation is the amount of water Nevada can consumptively use per year. "Consumptive use" is defined in the Court's decree as diversions from the stream less return flow thereto. 376 U.S. 340. Thus, the total amount of Colorado River water the commission can divert from the river is directly dependent upon the return of that water to the river. Without return flow credits, the state may divert only 300,000 acre-feet of Colorado River water per year. With the amount of return flow that can be reasonably anticipated, Nevada's diversionary capability, we understand, can be extended to over 450,000 acre-feet per year. Optimizing Nevada's ability to divert Colorado River water through return flow credits is, in our view, clearly within the commission's trust responsibilities under NRS 538.171(1). The commission's authority under NRS 533.372(2)--to evaluate and approve or disapprove applications for permits for subsequent appropriations of Colorado River water--is a proper concomitant of those trust responsibilities and would appear to substantially further the stated policy of the legislature to "protect and safeguard" Nevada's allocation of that water.

CONCLUSION

The Colorado River Commission has the authority under NRS 533.372(2) and 538.171(2) to approve or disapprove applications to the State Engineer for permits issued under NRS 533.325 through 533.440, to the extent those permits involve the subsequent appropriation or use of water originally appropriated from the Colorado River pursuant to federal law and NRS 538.171.

Sincerely,

BRIAN MCKAY
Attorney General

By


William E. Isaeff
Chief Deputy Attorney General

OPINIONS OF THE ATTORNEY GENERAL

- 107 State Water Laws and the Colorado River—The U.S. Supreme Court opinion and decree in *Arizona v. California*, 373 U.S. 546 (1963), interpreting the Boulder Canyon Project Act, have largely preempted state water laws governing appropriation of public waters as applied to the Colorado River. But state water permits are still required of parties contracting with the Secretary of Interior where purpose is to gather information for State Engineer's records and to facilitate the administration of other water resources.

CARSON CITY, December 14, 1972

MR. ROLAND D. WESTERGARD, *State Engineer, Division of Water Resources, Department of Conservation and Natural Resources*,
201 South Fall Street, Carson City, Nevada 89701

DEAR MR. WESTERGARD:

You have asked this office for an opinion on the following:

QUESTION

Does the U.S. Supreme Court opinion and decree in *Arizona v. California*, 373 U.S. 546 (1963) and 376 U.S. 340 (1964), eliminate the requirement that persons desiring to appropriate waters from the Colorado River comply with the provisions of our State Water Law, NRS 533.325 to 533.435, inclusive?

ANALYSIS

The general water appropriation law of Nevada requires all water users to apply for a permit to appropriate public waters. With respect to water from the Colorado River, NRS 533.370 requires approval by both the Colorado River Commission and the State Engineer before an appropriation permit may be issued.

In the opinion of this office, this broad, discretionary authority in these two state agencies to approve or disapprove water appropriation from the Colorado River is, if read literally, in direct conflict with the authority granted by the Congress of the United States to the Secretary of Interior under § 5 of the Boulder Canyon Project Act, 45 Stat. 1057 (1928), 43 U.S.C. §§ 617-617t, as interpreted by the U.S. Supreme Court in *Arizona v. California*, *supra*.

This congressional enactment was the end product of years of continuing controversy over the waters of the Colorado River, which the states through which the river flows, despite repeated efforts, had been unable to settle. Congress, acting in the national interest, settled the controversy itself with an act which controls all questions concerning initial use of waters from the Colorado River. As pointed out by the U.S. Supreme Court, 373 U.S., at 575, 579, Congress intended to and did, in fact, create its own comprehensive scheme for apportionment of waters from the Colorado River, by giving full and complete authority to the Secretary of Interior to effectuate the original division of waters approved in the Act through the making of contracts for its delivery and then prohibiting any one from acquiring water without first securing a contract from the secretary.

The authority in the Secretary of Interior under § 5 of the Project Act is all encompassing: Congress intended the secretary, through his § 5 contracts, both to carry out the original allocation of the waters of the mainstream of the Colorado River among the lower basin states and to initially decide which users within each state would get water. 373 U.S., at 580. In choosing between various water users within each state and in settling the terms of his contracts, the High Court declared, in

unmistakable terms, the secretary is not bound by or required to follow state law:

But where the Secretary's contracts, as here, carry out a Congressional plan for the complete distribution of water to users, *state law has no place*. 373 U.S., at 588. (Italics added.)

One of the main contentions of the State of Nevada in the case of *Arizona v. California* was that the general contract between the Colorado River Commission and the Secretary of Interior satisfied the terms of § 5 of the act and obviated the necessity of further contracts with actual users. It was no doubt the intention of the Colorado River Commission to then dispense this water as it thought best to Nevada users in accordance with Nevada law. The U.S. Supreme Court specifically rejected this contention, saying:

Acceptance of Nevada's contention here would not only undermine this plain congressional requirement that water users have contracts with the Secretary, but would likewise transfer from the Secretary to Nevada a large part, if not all, of the Secretary's power to determine with whom he will contract and upon what terms.

We have already held the contractual power of the Secretary cannot be diluted in this manner. We therefore reject Nevada's contention. 373 U.S., at 592.

It is, therefore, the opinion of this office that any attempt by the State Engineer to interfere with the appropriation of water from the Colorado River by users who take their water directly from the river would be a violation of the U.S. Supreme Court decree which was subsequently issued in the case of *Arizona v. California*, 376 U.S. 340 (1964), whose Article III specifically enjoined the State of Nevada from in any way interfering with or purporting to authorize interference with the execution of the Secretary of Interior's duties under federal law.

However, this is not to say that the State Engineer could not legally require all water users who contract with the secretary to also apply for a state water permit after they have secured their federal contract, where the purpose of such an application is merely to insure the records of the State Engineer reflect all the necessary information related to water use from the Colorado River which he may need in order to make intelligent and informed decisions concerning any subsequent allocations of these waters after they come under state jurisdiction.

In view of the strong language in the opinion and decree in *Arizona v. California*, supra, it follows that, with regards to the question whether or not to issue the permit to an original appropriator of Colorado River water, the State Engineer would have no discretion. He would be required to issue the requested permit in every case, otherwise his actions could easily be viewed as inconsistent with the broad grant of authority in the Secretary of Interior under the Boulder Canyon Project Act and with the contract the secretary has already made with the applicant for a state permit.

While the necessity of obtaining a state water permit in addition to the secretary's contract may at first appear somewhat duplicitous, it must be borne in mind that the State Engineer is charged with substantial responsibilities (1) with respect to the uses of water now within the State, (2) with respect to subsequent uses of water originally taken from the Colorado River, and (3) with respect to the return flow of water to the river, especially should appropriations by Nevada users ever exceed the 300,000 annual acre-feet allowed the State of Nevada by the federal enactment. Without the information and records he would obtain through applications for state water permits, the State Engineer would be severely handicapped in carrying out these other important duties of his office.

Although it has been pointed out above that under the rulings of the United States Supreme Court in *Arizona v. California*, supra, the State Engineer lacks discretionary powers over water permits applied for by original Colorado River water users in that he may never refuse such a

permit or attach conditions to it inconsistent with the terms of the secretary's contract, this is not to imply that he also lacks these discretionary powers with respect to permit applications from parties seeking to make further use of these same waters or their byproducts at some later time when the waters are clearly within the State's jurisdiction. In situations of this type, his authority under state law remains undiminished. This analysis is believed by this office to be in keeping with the spirit of § 18 of the Boulder Canyon Project Act, 43 U.S.C. § 617q, which provides that nothing in that act shall be construed as interfering with the rights of the states, as of December 21, 1928, "either to the waters within their borders or to adopt such policies and enact such laws as they deem necessary with respect to the appropriation, control or use of water within their borders, except as modified by the Colorado River Compact or other interstate agreement."

By way of example of the interpretation outlined above, if the Las Vegas Valley Water District were to contract with the Secretary of Interior for a direct appropriation of water from the Colorado River, then the district, after obtaining its contract, would also apply for a state water permit, which the State Engineer would be required to issue after he had received whatever information and data he believed necessary for his records. Subsequent persons or firms desiring to make further use of waters and the byproducts of waters, including effluent, originally appropriated to the district would also have to apply, under current state law, for a state water permit whose issuance, with or without conditions, would be solely within the discretion of the State Engineer, since such waters would now be entirely within the State of Nevada and subject only to state rather than federal law.

CONCLUSION

The U.S. Supreme Court opinion and decree in *Arizona v. California*, 373 U.S. 546 (1963) and 376 U.S. 340 (1964), interpreting the provisions of the Boulder Canyon Project Act, 45 Stat. 1057 (1928), 43 U.S.C. §§ 617-617L, have to a large extent preempted state water laws governing appropriation of public waters from the Colorado River. But state water permits are still required of those parties contracting with the Secretary of Interior where the purpose is to gather necessary information for the State Engineer's records and to facilitate the administration of other water resources.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By WILLIAM E. ISAEFF, *Deputy Attorney General*

APPENDIX F

**Safe Drinking Water Newsletter
National Conference of
State Legislatures**



SAFE DRINKING WATER NEWSLETTER

Produced by the Energy and Natural Resources Program

Safe Drinking Water Project

NATIONAL CONFERENCE OF STATE LEGISLATURES
1560 Broadway, Suite 700 Denver, Colorado 80202
Volume 1 Number 1
October 1990

FEDERAL DRINKING WATER AMENDMENTS TO HAVE MAJOR IMPACTS ON STATES

The 1986 Safe Drinking Water Act (SDWA) amendments made fundamental changes in national drinking water policy. They removed the Environmental Protection Agency's *discretionary* authority to set drinking water standards and *mandated* EPA to adopt standards for 83 contaminants--only 22 had been set before--within three years of enactment. Although passed by Congress four years ago, the amendments' impacts only now are becoming clear. The time for state compliance has come due.

States have primary responsibility for managing drinking water programs. Forty-eight states--all but Indiana and Wyoming--have received EPA approval to administer drinking water programs. To obtain approval--primacy--a state must adopt drinking water standards and other program elements that are at least as stringent as EPA's, and have adequate enforcement authority.

State drinking water agencies have expressed concern that the magnitude and timing of the new SDWA requirements may bankrupt a number of small water supply systems, resulting in vio-

lations of drinking water standards. States will incur significant costs not only to enforce standards, but to provide technical and financial assistance to water supply systems to conform with the Safe Drinking Water Act.

Complying with the 1986 amendments will mean significantly increased costs to states. The annual pre-amendment costs to all states of conforming with the national drinking water program has been estimated at \$130 million. Actual state expenditures, however, totaled only \$95 million (one-third of which has been provided by EPA grants). Post-amendment compliance costs are projected to rise to \$150 mil-

lion per year beginning in 1992 (Figure 1). This is on top of additional upfront costs of \$180 million through 1991 (Figure 2).

Despite the costs a state will incur, there are sound reasons for retaining primacy of the drinking water program. State agencies are more responsive to the problems faced by local water utilities in complying with drinking water standards than EPA, providing technical assistance and issuing advisories before undertaking enforcement actions. State financial assistance also may be accorded to water utilities in need of infrastructure improvements, something not available from EPA. (See AMENDMENTS, page 2.)

NCSL LAUNCHES NEW SAFE DRINKING WATER PROJECT

This is the initial quarterly newsletter of the National Conference of State Legislatures' Safe Drinking Water Project. The newsletter is part of a larger project designed to assist states in developing legislation to comply with new federal standards. The assistance may take the form of NCSL staff testimony or presentations by out-

side resource persons to legislative committees considering legislation. It also may include policy research, program evaluation, and bill review and drafting services. The project is supported by a grant from the U.S. Environmental Protection Agency. For additional information, contact Larry Morandi in NCSL's Denver office.

AMENDMENTS from page 1

Retaining primacy may require specific legislation to authorize the use of alternative funding mechanisms, such as fees and dedicated taxes for program administration, and the use of bond proceeds in state revolving funds to assist water utilities in financing infrastructure improvements.

Legislation also may be necessary to regulate the formation and operation of small water supply systems that may not have sufficient revenue-raising capabilities or technical expertise to comply with federal drinking water standards, and to empower state agencies to assess administrative penalties against violations.

STATE AGENCY JURISDICTION: VERMONT CONSIDERS CHANGE FROM HEALTH TO ENVIRONMENT

Slightly more than half of the states administer their drinking water program out of a health department. The balance are in an environment or natural resources agency. The Vermont Legislature commissioned a study in 1989 to assess the most effective means of regulating drinking water, including a determination of which state agency was best suited to exercise administrative jurisdiction.

The final report, *A Study of the Regulation of Drinking Water in Vermont*, found that most of the drinking water functions logically fit in the Department of Environmental Conservation (DEC) as opposed to the Health Department, which currently runs the program. In the Health Department, safe drinking water must compete with programs such as prenatal care and medical services for funding. If the primacy agency were changed, some Health Department staff would continue to manage components of the drinking water program but most staff would be transferred to the Department of Environmental Conservation.

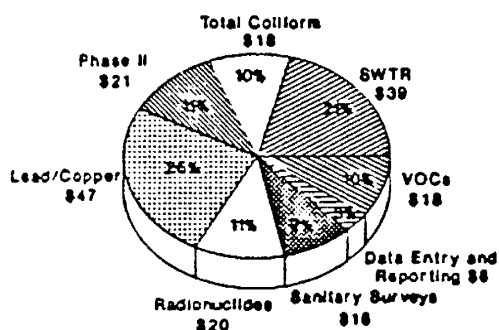
The report concluded that there would be more homogeneity in permitting regulatory enforcement and technical assistance to local water agencies if the program were in DEC.

The affected department head and the governor have concurred with the report's recommendation and an executive order to approve the transfer will be drawn up for consideration by the new governor in January 1991. The governor would have the option to submit the change in agency jurisdiction to the legislature for approval.

Figure 1

Initial Costs for New Requirements [Estimated Costs in \$M]

Total: \$180M

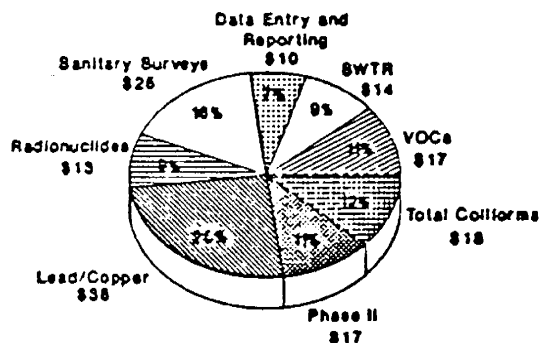


Source: U.S. Environmental Protection Agency and Association of State Drinking Water Administrators.

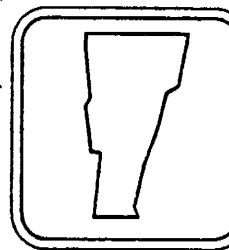
Figure 2

Out-Year Costs for New Requirements [Estimated Costs in \$M/Year]

Total: \$150M/Year



Source: U.S. Environmental Protection Agency and Association of State Drinking Water Administrators.



LEGISLATING FOR SAFE DRINKING WATER: A FEDERAL PERSPECTIVE ON STATE ACTION

By Michael B. Cook, Director, Office of Drinking Water
U.S. Environmental Protection Agency

The original Safe Drinking Water Act mandated the U.S. Environmental Protection Agency (EPA) to develop, implement, and enforce national regulations that govern the quality of public water supplies and protect public health from drinking water contaminants. These contaminants include microbiologic organisms such as bacteria and viruses, organic chemicals such as benzene and vinyl chloride, inorganic chemicals such as lead and nitrates, and radiologic contaminants such as radium and radon.

The 1986 amendments to the act recognized an urgent need for change in standards for public water systems. EPA was given three years to set standards for 83 contaminants to protect the public from both short- and long-term health effects caused by impure drinking water. The amendments included a ban on all future use of lead pipe and lead solder, mandated greater protection of groundwater sources of drinking water, and required consistent and fair enforcement procedures to ensure that drinking water suppliers comply with the act. When fully implemented, these regulations will have a profound public health benefit for all citizens using public water systems. For example, 90,000 cases per year of gastrointestinal illness will be avoided, 180 cancer deaths per year will be prevented, and 140 million citizens will enjoy the benefits of reduced exposure to lead.

State legislatures can play a major role in implementing the act and its amendments effectively. Some states are better off than others, but all state programs have a financial and managerial

challenge ahead of them. Federal grants cover about one-third of the cost of state drinking water program administration. In recent years these grants have been increasing to help cover the costs associated with the new requirements. State legislatures will be facing the question of how to establish additional funding mechanisms for drinking water programs. There is only limited federal assistance available to water suppliers to meet the requirements of the act. Legislatures will be facing pressure from water suppliers to develop grant and loan programs. Some areas where legislative actions can be focused are building state capacity, supporting institutional change and addressing the needs of small systems.

Building state drinking water program capacity is of great importance. Except for Indiana, Wyoming and the District of Columbia, all states and territories have primary enforcement authority, what we call primacy. The job of the primacy agency, usually the state department of health or environment, is to over-

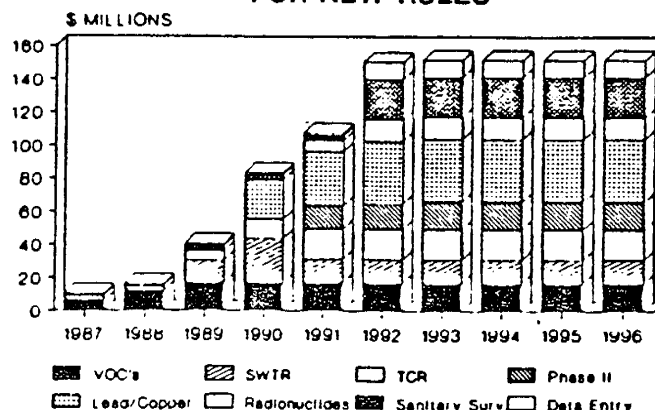
see the state drinking water program and ensure that water systems meet new treatment and monitoring/reporting requirements. A sound and effective state primacy agency will have strong personnel and financial resources.

Implementation of the 1986 amendments will cost states an estimated \$180 million in "one-time costs" during the next several years, and will lead to an increase in annual costs of \$150 million per year after 1992 (Figure 3). This is more than a doubling of resources currently available to state primacy agencies. State legislators can play a role in providing funding for safe drinking water to their constituents through their support of state drinking water programs.

While almost every state is facing severe budget constraints, there are alternative funding methods that can be tailored to the specific needs of the individual states. These are methods to raise funds separate from general tax revenue for use specifically in the

(Concluded on page 4.)

Figure 3
STATE COST REQUIREMENTS BY YEAR
FOR NEW RULES



Source: U.S. Environmental Protection Agency and Association of State Drinking Water Administrators.

drinking water program or for public water systems.

One source of funding that has proven successful is the establishment of state user fees. User fees are often the most equitable means of matching program costs with those responsible for or benefiting from program activities. For example, New Hampshire's governor signed legislation that will allow a user fee to be implemented. The user fee is expected to yield approximately \$350,000 per year. The state's drinking water program is in the process of hiring six new staff members in order to meet the demands of the 1986 amendments. The Florida and California legislatures have recently passed user fee legislation, and proposals are pending in Ohio and Wisconsin. Additionally, other states are considering implementing some form of user fees.

Many activities the states conduct as part of their water quality program can be funded by a "fee for service," such as fees for facility inspection, monitoring and sampling or issuing permits. Fees should be set up to recover the full cost of service. Legislatures also can provide their state drinking water programs with authority to assess penalties administratively from systems that violate drinking water regulations without having to take the violator to court. Over a dozen states currently have administrative penalty authority.

Besides resource constraints, there are other limitations on the capacity of states to implement successfully the drinking water program. Often operators of drinking water systems do not have the training or knowledge to run a drinking water facility. Mandatory operator certification would ensure that the operators of drinking water systems are trained in maintenance procedures and have

the skills required to guarantee safe drinking water. By requiring operators of small drinking water systems to become certified, legislatures are guaranteeing their constituents reliable, skilled personnel who are qualified to maintain a water systems.

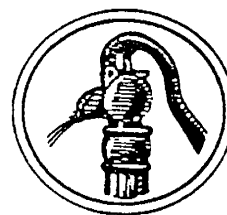
The unique problems faced by small systems must be resolved with unique solutions. Small systems (serving fewer than 3,300 persons) account for 87 percent of all public water systems and represent an even greater portion of those systems that fail to comply with safe drinking water regulations. Implementation of the 1986 amendments will exacerbate the problems facing small systems, many of which are already marginal operations, by imposing additional regulatory requirements. Underlying their difficulties are a lack of financial capacity, technical and management capability, and information about the regulations. Any one or a combination of these factors can make a system unfit to function viably over the long term.

The first step state legislatures can take in addressing small systems problems is passing legislation setting the standards to ensure the viability of all new systems. States can use the permitting process to require that new, small systems comply with minimum design, operating and construction standards. The viability of new systems can be controlled by encouraging interconnections with existing systems, promoting satellite management or ownership, and requiring new, small systems to take measures to ensure their financial viability.

The second challenge before state legislatures is supporting institutional changes to help existing non-viable systems. There are a variety of approaches to restructuring systems physically,

managerially and financially. The most complete form of restructuring is physical consolidation between non-viable systems and viable existing systems. Contracting out for operation and maintenance assistance and satellite management is a way to address management and technical deficiencies. Small systems pay more per unit for goods and services. By forming cooperatives, contracting out for service or joining a "big brother" network, small systems can alleviate their financial shortcomings. State legislatures can support restructuring by making mergers and acquisitions mandatory when a public water system is unable to provide safe drinking water to its consumers.

Building state capacity, supporting institutional change and addressing the issue of small systems are all ways state legislatures can ensure the efficient implementation of the Safe Drinking Water Act and its 1986 amendments, and, ultimately, to provide safe drinking water to constituents. The risk of not ensuring viability of all systems is too great to take in an era where invisible health hazards confront people every day. EPA would like to work with legislatures and drinking water programs in every state to implement the Safe Drinking Water Act Amendments. With the help of the state legislatures EPA and the state programs can ensure that safe drinking water continues to be produced nationwide.



ADMINISTRATIVE PRIMACY: VIRGINIA DECIDES TO RETAIN CONTROL

Virginia recently examined the merits of retaining administrative control--primacy--of its safe drinking water program. Maintaining primacy by complying with the new safe drinking water regulations will increase state administrative costs. The issue was whether the primacy benefits outweighed the liability of the increased costs.

The Division of Water Supply Engineering in the Virginia Department of Health prepared a report, *The Impact of the Safe Drinking Wa-*



ter Act Amendments of 1986 on the Commonwealth of Virginia, for the governor and the general assembly. The report determined that although the state would need more money to maintain primacy, turning it back to EPA would result in the loss of federal grants and a consequent reduction in state jobs.

Exercising primacy gives the state some discretion in enforcing drinking water regulations; EPA would be required to enforce all regulations regardless of priority. The state also is better positioned than EPA to provide local water purveyors with technical assistance in the management and operation of drinking water systems.

The report concluded that (1) although safe drinking water program costs will increase, the overall costs to the state and water utilities would be less than those incurred if the program were run by EPA; and (2) continued state control would more efficiently serve the needs of the state and of small water systems in particular.

ENSURING THE VIABILITY OF SMALL DRINKING WATER SYSTEMS

A major concern of state drinking water agencies is ensuring the operational and financial viability of small drinking water systems (those serving between 25 and 3,300 customers). Small systems are more likely to violate EPA standards than larger ones because of a lack of technical and management expertise, and inadequate financial resources to afford capital improvements. Roughly 80 to 95 percent of the violations of drinking water standards and monitoring and reporting requirements nationwide are attributable to small systems. The SDWA amendments can be expected to increase compliance problems for small systems as new standards go into effect.

The Environmental Protection Agency held a workshop in Scottsdale, Arizona, September 22-24, 1990, to assist states in devising policies to manage the formation and operation of small drinking water systems. Ten states were targeted for technical assistance during three days of intensive discussions: Arizona, Kentucky, Massachusetts, Missouri, Montana, Nevada, New Hampshire, Pennsylvania, Utah, and Vermont. Legislators from Kentucky and Washington attended. NCSL and Council of State Gov-

ernment staff served as workshop faculty along with state agency personnel from Connecticut, Maryland, Pennsylvania, and Washington, and EPA officials.

The workshop was designed to have each state formulate an action plan that could entail legislative recommendations for the 1991 sessions. A peer review process was utilized to provide expert critiques of each state's strategy. The majority of action plans included proposed legislation for:

- Permit procedures that would include financial evaluations to control the formation of nonviable drinking water systems;
- Encouraging mergers and interconnections among existing small systems;
- Alternative funding mechanisms to support state drinking water program administration and provide financial assistance for water utility infrastructure improvements; and
- Administrative penalties to enforce compliance with drinking water standards and other program elements.

Safe Drinking Water Newsletter

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William T. Pound,
Executive Director
Larry Morandi, Project Manager

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Layout and design:
Leann Stelzer

Contributors to this issue:
Barbara Foster, Larry Morandi

NEVADA LEGISLATIVE COMMITTEE RECOMMENDATIONS TO RETAIN DRINKING WATER PROGRAM PRIMACY

The Nevada Legislative Commission's Subcommittee to Study the Laws, Regulations and Policies Relating to Water and Waste Water Resources made extensive recommendations during the 1990 interim period for drinking water legislation to be introduced in the 1991 session. The key components, and accompanying rationale, are cited in full below.

1. Enact legislation containing the following elements:

a. "Whereas clauses" which:

■ Refer to enactment of the federal Safe Drinking Water Act.

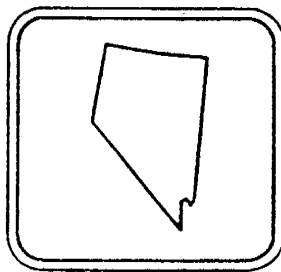
■ Highlight the ability of the state to retain primary enforcement authority (primacy) for the Public Water System Supervision Program which is authorized under the federal act.

■ Explain that retaining primacy allows the state to act with a degree of discretion in establishing water quality monitoring schedules, approving variances and exemptions, and conducting other activities allowed under the federal act.

■ Point out the need for the state to provide technical assistance to water suppliers and laboratory facilities for use within the state.

■ Acknowledge the need for continuing support of the state program.

■ State that safe drinking water is important to the health of all Nevada citizens and the visitors to the state.



b. A policy statement expressing the legislature's conclusion that primacy for the Public Water System Supervision Program should remain at the state level and that Nevada's program should include provisions for technical assistance to water suppliers and laboratory facilities for use within the state.

2. Establish a matching grant program administered by the State Board to Finance Water Projects to provide, at the board's discretion, financial assistance for capital improvements required of noninvestor-owned community and nontransient public water systems which are in existence at the time of passage and approval of the legislative act.

a. Direct the board to adopt regulations establishing a sliding scale from 75 percent to 15 percent matching requirements based upon average household income, demonstration of economic hardship, imminent risk to public health, and other relevant factors.

b. Provide that grants may include costs associated with consolidation or regionalization of systems, and may include costs associated with the transfer and connection of an investor-owned system to a noninvestor-owned system.

c. Authorize issuance of \$25 million in state general obliga-

tion bonds to furnish funds for the program, and provide that the bonds are to be repaid through property taxes.

3. Establish, if constitutionally feasible, a revolving loan fund administered by the State Board to Finance Water Projects to provide, at the board's discretion, low interest loans for capital improvements required of community water systems.

a. Specify that the monies obtained through such a loan cannot be used as the local matching portion in order to obtain a grant through the state grant program.

b. Authorize the State Board to Finance Water Projects to administer any federal funds which are made available for this type of program.

c. Authorize issuance of \$100 million in state general obligation bonds to furnish funds for the program, and provide that the bonds are to be repaid in a manner appropriate for the program.

4. Require that the operators of community water systems which are designated surface water systems or community water systems serving 100 or more persons must be certified through a program administered by Nevada's Health Division.

5. Urge, by resolution, counties and cities to establish "wellhead protection zones" to protect the quality of community drinking water sources through the planning and zoning powers as provided in NRS 278.020, 278.150, 278.160 and 278.250.

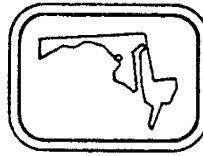
SELECTED STATE DRINKING WATER LEGISLATION
ENACTED DURING THE 1990 SESSION

California
SB 1806



Assesses an annual fee of 50 cents per customer on public water systems servicing at least 200 connections. The fee will be paid to the Department of Health. Public water systems are authorized to charge their customers to recover the fee.

Maryland
HB 904



Establishes a Water Supply Facilities Financial Assistance Program financed by state general fund appropriations. State and local governmental entities responsible for safe drinking water are eligible for grants and loans in amounts not exceeding 87 1/2 percent of the costs of each project. Loans may not exceed \$500,000 of the principal amount of a project and will be made at the same interest rate as state general obligation bonds. The loans must be repaid within 30 years.

Ohio
SB 75



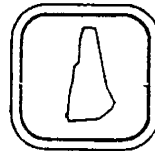
Authorizes a board of township trustees to enter into a contract with a board of county commissioners for the township to pay all or part of the cost of a water supply improvement. It also authorizes a board of township trustees to levy a property tax in excess of the 10-mill limitation or issue bonds to meet all of its contractual obligation to pay costs of the improvement.

Delaware
HB 772



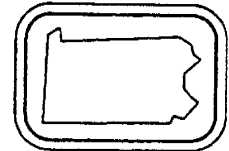
Authorizes the State Board of Health to analyze drinking water supplies for contamination; inspect public water systems; review plans for new systems and improvements to existing systems; and provide technical assistance to public water systems. Empowers the board to impose fees to recover the costs of providing these services.

New Hampshire
HB 149



Authorizes the Division of Water Supply and Pollution Control to grant operational permits for public water systems. The division is empowered to adopt a fee system for the issuance of such permits; governmentally owned water systems are exempt from the fees. Revenue raised from fee assessments must be deposited in the state general fund.

Pennsylvania
HB 24



Authorizes a public water system to include in its rate base the costs of property acquired from another water utility that are in excess of the original cost of the property when first put to public service. The Public Utility Commission may approve the rate increase only if the acquiring water utility demonstrates, among other facts, that (1) the property will be used to provide safe drinking water; (2) the property was acquired from a utility with 1,200 or less service connections; (3) the former utility was not providing safe drinking water and has agreed to the purchase; and (4) the rates charged to its existing customers will not increase unreasonably due to the acquisition.

Hawaii
SB 3109



Creates an Environmental Response Revolving Fund to finance the cleanup of contaminated drinking water supplies and other environmental pollution.

HB 1040

Authorizes the Division of Water Supply and Pollution Control in the Department of Environmental Services to require improvements in the source, treatment and distribution of all public water supplies for domestic use. It also provides fines for violations of the act.

Idaho
SCR 132



Declares it to be the legislative intent of the state of Idaho to maintain primacy over the administration of the safe drinking water program.

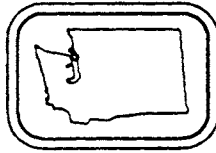
Rhode Island
HB 8133



Requires public water systems to complete water management plans no later than July 1, 1991, and to conduct leak detection and water

calibration testing at least once every 10 years after the preparation of the plans.

Washington
SB 6446



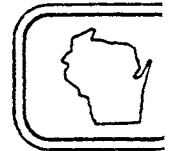
Requires the secretary of the Department of Health to review and approve plans for public water system design, engineering, operation, maintenance, financing and emergency response. Authorizes the Utilities and Transportation Commission, when determining water rates, to provide for the funding of a reserve account to be used for making capital improvements to comply with state or federal drinking water regulations.

SB 6447

Requires the Department of Health or a local health officer bringing an action to place a water supply system in receivership to list the names of potential candidates to assume system operation. Absent qualified candidates, the statute mandates the court to appoint the county in which the system lies as receiver and authorizes the county to contract out for operation services. Authorizes the assigned operator to assess reasonable charges on its new customers to recover improvement costs. Requires a local health officer to inspect the expansion or modification of existing public water systems, and the construction of new public water systems, to assure that improve-

ments conform to plan design. The act further requires the Department of Health to submit report to the legislature no later than December 1, 1990, regarding small system problems and policy options.

Wisconsin
AB 25



Authorizes the Department of Natural Resources to award clean drinking water grants to municipalities for capital costs of improvements to achieve compliance with department drinking water standards. Grants will be prioritized on the basis of severity of risk.

APPENDIX G

Outline Of Major Elements Of Approval Program For Water Systems

APPENDIX G

OUTLINE OF MAJOR ELEMENTS OF APPROVAL PROGRAM FOR WATER SYSTEMS

(Based on Approval Program for Package Sewer Treatment Plants)
(Nevada Revised Statutes (NRS) 445.2521 Through 445.2529)

- A. Require that all new public water systems must obtain a permit from the state's Health Division, or a local agency acting on its behalf, before they begin to serve water.
- B. Provide that a permit may not be issued unless all of the following conditions are met:
 - 1. Neither of the following is available:
 - (a) Water provided by a public utility; or
 - (b) Water provided by a municipality or other public entity.
 - 2. The local governing body assumes:
 - (a) Responsibility in case of default by the builder or developer for the continued operation and maintenance of the facilities in accordance with all of the terms and conditions of the permit; and
 - (b) The duty of assessing the lands served if there is a default and sufficient surety is not available.
 - 3. The applicant furnishes sufficient surety to ensure the continued maintenance and operation of the facility:
 - (a) For 5 years following the date the facilities are placed in operation; or
 - (b) Until 75 percent of the lots or parcels served by the facilities are sold, whichever is later.
 - 4. The owners of the lands to be served record a declaration of covenants, conditions and restrictions, which is an equitable servitude running with the land and which must provide that each lot or parcel will be assessed by the local governing body for its proportional share of the cost of continued operation and maintenance of the facilities if there is a default and a sufficient surety is not available.
 - 5. The declaration further provides that if the local governing body determines that:
 - (a) The facilities are not satisfactorily serving the needs of their users; and
 - (b) Water provided by a public utility or a municipality or other public entity is reasonably available, the local governing body may require all users of the facilities to connect to the available water system, and each lot or parcel will be assessed for its proportionate share of the cost of connection.

- C. Include typical language concerning assessment liens and deposit/expenditure of proceeds of assessments.
- D. Provide procedures whereby a local governing body may assume control and operation of the facilities if the state's Health Division determines that a condition of the permit has been violated or the local governing body determines that immediate action is necessary to protect the public health and welfare.
- E. Outline the local regulatory activities that are not affected by this measure.

FW/en:SCR24,Water Systems

Source: Minutes of the May 24, 1990, meeting of the Legislative Commission's Subcommittee to Study Laws, Regulations and Policies Relating to Water and Waste Water Resources in Nevada (S.C.R.24).

APPENDIX H

S 3084
Congressional Record-Senate
October 26, 1990

S 17050

CONGRESSIONAL RECORD — SENATE

October 26, 1990

Mr. REID. Mr. President, will the Senator yield for a question?

Mr. INOUE. The Senator will yield.

Mr. REID. Mr. President, I would like to engage Chairman INOUE in a colloquy.

Section 705(b)(3) of the bill states:

The Secretary is authorized to enter into an interim agreement with Sierra Pacific Power Co. and the Pyramid Lake Tribe to store water owned by Sierra Pacific Power Co. in Stampede Reservoir except that the amount of such storage shall not exceed 5,000 acre-feet on September 1 of any year, such agreement shall be superseded by the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement upon the entry into effect of those agreements.

Is my understanding correct that the term "interim agreement" is intended to mean the same thing as "a long-term agreement" which will be superseded by the preliminary settlement agreement and the operating agreement if those agreements should go into effect?

Sierra Pacific must rely on a water supply created by such an agreement so long as new customers are connected to its system. We therefore believe that the term interim was referring to the supersedure that would occur if the preliminary settlement agreement and operating agreement became effective and not the term of the agreement.

Mr. INOUE. The Senator's understanding is correct.

The PRESIDING OFFICER. Is there further debate on the amendment?

If there be no further debate, the question is on agreeing to the amendment of the Senator from Nevada.

The amendment (No. 3176) was agreed to.

Mr. FOWLER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRASSLEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill (S. 3084) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S 3084

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FALLON PAIUTE SHOSHONE TRIBAL SETTLEMENT ACT

SECTION 101. SHORT TITLE.

This Act may be cited as the "Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990".

SEC. 102. SETTLEMENT FUND.

(A) There is hereby established within the Treasury of the United States, the "Fallon Paiute Shoshone Tribal Settlement Fund", hereinafter referred to in the Act as the "Fund".

(B) There is authorized to be appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund \$3,000,000 in fiscal year 1992, and \$8,000,000 in each year for fiscal years 1993, 1994, 1995, 1996 and 1997 for a total sum of \$43,000,000.

(C)(1) The income of the Fund may be obligated and expended only for the following purposes:

(a) Tribal economic development, including development of long-term, profit-making opportunities for the Fallon Paiute Shoshone Tribes (hereinafter referred to in the Act as "Tribes") and its tribal members, and the development of employment opportunities for tribal members;

(b) Tribal governmental services and facilities;

(c) Per capita distributions to tribal members;

(d) Rehabilitation and betterment of the irrigation system on the Fallon Paiute Shoshone Indian Reservation (hereinafter referred to in the Act as "Reservation") Paiute Shoshone Indian Reservation, (hereinafter referred to in the Act as "Reservation") not including lands added to the Reservation pursuant to the provisions of Public Law 95-337, 92 Stat. 435;

(e) Acquisition of lands, water rights or related property interests located outside the Reservation from willing sellers, and improvement of such lands;

(f) Acquisition of individually-owned land, water rights or related property interests on the Reservation from willing sellers, including those held in trust by the United States;

(2) Except as provided in subsection (C)(3) of this section, the principal of the Fund shall not be obligated or expended.

(3) In obligating and expending funds for the purposes set forth in subsections (C)(1)(d), (C)(1)(e) and (C)(1)(f) of this section, the Tribes may obligate and expend no more than 20 percent of the principal of the Fund, provided that any amounts so obligated and expended from principal must be restored to the principal from repayments of such amounts expended for the purposes identified in this subsection, or from income earned on the remaining principal.

(4) In obligating and expending funds for the purpose set forth in subsection (C)(1)(c), no more than twenty percent of the annual income from the Fund may be obligated or expended for the purpose of providing per capita payments to tribal members.

(D) The Tribes shall invest, manage, and use the monies appropriated to the Fund for the purposes set forth in this section in accordance with the plan developed in consultation with the Secretary under subsection (F) of this section.

(E) Upon the request of the Tribes, the Secretary shall invest sums deposited in, accruing to, and remaining in the Fund, in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037, 25 U.S.C. 162a, as amended. All income earned on such investments shall be added to the Fund.

(F)(1) The Tribes shall develop a plan, in consultation with the Secretary, for the investment, management, administration and

expenditure of the monies in the Fund, and shall submit the plan to the Secretary. The plan shall set forth the manner in which such monies will be managed, administered and expended for the purposes outlined in subsection (C)(1) of this section. Such plan may be revised and updated by the Tribes in consultation with the Secretary.

(2) The plan shall include a description of a project from the rehabilitation and betterment of the existing irrigation system on the Reservation. The rehabilitation and betterment project shall include measures to increase the efficiency of irrigation deliveries. The Secretary may assist in the development of the rehabilitation and betterment project, and the Tribes shall use their best efforts to implement the project within four years of the time when appropriations authorized in subsection (B) of this section become available.

(3) Upon the request of the Tribes, the Secretary of the Treasury and the Secretary of the Interior shall make available to the Tribes, monies from the Fund to serve any of the purposes set forth in subsection (C)(1) of this section, except that no disbursement shall be made to the Tribes unless and until they adopt the plan required under this section.

(G) The provisions of section 7 of Public Law 93-134, 87 Stat. 468, as amended by section 4 of Public Law 97-458, 96 Stat. 2513, U.S.C. 1407, shall apply to any funds which may be distributed per capita under subsection (C)(1)(c) of this section.

SEC. 103. ACQUISITION AND USE OF LANDS AND WATER RIGHTS.

(A) Title to all lands, water rights and related property interests acquired under section 102(C)(1)(e) within the counties of Churchill and Lyon in the State of Nevada, shall be held in trust by the United States for the Tribes as part of the Reservation, provided that no more than 2,415.3 acres of such acquired lands and no more than 8,453.55 acre feet per year of such water rights shall be held in trust by the United States and become part of the Reservation under this subsection.

(B) Any lands acquired under section 102(C)(1) (e) or (f) shall be subject to the provisions of section 20 of the Act of October 17, 1988, 102 Stat. 2485.

(C)(1) Total annual use of water rights appurtenant to the Reservation which are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, whether used on the Reservation or transferred and used off the Reservation pursuant to applicable law, shall not exceed the sum of:

(a) 10,587.5 acre feet of water per year, which is the quantum of water rights served by the Newlands Reclamation Project appurtenant to the Fallon Paiute Shoshone Indian Reservation lands that are currently served by irrigation facilities; and

(b) the quantum of active Newlands Reclamation Project water rights currently located outside of the Reservation that may be added to the Reservation or water rights which are acquired by the Secretary and exercised to benefit Reservation wetlands.

(2) The requirements of section 103(C)(1) shall not take effect until the Tribes agree to the limitations on annual use of water rights set forth in subsection (1) of this section.

(D) The Secretary is authorized and directed to reimburse non-Federal entities for reasonable and customary costs for delivery of Newlands Reclamation Project water to serve water rights added to the Reservation under subsection (A) of this section, and to

enter into renewable contracts for the payment of such costs, for a term not exceeding forty years.

(E) Subject to the limitation on the quantum of use set forth in subsection (C) of this section, and applicable state law, all water rights appurtenant to the Reservation that are served by the Newlands Reclamation Project, including Newlands Reclamation Project water rights added to the Reservation under subsection (A) of this section, may be used for irrigation, fish and wildlife, municipal and industrial, recreation, or water quality purposes, or for any other beneficial use subject to applicable laws of the State of Nevada. Nothing in this subsection is intended to affect the jurisdiction of the Tribes or the State of Nevada, if any, over the use and transfer of water rights within the Reservation or off the Reservation, or to create any express or implied Federal reserved water right.

(FX1) The Tribes are authorized to acquire by purchase, by exchange of lands or water rights, or interests therein, including those held in trust for the Tribes, or by gift, any lands or water rights, or interests therein, including those held in trust, located within the Reservation, for any of the following purposes:

(a) Consolidating Reservation landholdings or water rights, including those held in trust;

(b) Eliminating fractionated heirship interests in Reservation lands or water rights, including those held in trust;

(c) Providing land or water rights for any tribal program;

(d) Improving the economy of the Tribes and the economic status of tribal members through the development of industry, recreational facilities, housing projects, or other means; and

(e) General rehabilitation and enhancement of the total resource potential of the Reservation; Provided that any water rights shall be transferred in compliance with applicable state law.

(2) Title to any lands or water rights, or interests therein, acquired by the Tribes within the counties of Churchill and Lyon in the State of Nevada under the authority of this subsection shall be held by the United States in trust for the Tribes.

SEC. 104. RELEASE OF CLAIMS.

(A)(1) The Secretary of the Treasury and the Secretary of the Interior shall not disburse any monies from the Fund until such time as the following conditions have been met:

(a) the Tribes have released any and all claims they may have against the United States resulting from any failure of the United States to comply with section 7 of Public Law 95-337, 92 Stat. 457;

(b) the Tribes have dismissed with prejudice their claims in *Northern Paiute Nation v. United States*, Docket No. 87-A, United States Claims Court;

(c) the Tribes have agreed to accept and abide by the limitation on use of water rights served by the Newlands Reclamation Project on the Reservation, as set forth in section 103(C);

(d) the Tribes have dismissed, without prejudice, their claims in *Pyramid Lake Paiute Tribe of Indians v. Lujan*, No. R-83-197 (D. Nev.) and their objections to the Operating Criteria and Procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988, provided that such dismissal shall not prejudice in any respect the Tribes' right to object in any administrative or judicial proceeding to such Operating Criteria and Procedures, or any revisions thereto, or to assert that any Operating Criteria and Procedures should

be changed due to new information, changes in environmental circumstance, changes in project descriptions or other relevant considerations, in accordance with the requirements of all applicable court decrees and applicable statutory requirements; and

(e) the Tribes agree to be bound by a plan developed and implemented by the Secretary in accordance with section 106 of this Title.

"(1)(1) the Tribes agree to indemnify the United States against monetary claims by any landowners who may hold water rights on the Reservation as of the date of enactment of the Act and who may assert that the provisions of section 103(C) of this Title effect an unlawful taking of their rights. Provided that:

(i) the United States shall defend and resist any such claims at its own expense;

(ii) the Tribes shall be entitled to intervene in any administrative or judicial proceeding on such claims; and

(iii) the United States shall not compromise or settle any such claims without the consent of the Tribes.

(2) The provisions of this section shall not be construed as:

(i) implying that section 103(C) unlawfully takes any water rights;

(ii) conferring jurisdiction on any court or other tribunal to adjudicate any such taking claims;

(iii) waiving any immunities of the United States or the Tribes; or

(iv) otherwise establishing or enhancing any claims to water rights or for the unlawful taking of such rights."

(2) If the appropriations authorized in section 102(B) are not appropriated by the Congress, it shall be deemed that the conditions set forth in this Act have not been satisfied, and the Tribes may rescind their release of claims under this section and its agreement under subsection (c) of this section.

(3) Upon the appropriation of monies authorized in section 102(B) of this Act, and the allocation of such monies to the Fund, Section 7 of Public Law 95-337, 92 Stat. 457, shall be repealed.

SEC. 105. LIABILITY OF THE UNITED STATES.

(A) Except with regard to the responsibilities assumed by the United States under section 102(e), and those set forth in section 1301 of the Act of February 12, 1929, 45 Stat. 1164, as amended, 25 U.S.C. 161a, the United States shall not bear any obligation or liability regarding the investment, management, or use of funds by the Tribes.

(B) Except with regard to the responsibilities assumed by the United States under section 102(B), section 102(F)(3), section 103(A), section 103(D), section 103(F)(2), section 104(A)(1), and section 106, the United States shall not bear any obligation or liability for the implementation of the provisions of this Act.

SEC. 106. PLAN FOR THE CLOSURE OF TJ DRAIN.

(A) The Secretary, in consultation with the Tribes and in accordance with applicable law, shall develop and implement a plan for the closure, including if appropriate, modification of components, of the TJ drain system, including the main TJ drain, the TJ-1 drain and the A drain and its sublaterals, in order to address any significant environmental problems with that system and its closure.

(B) The plan shall include measures to provide necessary substitute drainage in accordance with Bureau of Reclamation standards for reservation lands in agricultural production as of the 1990 irrigation season that are served by that system, unless the Tribes and the Secretary agree otherwise.

(C) Implementation of the plan shall not interfere with ongoing agricultural operations.

(D) The United States shall bear all costs for developing and implementing the plan.

(E) There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

SEC. 107. DEFINITIONS.

For purposes of this Title, and for no other purposes—

(A) The term "Fallon Paiute Shoshone Tribal Settlement Fund" or "Fund" means the Fund established under section 102(A) of this Act to enable the Fallon Paiute Shoshone Tribes to carry out the purposes set forth in section 102(C)(1) of this Title.

(B) The term "income" means all interest, dividends, gains and other earnings resulting from the investment of the principal of the Fallon Paiute Shoshone Tribal Settlement Fund, and the earnings resulting from the investment of such income.

(C) The term "principal" means the total sum of monies appropriated to the Fallon Paiute Shoshone Tribal Settlement Fund under section 102(B) of this Act.

(D) The term "Reservation" means the lands set aside for the benefit of the Fallon Paiute Shoshone Tribes by the orders of the Department of the Interior of April 20, 1907, and November 21, 1917, as expanded and confirmed by the Act of August 4, 1978, Public Law 95-337, 92 Stat. 457.

(E) The term "Secretary" means the Secretary of the Department of the Interior.

(F) The term "tribal members" means the enrolled members of the Fallon Paiute-Shoshone Tribes.

(G) The term "Tribe" means the Fallon Paiute-Shoshone Tribe.

TITLE II—TRUCKEE-CARSON-PYRAMID LAKE WATER SETTLEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the "Truckee-Carson-Pyramid Lake Water Rights Settlement Act."

SEC. 202. PURPOSES.

The purposes of this title shall be to:

(a) provide for the equitable apportionment of the waters of the Truckee River, Carson River, and Lake Tahoe between the State of California and the State of Nevada;

(b) authorize modifications to the purposes and operation of certain Federal Reclamation project facilities to provide benefits to fish and wildlife, municipal, industrial, and irrigation users, and recreation;

(c) authorize acquisition of water rights for fish and wildlife;

(d) encourage settlement of litigation and claims;

(e) fulfill Federal trust obligations toward Indian tribes;

(f) fulfill the goals of the Endangered Species Act by promoting the enhancement and recovery of the Pyramid Lake fishery; and

(g) protect significant wetlands from further degradation and enhance the habitat of many species of wildlife which depend on those wetlands, and for other purposes.

SEC. 203. DEFINITIONS.

For the purposes of this title:

(a) the term "Alpine court" means the court having continuing jurisdiction over the Alpine decree;

(b) the term "Alpine decree" means the final decree of the United States District Court for the District of Nevada in *United States of America v. Alpine Land and Reservoir Company*, Civ. No. D-183, entered December 18, 1930, and any supplement thereto;

(c) the term "Carson River basin" means the area which naturally drains into the

Carson River and its tributaries and into the Carson River Sink, but excluding the Humboldt River drainage area;

(d) the term "Fallon Tribe" means the Fallon Paiute-Shoshone Tribe;

(e) the term "Lahontan Valley wetlands" means wetland areas associated with the Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and the Fallon Indian Reservation;

(f) the term "Lake Tahoe basin" means the drainage area naturally tributary to Lake Tahoe, including the lake, and including the Truckee River upstream of the intersection between the Truckee River and the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian;

(g) the term "Lower Truckee River" means the Truckee River below Derby Dam;

(h) the term "Operating Agreement" means the agreement to be negotiated between the Secretary and the States of California and Nevada and others, as more fully described in section 205 of this title;

(i) the term "Orr Ditch court" means the court having continuing jurisdiction over the Orr Ditch decree;

(j) the term "Orr Ditch decree" means the decree of the United States District Court for the District of Nevada in *United States of America v. Orr Water Ditch Company, et al.*—In Equity, Docket No. A3, including, but not limited to the Truckee River Agreement;

(k) the term "Preliminary Settlement Agreement as Modified by the Ratification Agreement" means the document with the title "Ratification Agreement by the United States of America," including Exhibit "1" attached thereto, submitted to the Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, by the Assistant Secretary for Water and Science, United States Department of the Interior, on August 2, 1980, as may be amended under the terms thereof. A copy of this agreement is included in the report of the Committee on Energy and Natural Resources as Appendix 1 to the Committee's report accompanying S. 1554;

(l) the term "Pyramid Lake fishery" means two fish species found in Pyramid Lake, the cut-throat (Chasmistes cujus) and the Lahontan cutthroat trout (*Salmo clarki henshawii*);

(m) the term "Pyramid Lake Tribe" means the Pyramid Lake Paiute Tribe;

(n) the term "Secretary" means the Secretary of the Interior;

(o) the term "Truckee River Agreement" means a certain agreement dated July 1, 1935 and entered into by the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company, and other users of the waters of the Truckee River;

(p) the term "Truckee River basin" means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including that lake, but excluding the Lake Tahoe basin;

(q) the term "Truckee River General Electric court" means the United States District Court for the Eastern District of California court having continuing jurisdiction over the Truckee River General Electric decree;

(r) the term "Truckee River General Electric decree" means the decree entered June 4, 1915, by the United States District Court for the Northern District of California in *United States of America v. Truckee River General Electric Co.*, No. 14861, which case was transferred to the United States District Court for the Eastern District of California

on February 9, 1968, and is now designated No. S-643;

(s) the term "Truckee River reservoirs" means the storage provided by the dam at the outlet of Lake Tahoe, Boca Reservoir, Prosser Creek Reservoir, Martis Reservoir, and Stampede Reservoir; and

(t) the term "1948 Tripartite Agreement" means the agreement between the Truckee-Carson Irrigation District, the Nevada State Board of Fish and Game Commissioners, and the United States Fish and Wildlife Service regarding the establishment, development, operation, and maintenance of Stillwater National Wildlife Refuge and Management Area, dated November 26, 1948.

SEC. 204. INTERSTATE ALLOCATION.

(a) CARSON RIVER.—

(1) The interstate allocation of waters of the Carson River and its tributaries represented by the Alpine decree is confirmed.

(2) The allocations confirmed in paragraph (1) of this subsection shall not be construed as precluding, foreclosing, or limiting the assertion of any additional right to the waters of the Carson River or its tributaries which were in existence under applicable law as of January 1, 1989, but are not recognized in the Alpine decree. The allocation made in paragraph (1) of this subsection shall be modified to accommodate any such additional rights, and such additional rights, if established, shall be administered in accordance with the terms of the Alpine decree; except that the total amount of such additional allocations shall not exceed 1,300 acre-feet per year by depletion for use in the State of California and 2,131 acre-feet per year by depletion for use in the State of Nevada. This paragraph shall not be construed to allow any increase in diversions from the Carson River or its tributaries beyond those in existence on December 31, 1992.

(3) If, on or after the date of enactment of this title, all or any portion of the effluent imported from the Lake Tahoe basin into the watershed of the Carson River in California is discontinued by reason of a change in the place of the disposal of such effluent, including underground disposal, to the Truckee River basin or the Lake Tahoe basin, in a manner which results in increasing the available supply of water in the Nevada portion of the Truckee River basin, the allocation to California of the water of the West Fork of the Carson River and its tributaries for use in the State of California shall be augmented by an amount of water which may be diverted to storage, except that such storage:

(A) shall not interfere with other storage or irrigation rights of Segments 4 and 5 of the Carson River, as defined in the Alpine decree;

(B) shall not cause significant adverse effects to fish and wildlife;

(C) shall not exceed 2,000 acre-feet per year, or the quantity by which the available annual supply of water to the Nevada portion of the Truckee River basin is increased, whichever is less; and

(D) shall be available for irrigation use in that or subsequent years, except that the cumulative amount of such storage shall not exceed 2,000 acre-feet in any year.

(4) Storage specified by paragraph (3) of this subsection shall compensate the State of California for any such discontinuance as referred to in such paragraph: *Provided*, That, the augmentation authorized by such paragraph shall be used only on lands having appurtenant Alpine decree rights. Use of effluent for the irrigation of lands with appurtenant Alpine decree rights shall not result in the forfeiture or abandonment

of all or any part of such appurtenant Alpine decree rights, but use of such wastewater shall not be deemed to create any new or additional water rights. Nothing in this title shall be construed as prohibiting the use of all or any portion of such effluent on any lands within the State of California. Any increased water delivered to the Truckee River shall only be available to satisfy existing rights under the Orr Ditch decree or, as appropriate, to augment inflows to Pyramid Lake.

(5) Nothing in this title shall foreclose the right of either State to study, either jointly or individually, the use of Carson River surface water, which might otherwise be lost to beneficial use, to enable conjunctive use of groundwater. For purposes of this paragraph, beneficial use shall include the use of water on wetlands or wildlife areas within the Carson River basin, as may be permitted under State law.

(6) Nothing in this title shall preclude the State of Nevada, agencies of the State of Nevada, private entities, or individuals from constructing storage facilities within the Carson River basin, except that such storage facilities shall be constructed and operated in accordance with all applicable State and Federal laws and shall not result in the inundation of any portion of the East Fork of the Carson River within California.

(7) The right of any water right owner to seek a change in the beneficial use of water from irrigation to storage for municipal and industrial uses or other beneficial uses, as determined by applicable State law, is unaffected by this title. Water stored for municipal and industrial uses may be diverted to storage in a given year and held for municipal and industrial uses in that year or subsequent years. Such changes and storage shall be in accordance with the Alpine decree and applicable State laws.

(8) Interbasin transfers of Carson River water shall be allowed only as provided by applicable State law.

(b) LAKE TAHOE.—

(1) Total annual gross diversions for use within the Lake Tahoe basin from all natural sources, including groundwater, and under all water rights in the basin shall not exceed 34,000 acre-feet per year. From this total, 23,000 acre-feet per year are allocated to the State of California for use within the Lake Tahoe basin and 11,000 acre-feet per year are allocated to the State of Nevada for use within the Lake Tahoe basin. Water allocated pursuant to this paragraph may, after use, be exported from the Lake Tahoe basin or reused.

(2) Total annual gross diversions for use allocated pursuant to paragraph (1) of this subsection shall be determined in accordance with the following conditions:

(A) Water diverted and used to make snow within the Lake Tahoe basin shall be charged to the allocation of each State as follows:

(i) the first 600 acre-feet used in California each year and the first 350 acre-feet used each year in Nevada shall not be charged to the gross diversion allocation of either State;

(ii) where water from the Lake Tahoe basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to the gross diversion allocations of each State shall be specified in the Operating Agreement; and

(iii) The provisions of paragraph 204(b)(1) notwithstanding, criteria for charging incidental runoff, if any, into the Carson River basin or the Truckee River basin, including the amount and basin to be charged, from use of water in excess of the amount speci-

fied in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(c)(1) of this title.

(B) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of either State's gross diversion, be conclusively presumed to utilize a gross diversion of four-tenths of one acre-foot per residence per year.

(C) Where water is diverted by a distribution system, as defined in clause (iii) of this subparagraph, the amount of such water that shall be charged to the gross diversion allocation of either California or Nevada shall be measured as follows:

(i) where a water distribution system supplies any municipal, commercial, and/or industrial delivery points (not including fire hydrants, flushing or cleaning points), any one of which is not equipped with a water meter, the gross diversion attributed to that water distribution system shall be measured at this point of diversion or extraction from the source; or

(ii) where all municipal, commercial, and industrial delivery points (not including fire hydrants, flushing or cleaning points) within a water distribution system are equipped with a water meter, the gross diversion attributed to that water distribution system may be measured as the sum of all amounts of water supplied to each such delivery point, provided there is in effect for such water distribution system a water conservation and management plan. Such plan may be either an individual, local plan or an area-wide, regional, or basin-wide plan, except that such plan must be reviewed and found to be reasonable under all relevant circumstances by the State agency responsible for administering water rights, or any other entity delegated such responsibility under State law. Such plan must be reviewed every five years by the agency which prepared it, and implemented in accordance with its adopted schedule, and shall include all elements required by applicable State law and the following:

(a) an estimate of past, current, and projected water use and, to the extent records are available, a segregation of those uses between residential, industrial, and governmental uses;

(b) identification of conservation measures currently adopted and in practice;

(c) a description of alternative conservation measures, including leak detection and prevention and reduction in unaccounted for water, if any, which would improve the efficiency of water use, with an evaluation of the costs, and significant environmental and other impacts of such measures;

(d) a schedule of implementation for proposed actions as indicated by the plan;

(e) a description of the frequency and magnitude of supply deficiencies, including conditions of drought and emergency, and the ability to meet short-term deficiencies;

(f) an evaluation of management of water system pressures and peak demands;

(g) an evaluation of incentives to alter water use practices, including fixture and appliance retrofit programs;

(h) an evaluation of public information and educational programs to promote wise use and eliminate waste;

(i) an evaluation of changes in pricing, rate structure, and regulations; and

(j) an evaluation of alternative water management practices, taking into account economic and non-economic factors (including environmental, social, health, and customer impact), technological factors, and incremental costs of additional supplies.

(iii) As used in this subparagraph, the term "water distribution system" means a point or points of diversion from a water supply source or sources, together with associated piping, which serve a number of identifiable delivery points, provided that the distribution system is not operationally interconnected with other distribution systems (except for emergency cross-ties) which are served from other points of diversion. An agency serving municipal and industrial water may have more than one water distribution system.

(iv) If a program for the review of water conservation and management plans as provided in clause (ii) of this subparagraph is not in effect in that portion of the Lake Tahoe basin within a State, all gross diversions within such State shall be measured at the point of diversion.

(D) For the purposes of this subsection, water inflow and infiltration of sewer lines shall not be considered a diversion of water, and such water shall not be charged to the gross diversion allocation of either State.

(E) Regulation of streamflow for the purpose of preserving or enhancing instream beneficial uses shall not be charged to the gross diversion allocation of either State.

(3) The transbasin diversions from the Lake Tahoe basin in Nevada and California identified in this paragraph may be continued, to the extent that such diversions are recognized as vested or perfected rights under the laws of the State where each diversion is made. Unless otherwise provided in this subsection, such diversions are in addition to the other allocations made by this subsection. Such transbasin diversions are the following:

(A) diversions of a maximum of 3,000-acre-feet per year from Mariette Lake for use in Nevada;

(B) diversion of a maximum of 561-acre-feet per year from Lake Tahoe for use in Nevada as set forth in Nevada Permit to Appropriate Water No. 23017, except that such diversion shall count against the allocation to Nevada made by this subsection;

(C) diversion of water from Echo Lake for use in California, pursuant to rights vested under California law; and

(D) diversion of water from North Creek as set forth in the State of Nevada Certificate of Appropriation of Water No. 4217.

The transbasin diversions identified in subparagraph (A), (C), and (D) of this paragraph may be transferred, for use only in the State where the recognized transbasin diversion exists, by lease of the right of use or by conveyance of the right, to the extent to which the right is vested or had been perfected. Any such transfer shall be subject to the applicable laws of the State in which the right is vested or perfected. The transbasin diversion described in subparagraph (B) of this paragraph may be transferred in accordance with State law. With the exception of the transbasin diversion described in subparagraph (B), all water made available for use within the Lake Tahoe basin as a result of any such transfer shall not be charged against the allocations made by this section, and such water may be depleted.

(c) TRUCKEE RIVER.—

(1) There is allocated to the State of California the right to divert or extract, or to utilize any combination thereof, within the Truckee River basin in California the gross amount of 32,000-acre-feet of water per year from all natural sources including both surface and ground water, in the Truckee River basin subject to the following terms and conditions:

(A) maximum annual diversion of surface supplies shall not exceed 10,000-acre-feet;

except that all diversions of surface supplies for use within California shall be subject to the right to water for use on the Pyramid Lake Indian Reservation in amounts as provided in Claim Nos. 1 and 2 of the Orr Ditch decree, and all such diversions initiated after the date of enactment of this title shall be subject to the right of the Sierra Pacific Power Company or its successor to divert forty (40) cubic feet per second of water for municipal industrial, and domestic use in the Truckee Meadows in Nevada, as such right is more particularly described in Article V of the Truckee River Agreement;

(B) all new wells drilled after the date of enactment of this title shall be designed to minimize any short-term reductions of surface steamflows to the maximum extent feasible;

(C) any use within the State of Nevada of any Truckee River basin ground water with a point of extraction within California shall be subordinate to existing and future uses in California, and any such use of water in Nevada shall cease to the extent that it causes extractions to exceed safe yield;

(D) except as otherwise provided in this paragraph, the extraction and use of ground water pursuant to this subsection shall be subject to all term and conditions of California law;

(E) determination of safe yield of any ground water basin in the Truckee River basin in California shall be made by the United States Geological Survey in accordance with California law;

(F) water shall not be diverted from within the Truckee River basin in California for use in California outside the Truckee River basin;

(G) if the Tahoe-Truckee Sanitation Agency or its successor (hereafter "TTS") changes in whole or in part the place of disposal of its treated wastewater to a place outside the area between Martis Creek and the Truckee River below elevation 5800 NGVD Datum, or changes the existing method of disposing of its wastewater, which change in place or method of disposal reduces the amount or substantially changes the timing or return flows to the Truckee River of the treated wastewater, TTS shall:

(i) acquire or arrange for the acquisition of preexisting water rights to divert and use water of the Truckee River or its tributaries in California or Nevada and discontinue the diversion and use of water at the preexisting point of diversion and place of use under such rights in a manner legally sufficient to offset such reduction in the amount of return flow or change in timing, and California's Truckee River basin gross diversion allocation shall continue to be charged the amount of the discontinued diversion; or

(ii) in compliance with California law, extract and discharge into the Truckee River or its tributaries an amount of Truckee River basin groundwater in California sufficient to offset such reduction or change in timing, subject to the following conditions:

(a) extraction and discharge of Truckee River Basin groundwater for purposes of this paragraph shall comply with the terms and conditions of subparagraphs 204(c)(1) (B) and (D) and shall not be deemed use of Truckee River basin ground water within the State of Nevada within the meaning of subparagraph 204(c)(1)(D); and

(b) California's Truckee River basin gross diversion allocation shall be charged immediately with the amount of ground water discharged and, when California's Truckee River Basin gross diversion allocation equals 22,000-acre-feet or when the total of any reductions resulting from the changes in the place or method of disposal exceed 1,000-acre-feet, whichever occurs first, the Cali-

Truckee River basin gross diversion allocation shall thereafter be charged with an additional amount of water required to compensate for the return flows which would otherwise have accrued to the Truckee River basin from municipal and industrial use of the discharged ground water. In no event shall the total of California's Truckee River gross diversions and extractions exceed 32,000-acre-feet.

(iii) For purposes of this paragraph, the existing method of disposal shall include, in addition to underground leach field disposal, surface spray or sprinkler infiltration of treated wastewater on the site between Martis Creek and the Truckee River referred to in this subsection.

(iv) The provisions of this paragraph requiring the acquisition of water rights or the extraction and discharge of ground water to offset reductions in the amount or timing of return flow to the Truckee River shall also apply to entities other than TTSA that may treat and dispose of wastewaters within the California portion of the Truckee River basin, but only if and to the extent that the treated wastewater is not returned to the Truckee River or its tributaries, as to timing and amount, substantially as if the wastewater had been treated and disposed of by TTSA in its existing place of disposal and by its existing method of disposal. The provisions of this paragraph shall not apply to entities treating and disposing of the wastewater from less than eight dwelling units.

(H) All uses of water for commercial, irrigated agriculture within the Truckee River basin within California initiated after the date of enactment of this title shall not impair and shall be junior and subordinate to all beneficial uses in Nevada, including, but not limited to, the use of water for the maintenance and preservation of the Pyramid Lake fishery. As used in this provision, the term "commercial, irrigated agriculture" shall include traditional commercial, irrigated farming operations but shall not include the following uses: irrigated golf courses and other recreational facilities, commercial nurseries, normal silvicultural activities other than commercial tree farms, irrigation under riparian rights on land irrigated at any time prior to the date of enactment of this title, lawns and ornamental shrubbery on parcels which include commercial, residential, governmental, or public buildings, and irrigated areas of two acres or less on parcels which include a residence.

(I) Water diverted within the Truckee River basin and used to make snow shall be charged to California's Truckee River allocation as follows:

(i) the first 225-acre-feet used in California each year shall not be charged to the gross diversion allocation;

(ii) where water from the Truckee River basin is diverted and used to make snow in excess of the amounts specified in clause (i) of this subparagraph, the percentage of such diversions chargeable to such allocation shall be specified in the Operating Agreement; and

(iii) the provisions of subparagraph 204(c)(1)(F) notwithstanding criteria for charging incidental runoff, if any, into the Lake Tahoe basin, including the amount and basin to be charged, from use of water in excess of the amount specified in clause (i) of this subparagraph, shall be specified in the Operating Agreement. The amounts of such water, if any, shall be included in each State's report prepared pursuant to paragraph 204(d)(1).

(J) Unmetered diversion or extraction of water by residences shall, for the purpose of calculating the amount of California's gross diversion, be conclusively presumed to utilize

a gross diversion of four-tenths of one-acre-foot per residence per year.

(K) For the purposes of this subsection, water inflow and infiltration to sewer lines is not a diversion of water, and water shall not be charged to California's Truckee River basin allocation.

(2) There is additionally allocated to California the amount of water decreed to the Sierra Valley Water Company by judgment in the case of United States of America v. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

(3) There is allocated to the State of Nevada all water in excess of the allocations made in paragraphs 204(c) (1) and (2) of this title.

(4) The right to water for use on the Pyramid Lake Indian Reservation in the amounts provided in Claim Nos. 1 and 2 of the Orr Ditch decree is recognized and confirmed. In accordance with and subject to the terms of the Orr Ditch decree and applicable law, the United States, acting for and on behalf of the Pyramid Lake Tribe, and with the agreement of the Pyramid Lake Tribe, or the Pyramid Lake Tribe shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so decreed on the reservation.

(d) COMPLIANCE.—

(1) Compliance with the allocations made by this section and with other provisions of this section applicable to each State shall be assured by each State. Within the third quarter following the end of each calendar year, each State shall publish a report of water use providing information necessary to determine compliance with the terms and conditions of this section.

(2) The United States District Courts for the Eastern District of California and the District of Nevada shall have jurisdiction to hear and decide any claims by any aggrieved party against the State of California, State of Nevada, or any other party where such claims allege failure to comply with the allocations or any other provision of this section. Normal rules of venue and transfers of cases between Federal courts shall remain in full force and effect. Each State, by accepting the allocations under this section, shall be deemed to have waived any immunity from the jurisdiction of such courts.

(e) FORFEITURE OR ABANDONMENT.—The provisions of this section shall not be interpreted to alter or affect the applicability of the law of each State regarding the forfeiture for nonuse or abandonment of any water right established in accordance with State law, nor shall the forfeiture for nonuse or abandonment of water rights under the applicable law of each State affect the allocations to each State made by this title.

(f) INTERSTATE TRANSFERS.—

(1) Nothing in this title shall prevent the interstate transfer of water or water rights for use within the Truckee River basin, subject to the following provisions:

(A) Each such interstate transfer shall comply with all State laws applicable to transfer of water or water rights, including but not limited to State laws regulating change in point of diversion, place of use, and purpose of use of water, except that such laws must apply equally to interstate and intrastate transfers.

(B) Use of water so transferred shall be charged to the allocation of the State wherein use of water was being made prior to the transfer.

(C) Subject to subparagraph (A) of this paragraph, in addition to the application of State laws intended to prevent injury to other lawful users of water, each State may,

to the extent authorized by State law, deny or condition a proposed interstate transfer of water or water rights having a source within the Truckee River basin where the State agency responsible for administering water rights finds, on the basis of substantial evidence that the transfer would have substantial adverse impacts on the environment or overall economy of the area from which the use of the water or water right would be transferred.

(D) Nothing in this paragraph shall be construed to limit the jurisdiction of any court to review any action taken pursuant to this paragraph.

(2) The jurisdiction of the Alpine court to administer, inter alia, interstate transfers of water or water rights on the Carson River under the Alpine decree, pursuant to jurisdiction reserved therein, including any amendment or supplement thereto, is confirmed. Each State may intervene of right in any proceeding before the Alpine court wherein the reserved jurisdiction of that court is invoked with respect to an interstate transfer of water or water rights, and may report to the court findings or decisions concerning the proposed change which have been made by the State agency responsible for administering water rights under any State law applicable to transfers or change in the point of diversion, purpose of use, or place of use of water.

(3) This subsection shall not be construed to authorize the State of California or the State of Nevada to deny or condition a transfer application made by the United States or its agencies if such denial or conditioning would be inconsistent with any clear congressional directive.

(g) USE OF WATER BY THE UNITED STATES.—Use of water by the United States of America or any of its agencies or instrumentalities, or by any Indian Tribe shall be charged to the allocation of the State wherein the use is made, except as otherwise provided in subsection (f) of this section.

(h) COURT DECREES.—Nothing in this section shall be construed as modifying or terminating any court decree, or the jurisdiction of any court.

(i) PLACE OF USE TO DETERMINE ALLOCATION.—Water diverted or extracted in one State for use in the other shall be charged to the allocation under this section of the State in which the water is used, except as otherwise provided in subsection (f) of this section.

(j) APPLICABILITY OF STATE LAW.—Nothing in this section shall be construed to alter the applicability of State law or procedures to the water allocated to the States hereunder.

SEC. 204. TRUCKEE RIVER WATER SUPPLY MANAGEMENT

(a) OPERATING AGREEMENT.

(1) The Secretary shall negotiate an operating agreement (hereafter "Operating Agreement") with the State of Nevada and the State of California, after consultation with such other parties as may be designated by the Secretary, the State of Nevada or the State of California.

(2) The Operating Agreement shall provide for the operation of the Truckee River reservoirs and shall ensure that the reservoirs will be operated to:

(A) satisfy all applicable dam safety and flood control requirements;

(B) provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended;

(C) carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement as modified by the Ratification Agreement. Mitigation necessary to reduce or avoid significant adverse environmental effects, if any, of the implementation of the Preliminary Settlement Agreement as modified by the Ratification Agreement, including instream beneficial uses of water within the Truckee River basin, shall be provided through one or more mitigation agreements which shall be negotiated and executed by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and the appropriate agencies of the State of Nevada and California;

(D) ensure that water is stored in and released from Truckee River reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch decree and Truckee River General Electric decree, except for those rights that are voluntarily relinquished by the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement, or by any other persons or entities, or which are transferred pursuant to State law; and

(E) minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

(3) The Operating Agreement may include, but is not limited to, provisions concerning the following subjects:

(A) administration of the Operating Agreement, including but not limited to establishing or designating an agency or court to oversee operation of the Truckee River and Truckee River reservoirs;

(B) means of assuring compliance with the provisions of the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement;

(C) operations of the Truckee River system which will not be changed;

(D) operations and procedures for use of Federal facilities for the purpose of meeting the Secretary's responsibilities under the Endangered Species Act, as amended;

(E) methods to diminish the likelihood of Lake Tahoe dropping below its natural rim and to improve the efficient use of Lake Tahoe water under extreme drought conditions;

(F) procedures for management and operations at the Truckee River reservoirs;

(G) procedures for operation of the Truckee River reservoirs for instream beneficial uses of water within the Truckee River basin;

(H) operation of other reservoirs in the Truckee River basin to the extent that owners of affected storage rights become parties to the Operating Agreement; and

(I) procedures and criteria for implementing California's allocation of Truckee River water.

(4) To enter into effect, the Operating Agreement shall be executed by the Secretary, the State of Nevada, and the State of California and shall be submitted to the Orr Ditch court and the Truckee River General Electric court for approval of any necessary modifications in the provision of the Orr Ditch decree or the Truckee River General Electric decree. Other affected parties may be offered the opportunity to execute the Operating Agreement.

(5) When an Operating Agreement meeting the requirements of this subsection has been approved by the Secretary, the State of Nevada, and the State of California, the Secretary, pursuant to title 5 of the United States Code, shall promulgate the Operating Agreement, together with such additional measures as have been agreed to by the Secretary, the State of Nevada, and the State of California, as the exclusive Federal regulations governing the Operating Agree-

ment. The Secretary and the other signatories to the Operating Agreement shall, if necessary, develop and implement a plan to mitigate for any significant adverse environmental impacts resulting from the Operating Agreement. Any subsequent changes to the Operating Agreement must be adopted and promulgated in the same manner as the original Operating Agreement. Any changes which affect the Preliminary Settlement Agreement as modified by the Ratification Agreement must also be approved by the signatories thereto. Judicial review of any such promulgation of the Operating Agreement may be had by any aggrieved party in the United States District Court of the Eastern District of California or the United States District Court for District of Nevada. A request for review must be filed not later than 60 days after the promulgation of the Operating Agreement becomes final, and by a person who participated in the administrative proceedings leading to the final promulgation. The scope of such review shall be limited to the administrative record and the standard of review shall be that prescribed in 5 U.S.C. 706(2)(A)-(D); Provided that the limits on judicial review in this paragraph shall not apply to any claim based on the provisions of the Endangered Species Act, as amended.

(6) The Secretary shall take such other actions as are necessary to implement the Preliminary Settlement Agreement as modified by the Ratification Agreement and to implement the Operating Agreement, including entering into contracts for the use of space in Truckee River reservoirs for the purposes of storing or exchanging water, subject to the preconditions that the Sierra Pacific Power Company and the Secretary shall have executed a mutually satisfactory agreement for payment by Sierra-Pacific Power Company of appropriate amount for the availability and use of storage capacity in Stampede Reservoir and other reservoirs.

(7) As provided in the Preliminary Settlement Agreement as modified by the Ratification Agreement, firm and non-firm municipal and industrial credit water and the 7,500-acre-feet of fishery credit water in Stampede Reservoir to be available under worse than critical drought conditions shall be used only to supply municipal and industrial needs when drought conditions or emergency or repair conditions exist, or as may be required to be converted to fishery credit water. None of these quantities of water shall be used to serve normal year municipal and industrial needs except when an emergency or repair condition exists.

(8) Subject to the terms and conditions of the Preliminary Settlement Agreement as modified by the Ratification Agreement, all of the fishery credit water established thereunder shall be used by the United States solely for the benefit of the Pyramid Lake fishery.

(9) In negotiating the Operating Agreement, the Secretary shall satisfy the requirements of the National Environmental Policy Act and regulations issued to implement the provisions thereof. The Secretary may not become a party to the Operating Agreement if the Secretary determines that the effects of such action, together with cumulative effects, are likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of any designated critical habitat of such species.

(b) AUTHORIZATION FOR USE OF WASHOE PROJECT FACILITIES, TRUCKEE RIVER STORAGE FACILITIES, AND LAKE TAHOE DAM AND RESERVOIR.

(1) The Secretary is authorized to use Washoe Project facilities, Truckee River Storage Project facilities, and Lake Tahoe

Dam and Reservoir for the storage of non-project water to fulfill the purposes of this title, including the Preliminary Settlement Agreement as modified by the Ratification Agreement and the Operating Agreement. The Secretary shall collect appropriate charges for such uses.

(2) Payments received by the Secretary pursuant to this subsection and paragraph 205(a)(6) shall be credited annually first to pay the operation and maintenance costs of Stampede Reservoir, then covered into the Lahontan Valley and Pyramid Lake Fish and Wildlife Fund created pursuant to subsection 206(f) of this title, with funds not needed for those purposes, if any, credited to the Reclamation Fund.

(3) The Secretary is authorized to enter into an interim agreement with the Sierra Pacific Power Company and Pyramid Lake Tribe to store water owned by Sierra Pacific Power Company in Stampede Reservoir, except that the amount of such storage shall not exceed 5,000-acre-feet on September 1 of any year, such agreement shall be superseded by the Preliminary Settlement as modified by the Ratification Agreement and the operating Agreement upon the entry into effect of those agreements.

(c) RELEASE OF WASHOE PROJECT REPAYMENT OBLIGATION.—The Secretary is released from any obligation to secure payment for the costs of constructing Washoe Project facilities, other than the power plant, including those specified in the Act of August 1, 1956, 70 Stat. 775, and under Federal reclamation laws, and such costs are hereby made non-reimbursable. Authority to construct a reservoir at the Watasheanu site, together with other necessary works for impoundment, diversion, and delivery of water, generation and transmission of hydroelectric power, and drainage of lands as conferred to the Secretary in the Act of August 1, 1956, 70 Stat. 775, is hereby revoked.

SEC. 206. WETLANDS PROTECTION.

(a) AUTHORIZATION TO PURCHASE WATER RIGHTS.—

(1) The Secretary is authorized and directed, in conjunction with the State of Nevada and such other parties as may provide water and water rights for the purposes of this section, to acquire by purchase or other means water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat within the Lahontan Valley wetlands in accordance with the following provisions of this subsection:

(A) water rights acquired under this subsection shall, to the maximum extent practicable, be used for direct application to such wetlands and shall not be sold, exchanged, or otherwise disposed of except as provided by the National Wildlife Refuge Administration Act and for the benefit of fish and wildlife within the Lahontan Valley;

(B) the Secretary shall select from any water rights acquired pursuant to this subsection those water rights or portions thereof, if not all, that can be transferred to the wetlands referenced in this subsection consistent with subsection 209(b) of this title; and

(C) in implementing this subsection, the Secretary shall consult with the State of Nevada and affected interests. Those water rights or portions thereof, if not all, which the Secretary selects for transfer shall then be transferred in accordance with applicable court decrees and State law, and shall be used to apply water directly to wetlands. No water rights shall be purchased, however,

unless the Secretary expects that the water rights can be so transferred and applied to direct use to a substantial degree.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(B) water rights acquired by the Secretary shall be managed by the Secretary after consultation with the State of Nevada and affected interests, except that any water rights acquired for Fallon Indian Reservation wetlands shall be managed by the Secretary in consultation with the Fallon Tribe; and

(C) prior to acquiring any water or water rights in the State of California for the Lahontan Valley wetlands, the Secretary shall first consult with the Governor of California and shall prepare a record of decision on the basis of such consultations.

(3) The Secretary is authorized to:

(A) use, modify, or extend, on a non-reimbursable basis, Federal water diversion, storage, and conveyance systems to deliver water to wetlands referenced in paragraph (a)(1) of this subsection, including the Fernley Wildlife Management Area;

(B) reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection; and

(C) enter into renewable contracts for the payment of reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water acquired by the Secretary to benefit the Lahontan Valley wetlands. The contracts shall be for a term not exceeding 40 years. Any such contract shall provide that upon the failure of the Secretary to pay such charges, the United States shall be liable for their payment and other costs provided for in applicable provisions of the contract, subject to the availability of appropriations.

(4) Consistent with fulfillment of this subsection and not as a precondition thereto, the Secretary shall and report on the social, economic, and environmental effects of the water rights purchase program authorized by this subsection and the water management measures authorized by subsection 206(c). This study may be conducted in coordination with the studies authorized by paragraph 207(c)(5) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this Act.

(b) EXPANSION OF STILLWATER NATIONAL WILDLIFE REFUGE.

(1) Notwithstanding any other provision of law, the Secretary shall manage approximately 77,520 acres of Federal land in the State of Nevada, as depicted upon a map entitled "Stillwater National Wildlife Refuge," dated July 16, 1990, and available for inspection in appropriate offices of the United States Fish and Wildlife Service, as a unit of the National Wildlife Refuge System.

(2) The lands identified in paragraph (1) of this subsection shall be known as the Stillwater National Wildlife Refuge and shall be managed by the Secretary through the United States Fish and Wildlife Service for the purposes of:

(A) maintaining and restoring natural biological diversity within the refuge;

(B) providing for the conservation and management of fish and wildlife and their habitats within the refuge;

(C) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and

(D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

(3) The Secretary shall administer all lands, waters, and interests therein transferred under this title in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966, as amended, except that any activity provided for under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The Secretary may utilize such additional statutory authority as may be available to the Secretary for the conservation and development of wildlife and natural resources, interpretive education, and outdoor recreation as the Secretary deems appropriate to carry out the purposes of this title.

(4) The Secretary is authorized to take such actions as may be necessary to prevent, correct, or mitigate for adverse water quality and fish and wildlife habitat conditions attributable to agricultural drain water originating from lands irrigated by the Newlands Project, except that nothing in this subsection shall be construed to preclude the use of the lands referred to in paragraph (1) of this subsection for Newlands Project drainage purposes. Such actions, if taken with respect to drains located on the Fallon Indian Reservation, shall be taken after consultation with the Fallon Tribe.

(5) Not later than November 28, 1997, after consultation with the State of Nevada and affected local interests, the Secretary shall submit to the Congress recommendations, if any, concerning:

(A) revisions in the boundaries of the Stillwater National Wildlife Refuge as may be appropriate to carry out the purposes of the Stillwater National Wildlife Refuge, and the provisions of subsection 206(a) of this section;

(B) transfer of any other United States Bureau of Reclamation withdrawn public lands within existing wildlife use areas in the Lahontan Valley to the United States Fish and Wildlife Service for addition to the National Wildlife Refuge System; and

(C) identification of those lands currently under the jurisdiction of the United States Fish and Wildlife Service in the Lahontan Valley that no longer warrant continued status as units of the National Wildlife Refuge System, with recommendations for their disposition.

(c) WATER USE, NAVAL AIR STATION, FALLON, NEVADA.

(1) Not later than one year after the date of enactment of this title, the Secretary of the Navy, in consultation with the Secretary, shall undertake a study to develop land management plans or measures to achieve dust control, fire abatement and safety, and foreign object damage control on those lands owned by the United States within the Naval Station at Fallon, Nevada, in a manner that, to the maximum extent practicable, reduce direct surface deliveries of water. Water saved or conserved shall be defined as reduced project deliveries relative to the maximum annual headgate delivery entitlement associated with recently irrigated water-righted Navy lands. Recently irrigated water-righted Navy lands shall be determined by the Secretary of the Navy in

consultation with the Secretary and the State of Nevada.

(2) The Secretary of the Navy shall promptly select and implement land management plans or measures developed by the study described in paragraph (1) of this subsection upon determining that water savings can be made without impairing the safety of operations at Naval Air Station, Fallon.

(3) All water no longer used and water rights no longer exercised by the Secretary of the Navy as a result of the implementation of the modified land management plan or measures specified by this subsection shall be managed by the Secretary for the benefit of fish and wildlife resources referenced in sections 206 and 207 of this title: *Provided, That:*

(A) as may be required to fulfill the Secretary's responsibilities under the Endangered Species Act, as amended, the Secretary shall manage such water and water rights primarily for the conservation of the Pyramid Lake fishery and in a manner which is consistent with the Secretary's responsibilities under the Endangered Species Act, as amended, and the requirements of applicable operating criteria and procedures for the Newlands Project; and

(B) the Secretary may manage such water or transfer temporarily or permanently some or all of the water rights no longer exercised by the Secretary of the Navy for the benefit of the Lahontan Valley wetlands so long as such management or transfers are consistent with applicable operating criteria and procedures.

(4) The Secretary of the Navy, in consultation with the Secretary of Agriculture and other interested parties, shall fund and implement a demonstration project and test site for the cultivation and development of low-precipitation grasses, shrubs, and other native or appropriate high-desert plant species, including the development of appropriate soil stabilization and land management techniques, with the goal of restoring previously irrigated farmland in the Newlands Project area to a stable and ecologically appropriate dryland condition.

(5) The Secretary shall reimburse appropriate non-Federal entities for reasonable and customary operation and maintenance costs associated with delivery of the water that comes under the Secretary's management pursuant to this subsection.

(6) In carrying out the provisions of this subsection, the Secretary of the Navy and the Secretary shall comply with all applicable provisions of State law and fulfill Federal trust obligation to the Pyramid Lake Tribe and the Fallon Tribe.

(d) **STATE COST-SHARING.**—The Secretary is authorized to enter into an agreement with the State of Nevada for use by the State of not less than \$9 million of State funds for water and water rights acquisitions and other protective measures to benefit Lahontan Valley wetlands. The Secretary's authority under subsection 206(a) is contingent upon the State of Nevada making such sums available pursuant to the terms of the agreement referred in this subsection.

(e) **TRANSFER OF CARSON LAKE AND PASTURE.**—The Secretary is authorized to convey to the State of Nevada Federal lands in the area known generally as the "Carson Lake and Pasture," as depicted on the map entitled "Carson Lake Area," dated July 16, 1990, for use by the State as a State wildlife refuge. Prior to and as a condition of such transfer, the Secretary and the State of Nevada shall execute an agreement, in consultation with affected local interests, including the operator of the Newlands project, ensuring that the Carson Lake and Pasture shall be managed in a manner consistent

with applicable international agreements and designation of the area as a component of the Western Hemisphere Shorebird Reserve Network. The Secretary shall retain a right of reverter under such conveyance if the terms of the agreement are not observed by the State. The official map shall be on file with the United States Fish and Wildlife Service. Carson Lake and Pasture shall be eligible for receipt of water through Newlands Project facilities.

(F) LAHONTAN VALLEY AND PYRAMID LAKE FISH AND WILDLIFE FUND.—

(1) There is hereby established in the Treasury of the United States the "Lahontan Valley and Pyramid Lake Fish and Wildlife Fund" which shall be available for deposit of donations from any source and funds provided under subsection 205 (a) and (b), 206(d), and subparagraph 208(a)(2)(C), if any, of this title.

(2) Moneys deposited into this fund shall be available for appropriation to the Secretary for fish and wildlife programs for Lahontan Valley consistent with this section and for protection and restoration of the Pyramid Lake fishery consistent with plans prepared under subsection 207(a) of this title. The Secretary shall endeavor to distribute benefits from this fund on an equal basis between the Pyramid Lake fishery and the Lahontan Valley wetlands, except that moneys deposited into the fund by the State of Nevada or donated by non-Federal entities or individuals for express purposes shall be available only for such purposes and may be expended without further appropriation, and funds deposited under subparagraph 208(a)(2)(C) shall only be available for the benefit of the Pyramid Lake fishery and may be expended without further appropriation.

(g) INDIAN LAKES AREAS.—The Secretary is authorized to convey to the State of Nevada or Churchill County, Nevada, Federal lands in the area generally known as the Indian Lakes area, as depicted on the map entitled "Indian Lakes Area," dated July 16, 1990, pursuant to an agreement between the Secretary and the State of Nevada or Churchill County, Nevada, as appropriate, for the purposes of fish and wildlife, and recreation. Any activity provided under the terms of the 1948 Tripartite Agreement may continue under the terms of that agreement until its expiration date, unless such agreement is otherwise terminated. The official map shall be on file with the United States Fish and Wildlife Service.

SEC. 207. CUL-UL AND LAHONTAN CUTTHROAT TROUT RECOVERY AND ENHANCEMENT PROGRAM.

(a) RECOVERY PLANS.—Pursuant to the Endangered Species Act, as amended, the Secretary shall expeditiously revise, update, and implement plans for the conservation and recovery of the cul-ul and Lahontan cutthroat trout. Such plans shall be completed and updated from time to time as appropriate in accordance with the Endangered Species Act, as amended, and shall include all relevant measures necessary to conserve and recover the species. Such plans and any amendments and revisions thereto shall take into account and be implemented in a manner consistent with the allocations of water to the State of Nevada and the State of California made under section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Opportunity Agreement, if and when those allocations and agreements enter into effect.

(b) TRUCKEE RIVER REHABILITATION.—

(1) The Secretary of the Army, in consultation with and with the assistance of the Pyramid Lake Tribe, State of Nevada, Environmental Protection Agency, the Secre-

tary, and other interested parties, is authorized and directed to incorporate into its ongoing reconnaissance level study of the Truckee River, a study of the rehabilitation of the lower Truckee River to and including the river terminus delta at Pyramid Lake, for the benefit of the Pyramid Lake fishery. Such study shall analyze, among other relevant factors, the feasibility of:

(A) restoring riparian habitat and vegetative cover;

(B) stabilizing the course of the Truckee River to minimize erosion;

(C) improving spawning and migratory habitat for the cul-ul;

(D) improving spawning and migratory habitat for the Lahontan cutthroat trout; and

(E) improving or replacing existing facilities, or creating new facilities, to enable the efficient passage of cul-ul and Lahontan cutthroat trout through or around the delta at the mouth of the Truckee River, and to upstream reaches above Derby Dam, to obtain access to upstream spawning habitat.

(2) There are authorized to be appropriated to the Secretary of the Army such funds as are necessary to supplement the ongoing reconnaissance level study, referenced in paragraph (1), to address and report on the activities and facilities described in this paragraph.

(c) ACQUISITION OF WATER RIGHTS.—

(1) The Secretary is authorized to acquire water and water rights, with or without the lands to which such rights are appurtenant, and to transfer, hold, and exercise such water and water rights and related interests to assist the conservation and recovery of the Pyramid Lake fishery in accordance with the provisions of this subsection. Water rights acquired under this subsection shall be exercised in a manner consistent with the Operating Agreement and the Preliminary Settlement Agreement as modified by the Ratification Agreement and, to the maximum extent practicable, used for the benefit of the Pyramid Lake fishery and shall not be sold, exchanged, or otherwise disposed of except to the benefit of the Pyramid Lake fishery.

(2) Acquisition of water rights and related interests pursuant to this subsection shall be subject to the following conditions:

(A) water rights acquired must satisfy eligibility criteria adopted by the Secretary;

(B) water right purchases shall be only from willing sellers, but the Secretary may target purchases in areas deemed by the Secretary to be most beneficial to such a purchase program;

(C) prior to acquiring any water or water rights in the State of California for the Pyramid Lake fishery, the Secretary shall first consult with the Governor of California and prepare a record of decision on the basis of such consultation;

(D) all water rights shall be transferred in accordance with any applicable State law; and

(E) water rights acquired by the Secretary shall be managed by the Secretary in consultation with the Pyramid Lake Tribe and affected interests.

(3) Nothing in this subsection shall be construed as limiting or affecting the authority of the Secretary to acquire water and water rights under other applicable laws.

(4) The Secretary is authorized to reimburse non-Federal entities for reasonable and customary costs for operation and maintenance of the Newlands Project associated with the delivery of water in carrying out the provisions of this subsection.

(5) Consistent with fulfillment of this section and not as a precondition thereto, the Secretary shall study and report on the

social, economic, and environmental effects of the water rights purchase program authorized by this section. This study may be conducted in coordination with the studies authorized by paragraph 206(a)(4) and subsection 209(c) of this title, and shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate, and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) USE OF STAMPEDE AND PROSSER RESERVOIRS.—

(1) The rights of the United States to store water in Stampede Reservoir shall be used by the Secretary for the conservation of the Pyramid Lake fishery, except that such use must be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(2) The rights of the United States to store water in Prosser Creek Reservoir shall be used by the Secretary as may be required to restore and maintain the Pyramid Lake fishery pursuant to the Endangered Species Act, as amended, except that such use must be consistent with the Tahoe-Prosser Exchange Agreement, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the mitigation agreement specified in subparagraph 205(a)(1)(C) of this title.

(3) Nothing in this subsection shall prevent exchanges of such water or the use of the water stored in or released from these reservoirs for coordinated non-consumptive purposes, including recreation, instream beneficial uses, and generation of hydroelectric power. Subject to the Secretary's obligations to use water for the Pyramid Lake fishery, the Secretary is authorized to use storage capacity in the Truckee River reservoirs, including Stampede and Prosser Creek reservoirs, for storage of non-project water, including, but not limited to, storage of California's Truckee River basin surface water allocation, through negotiation of appropriate provisions for storage of such water in the Operating Agreement. To the extent it is not necessary for the Pyramid Lake fishery, the Secretary may allow Truckee River reservoir capacity dedicated to Washoe Project water to be used for exchanges of water or water rights, and to enable conjunctive use. In carrying out the provisions of this subsection, the Secretary shall comply with all applicable provisions of State law.

(e) OFFSETTING FLOWS.—Additional flows in the Truckee River and to Pyramid Lake resulting from the implementation of subsection 206(c) of this title are intended to offset any reductions in those flows which may be attributable to the allocations to California or Nevada under section 204 of this title or to the waivers in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

SEC. 208. PYRAMID LAKE FISHERIES AND DEVELOPMENT FUNDS.

(a) FUNDS ESTABLISHED.—

(1) There are hereby established within the Treasury of the United States the "Pyramid Lake Palute Fisheries Fund" and "Pyramid Lake Palute Economic Development Fund".

(2) There is authorized to be appropriated to the Pyramid Lake Palute Fisheries Fund \$25,000,000.

(A) The principal of the Pyramid Lake Palute Fisheries Fund shall be unavailable for withdrawal.

(B) Interest earned on the Pyramid Lake Palute Fisheries Fund shall be available to the Pyramid Lake Tribe only for the purposes of operation and maintenance of fishery facilities at Pyramid Lake, excluding Marble Bluff Dam and Fishway, and for conservation of the Pyramid Lake fishery in accordance with plans prepared by the Pyramid Lake Tribe in consultation with and the concurrence of the United States Fish and Wildlife Service and approved by the Secretary. Of interest earned annually on the principal, 25 percent per year, or an amount which, in the sole judgment of the Secretary of the Treasury, is sufficient to maintain the principal of the fund at \$25,000,000 in 1990 constant dollars, whichever is less, shall be retained in the fund as principal and shall not be available for withdrawal. Deposits of earned interest in excess of that amount may be made at the discretion of the Pyramid Lake Tribe, and all such deposits and associated interest shall be available for withdrawal.

(C) All sums deposited in, accruing to, and remaining in the Pyramid Lake Palute Fishery Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938, 52 Stat. 1037. Interest earnings not expended, added to principal, or obligated by the Pyramid Lake Tribe in the year in which such earnings accrue to the fund or in the four years that immediately follow shall be credited to the fund established under subsection 206(f) of this title.

(D) Subject to subparagraph (E) of this paragraph, the Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such eligible moneys from the Pyramid Lake Fishery Fund as are requested by the Pyramid Lake Tribe to carry out plans developed under subparagraph (B) of this paragraph.

(E) The Secretary and the Secretary of the Treasury shall not disburse moneys from the Pyramid Lake Palute Fishery Fund until such time as the following conditions have been met:

(1) The Pyramid Lake Tribe has released any and all claims of any kind whatsoever against the United States for damages to the Pyramid Lake fishery resulting from the Secretary's acts or omissions prior to the date of enactment of this title; and

(2) The Pyramid Lake Tribe has assumed financial responsibility for operation and maintenance of the fishery facilities located at Pyramid Lake for the benefit of the Pyramid Lake fishery, excluding the Marble Bluff Dam and Fishway.

(3) There is authorized to be appropriated to the Pyramid Lake Palute Economic Development Fund \$40,000,000 in five equal annual installments in the 1993, 1994, 1995, 1996, and 1997 fiscal years.

(A) The principal and interest of the Pyramid Lake Palute Economic Development Fund shall be available for tribal economic development only in accordance with a plan developed by the Pyramid Lake Tribe in consultation with the Secretary. The objectives of the plan shall be to develop long-term, profit-making opportunities for the Pyramid Lake Tribe and its members, to create optimum employment opportunities for tribal members, and to establish a high quality recreation area at Pyramid Lake using the unique natural and cultural resources of the Pyramid Lake Indian Reservation. The plan shall be consistent with the fishery restoration goals of section 207 of this title. The plan may be revised and

updated by the Pyramid Lake Tribe in consultation with the Secretary.

(B) The Pyramid Lake Tribe shall have complete discretion to invest and manage the Pyramid Lake Palute Economic Development Fund, except that no portion of the principal shall be used to develop, operate, or finance any form of gaming or gambling, except as may be provided by the Indian Gaming Regulatory Act, Pub. L. 100-497 (102 Stat. 2467), and the United States shall not bear any obligation or liability regarding the investment, management, or use of such fund that the Pyramid Lake Tribe chooses to invest, manage, or use.

(C) If the Pyramid Lake Tribe so requests, all sums deposited in, accruing to, and remaining in the Pyramid Lake Palute Economic Development Fund shall be invested by the Secretary and the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act on June 24, 1938, 52 Stat. 1037. All such interest shall be added to the Pyramid Lake Palute Economic Development Fund.

(D) The Secretary and the Secretary of the Treasury shall allocate and make available to the Pyramid Lake Tribe such moneys from the Pyramid Lake Economic Development Fund as are requested by the Pyramid Lake Tribe, except that no disbursements shall be made to the Pyramid Lake Tribe unless and until the Pyramid Lake Tribe adopts and submits to the Secretary the economic development plan described in subparagraph (A) of this paragraph, and section 204, the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement enter into effect in accordance with the terms of subsection 210(a) of this title.

(4) Under no circumstances shall any part of the principal of the funds established under this section be distributed to members of the Pyramid Lake Tribe on a per capita basis.

(5) If, and to the extent that any portion of the sum authorized to be appropriated in paragraph 208(a)(2) is appropriated after fiscal year 1992, or in a lesser amount, there shall be deposited in the Pyramid Lake Palute Fisheries Fund, subject to appropriations, in addition to the full contribution to the Pyramid Lake Palute Fisheries Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had the amount authorized in paragraph 208(a)(2) been appropriated in full for fiscal year 1992.

(6) If and to the extent that any portion of the sums authorized to be appropriated in paragraph 208(a)(3) are appropriated after fiscal year 1993, 1994, 1995, 1996, and 1997, or in lesser amounts than provided by paragraph 208(a)(3), there shall be deposited in the Pyramid Lake Palute Economic Development Fund, subject to appropriations, in addition to the full contributions to the Pyramid Lake Palute Economic Development Fund, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amounts had the amounts authorized in paragraph 208(a)(3) been appropriated in full for fiscal years 1993, 1994, 1995, 1996, and 1997.

SEC. 209. NEWLANDS PROJECT IMPROVEMENT.

(a) EXPANSION OF AUTHORIZED PURPOSES.—

(1) In addition to the existing irrigation purpose of the Newlands Reclamation Project, the Secretary is authorized to operate and maintain the project for the purposes of:

(A) fish and wildlife, including endangered and threatened species;

(B) municipal and industrial water supply in Lyon and Churchill counties, Nevada, including the Fallon Indian Reservation;

(C) recreation;

(D) water quality; and

(E) any other purposes recognized as beneficial under the law of the State of Nevada.

(2) Additional uses of the Newlands Project made pursuant to this section shall have valid water rights and, if transferred, shall be transferred in accordance with State law.

(b) TRUCKEE RIVER DIVERSIONS.—The Secretary shall not implement any provision of this title in a manner that would:

(1) increase diversions of Truckee River water to Newlands Project over those allowed under applicable operating criteria and procedures; or

(2) conflict with applicable court decrees.

(c) PROJECT EFFICIENCY STUDY.—

(1) The Secretary shall study the feasibility of improving the conveyance efficiency of Newlands Project facilities to the extent that, within twelve years after the date of enactment of this title, on average not less than seventy-five percent of actual diversions under applicable operating criteria and procedures shall be delivered to satisfy the exercise of water rights within the Newlands Project for authorized project purposes.

(2) The Secretary shall consider the effects of the measures required to achieve such efficiency on groundwater resources and wetlands in the Newlands Project area. The Secretary shall report the results of such study to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives not later than three years after the date of enactment of this title.

(d) WATER BANK.—The Secretary, in consultation with the State of Nevada and the operator of the Newlands Project, is authorized to use and enter into agreements to allow water right holders to use Newlands Project facilities in Nevada, where such facilities are not otherwise committed or required to fulfill project purposes or other Federal obligations, for supplying carryover storage of irrigation and other water for drought protection and other purposes, consistent with subsections (a) and (b) of this section. The use of such water shall be consistent with and subject to applicable State laws.

(e) RECREATION STUDY.—The Secretary, in consultation with the State of Nevada, is authorized to conduct a study to identify administrative, operational, and structural measures to benefit recreational use of Lahontan Reservoir and the Carson River downstream of Lahontan Dam. Such study shall be reported to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(f) EFFLUENT REUSE STUDY.—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, the State of Nevada, and appropriate local entities, shall study the feasibility of reusing municipal wastewater for the purpose of wetland improvement or creation, or other beneficial purposes, in the areas of Fernley, Nevada, the former Lake Winnemucca National Wildlife Refuge, and the Lahontan Valley. The Secretary shall coordinate such studies with other efforts underway to manage wastewater from the Reno and Sparks, Nevada, area and to improve Truckee River and Pyramid Lake water quality.

Such study shall be reported to the Committees on Energy and Natural Resources, Environment and Public Works, and Appropriations of the Senate and the Committees on Interior and Insular Affairs, Merchant Marine and Fisheries, and Appropriations of the House of Representatives.

(g) **REPAYMENT CANCELLATION.**—Notwithstanding any other provision of law, the Secretary may cancel all repayment obligations owing to the Bureau of Reclamation by the Truckee-Carson Irrigation District. As a precondition for the Secretary to cancel such obligations, the Truckee-Carson Irrigation District shall agree to collect all such unpaid repayment obligations and use such funds for water conservation measures. For the purpose of this subsection and paragraph 209(h)(2), the term "water conservation measures" shall not include repair, modification, or replacement of Dertj Dam.

(h) **SETTLEMENT OF CLAIMS.**—

(1) The provisions of subsection 209(d), (e), (f), and (g) of this section shall not become effective unless and until the Truckee-Carson Irrigation District has entered into a settlement agreement with the Secretary concerning claims for recoupment of water diverted in excess of the amounts permitted by applicable operating criteria and procedures.

(2) The provisions of subsection 209(g) of this section shall not become effective unless and until the State of Nevada provides not less than \$1,000,000 for use in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(3) The Secretary is authorized to expend such sums as may be required to match equally the sums provided by the State of Nevada under paragraph (2) of this subsection. Such sums shall be available for use only in implementing water conservation measures pursuant to the settlement described in paragraph (1) of this subsection.

(i) **FISH AND WILDLIFE.**—The Secretary shall, insofar as is consistent with project irrigation purposes and applicable operating criteria and procedures, manage existing Newlands Project re-regulatory reservoirs for the purpose of fish and wildlife.

(j) **OPERATING CRITERIA AND PROCEDURES.**—

(1) In carrying out the provisions of this title, the Secretary shall act in a manner that is fully consistent with the decision in the case of *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 P. Supp. 252 (D. C. 1973).

(2) Notwithstanding any other provision of law, the operating criteria and procedures for the Newlands Reclamation Project adopted by the Secretary on April 15, 1988 shall remain in effect at least through December 31, 1997, unless the Secretary decides, in his sole discretion, that changes are necessary to comply with his obligations, including those under the Endangered Species Act, as amended. Prior to December 31, 1997, no court or administrative tribunal shall have jurisdiction to set aside any of such operating criteria and procedures or to order or direct that they be changed in any way. All actions taken heretofore by the Secretary under any operating criteria and procedures are hereby declared to be valid and shall not be subject to review in any judicial or administrative proceeding, except as set forth in paragraph (3) of this subsection.

(3) The Secretary shall henceforth ensure compliance with all of the provisions of the operating criteria and procedures referenced in paragraph (2) of this subsection or any applicable provision of any other operating criteria or procedures for the Newlands Project previously adopted by the Secretary, and shall, pursuant to subsection

709(h) or judicial proceeding, pursue recoupment of any water diverted from the Truckee River in excess of the amounts permitted by any such operating criteria and procedures. The Secretary shall have exclusive authority and responsibility to pursue such recoupment, except that, if an agreement or order leading to such recoupment is not in effect as of December 31, 1997, any party with standing to pursue such recoupment prior to enactment of this title may pursue such recoupment thereafter. Any agreement or court order between the Secretary and other parties concerning recoupment of Truckee River water diverted in violation of applicable operating criteria and procedures shall be consistent with the requirements of this subsection and the Endangered Species Act, as amended, and shall be submitted for the review and approval of the court exercising jurisdiction over the operating criteria and procedures for the Newlands Project. All interested parties may participate in such review. In any recoupment action brought by any party, other than the Secretary, after December 31, 1997, the only relief available from any court of the United States will be the issuance of a declaratory judgment and injunctive relief directing any unlawful user of water to restore the amount of water unlawfully diverted. In no event shall a court enter any order in such a proceeding that will result in the expenditure of any funds out of the United States Treasury.

SEC. 214. MISCELLANEOUS PROVISIONS.

(a) **CLAIMS SETTLEMENT.**—

(1) The effectiveness of section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and the Secretary's authority to disburse funds under paragraph 208(a)(3) of this title are contingent upon dismissal with prejudice or other final resolution, with respect to the parties to the Preliminary Settlement Agreement as modified by the Ratification Agreement and the State of Nevada and the State of California, of the following outstanding litigation and proceedings:

(A) *Pyramid Lake Paiute Tribe v. California*, Civ. S-181-378-RAR-RCB, United States District Court, Eastern District of California;

(B) *United States v. Truckee-Carson Irrigation District*, Civ. No. R-2987-RCB, United States District Court, District of Nevada;

(C) *Pyramid Lake Paiute Tribe v. Lujan*, Civ. S-87-1281-LKK, United States District Court, Eastern District of California;

(D) *Pyramid Lake Paiute Tribe v. Department of the Navy*, Civ. No. R-86-115-BRT in the United States District Court, District of Nevada and Docket No. 88-1650 in the United States Court of Appeals for the Ninth Circuit; and

(E) All Pending motions filed by the Tribe in Docket No. E-9530 before the Federal Energy Regulatory Commission.

(2) In addition to any other conditions on the effectiveness of this title set forth in this title, the provisions of:

(A) section 204, subsection 206(c), 207(c) and (d), subparagraph 208(a)(3)(D), and paragraph 210(a)(3) of this title shall not take effect until:

(i) the agreements and regulations, required under section 205 of this title, including the Truckee Meadows water conservation plan referenced in the Preliminary Settlement Agreement as modified by the Ratification Agreement, enter into effect;

(ii) the outstanding claims described in paragraph 210(a)(1) have been dismissed with prejudice or otherwise finally resolved;

(B) section 204 of this title, the Preliminary Settlement Agreement as modified by

the Ratification Agreement, and the Operating Agreement, shall not take effect until the Pyramid Lake Tribe's claim to the remaining waters of the Truckee River which are not subject to vested or perfected rights has been finally resolved in a manner satisfactory to the State of Nevada and the Pyramid Lake Tribe; and

(C) section 204 of this title, the Preliminary Settlement Agreement as modified by the Ratification Agreement, the Operating Agreement, and subsection 207(d) shall not take effect until the funds authorized in paragraph 209(a)(3) of this title have been appropriated.

(3) On and after the effective date of section 204 of this title, except as otherwise specifically provided herein, no person or entity who has entered into the Preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement, or accepted any benefits or payments under this legislation, including any Indian Tribe and the States of California and Nevada, the United States its offices and agencies may assert in any judicial or administrative proceeding a claim that is inconsistent with the allocations provided in section 204 of this title, or inconsistent or in conflict with the operational criteria for the Truckee River established pursuant to section 205 of this title. No person or entity who does not become a party to the preliminary Settlement Agreement as modified by the Ratification Agreement or the Operating Agreement may assert in any judicial or administrative proceeding any claim for water or water rights for the Pyramid Lake Tribe, the Pyramid Lake Indian Reservation, or the Pyramid Lake fishery. Any such claims are hereby barred and extinguished and no court of the United States may hear or consider such claims by such persons or entities.

(b) **GENERAL PROVISIONS.**—

(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and to all existing property rights or interests, all of the trust land within the exterior boundaries of the Pyramid Lake Indian Reservation shall be permanently held by the United States for the sole use and benefit of the Pyramid Lake Tribe.

(2) Anaho Island in its entirety is hereby recognized as part of the Pyramid Lake Indian Reservation. In recognition of the consent of the Pyramid Lake Tribe evidenced by Resolution No. 19-90 of the Pyramid Lake Paiute Tribal Council, all of Anaho Island shall hereafter be managed and administered by and under the primary jurisdiction of the United States Fish and Wildlife Service as an integral component of the National Wildlife Refuge System for the benefit and protection of colonial nesting species and other migratory birds. Anaho Island National Wildlife Refuge shall be managed by the United States Fish and Wildlife Service in accord with the National Wildlife Refuge System Administration Act, as amended, and other applicable provisions of Federal law. Consistent with the National Wildlife Refuge System Administration Act, as amended, the Director of the United States Fish and Wildlife Service is authorized to enter into cooperative agreements with the Pyramid Lake Tribe regarding Anaho Island National Wildlife Refuge.

(3) Subject to the relinquishment by the legislature of the State of Nevada of any claim the State of Nevada may have to ownership of the beds and banks of the Truckee River within the exterior boundaries of the Pyramid Lake Indian Reservation and of Pyramid Lake, those beds and banks are recognized as part of the Pyramid Lake Indian

Reservation and as being held by the United States in trust for the sole use and benefit of the Pyramid Lake Tribe. Nothing in this subsection shall be deemed to recognize any right, title, or interest of the State of Nevada in those beds and banks which it would not otherwise have. No other provision of this title shall be contingent on the effectiveness of this subsection.

(4) Except as provided in paragraphs (2) and (9) of this subsection, the Pyramid Lake Tribe shall have the sole and exclusive authority to establish rules and regulations governing hunting, fishing, boating, and all forms of recreation on all lands within the Pyramid Lake Indian Reservation except fee-patented land, provided that the regulation of such activities on fee-patented land within the Pyramid Lake Indian Reservation shall not be affected by this paragraph. Nothing in this paragraph shall be deemed to recognize or confer any criminal jurisdiction on the Pyramid Lake Tribe or to affect any regulatory jurisdiction of the State of Nevada with respect to any other matters.

(5) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement by the State of Nevada and Washoe County of the rules and regulations referred to in paragraph (4) adopted by the Pyramid Lake Tribe governing hunting, fishing, boating, and all forms of water based recreation against non-members of the Pyramid Lake Tribe and for State courts or other forums of the State of Nevada or its political subdivisions to exercise civil and criminal jurisdiction over violations of the Pyramid Lake Tribe's rules and regulations allegedly committed by such non-members, except as provided by paragraphs (2) and (9) of this subsection.

(6) The consent of the United States is given to the negotiation and execution of an intergovernmental agreement between the Pyramid Lake Tribe and the State of Nevada, which agreement may also include Washoe County, Nevada, providing for the enforcement of rules and regulations governing hunting, fishing, boating, and all forms of water based recreation on fee-patented land within the Pyramid Lake Indian Reservation, except as provided by paragraphs (2) and (9) of this subsection.

(7) Nothing in this title shall limit or diminish the Federal Government's trust responsibility to any Indian Tribe, except that this provision shall not be interpreted to impose any liability on the United States or its agencies for any damages resulting from actions taken by the Pyramid Lake Paiute Tribe as to which the United States is not a party or with respect to which the United States has no supervisory responsibility.

(8) Subject to the terms, conditions, and contingencies of and relating to the Preliminary Settlement Agreement as modified by the Ratification Agreement, the United States on its own behalf and in its capacity as trustee to the Pyramid Lake Tribe confirms and ratifies the waivers of any right to object to the use and implementation of the water supply measures described in sections 3 and 21 of article II of the Preliminary Settlement Agreement as modified by the Ratification Agreement, and any waivers of sovereign immunity given in connection with that agreement or the Operating Agreement, upon the entry into effect of the Preliminary Settlement Agreement as modified by the Ratification Agreement.

(9) Nothing in this title shall be construed as waiving or altering the requirements of any Federal environmental or wildlife conservation law, including, but not limited to,

the Endangered Species Act, as amended, including the consultation and reinitiation of consultation responsibilities of the Secretary under section 7 of the Act, and the National Environmental Policy Act of 1969.

(10) Nothing in this title shall be construed to create an express or implied Federal reserved water right.

(11) Nothing in this title shall subject the United States or any of its agencies or instrumentalities or any Indian Tribe to any State jurisdiction or regulation to which they would not otherwise be subject.

(12) Nothing in this title is intended to abrogate the jurisdiction of or required approvals by the Nevada State Engineer or the California State Water Resources Control Board.

(13) Nothing in this title is intended to affect the power of the Orr Ditch court or the Alpine court to ensure that the owners of vested and perfected Truckee River water rights receive the amount of water to which they are entitled under the Orr Ditch decree or the Alpine decree. Nothing in this title is intended to alter or conflict with any vested and perfected right of any person or entity to use the water of the Truckee River or its tributaries, including, but not limited to, the rights of landowners within the Newlands Project for delivery of the water of the Truckee River to Derby Dam and for the diversion of such waters at Derby Dam pursuant to the Orr Ditch decree or any applicable law.

(14) No single provision or combination of provisions in this title, including interstate allocations under section 204, or associated agreements which may adversely affect inflows of water to Pyramid Lake shall form the basis for additional claims of water to benefit Pyramid Lake, the Pyramid Lake fishery, or lands within the Pyramid Lake Indian Reservation.

(15) Nothing in this title shall affect any claim of Federal reserved water rights, if any, to the Carson River or its tributaries for the benefit of lands within the Fallon Indian Reservation.

(16) The Secretary, in consultation with the State of Nevada and affected local interests, shall undertake appropriate measures to address significant adverse impacts, identified by studies authorized by this title, on domestic uses of groundwater directly resulting from the water purchases authorized by this title.

(17) It is hereby declared that after August 26, 1935 and prior to the date of enactment of this title, there was no construction within the meaning of section 23(b) of the Federal Power Act, as amended, at the four run-of-river hydroelectric project works owned by Sierra Pacific Power Company and located on the Truckee River. Notwithstanding any other provision of law, after the date of enactment of this title, development of additional generating capacity at such project works that is accomplished through replacement of turbine generators and increases in effective head shall not constitute construction within the meaning of section 23(b) of the Federal Power Act, as amended. *Provided*, That such development may not change the location of or increase any existing impoundments and may not require diversions of water in excess of existing water rights for such project works: *And provided further*, That the diversions of water for the operation of such project works shall be consistent with the Preliminary Settlement Agreement as modified by the Ratification Agreement, and the Operating Agreement. The Secretary shall take into account the monetary value of this provision to the Sierra Pacific Power Company in calculating the storage charge referred to in paragraph 205(a)(6).

(18) The Secretary is authorized, in accordance with this section and applicable provisions of existing law, to exchange surveyed public lands in Nevada for interests in fee patented lands, water rights, or surface rights to lands within or contiguous to the exterior boundaries of the Pyramid Lake Indian Reservation. The values of the lands or interests therein exchanged by the Secretary under this paragraph shall be substantially equal, but the Secretary is authorized to accept monetary payments from the owners of such fee patented lands, water rights, or surface rights as circumstances may require in order to compensate for any difference in value. Any such payments shall be deposited to the Treasury. The value of improvements on land to be exchanged shall be given due consideration and an appropriate allowance shall be made therefor in the valuation. Title to lands or any interest therein acquired by the Secretary pursuant to this subsection shall be taken in the name of the United States in trust for the Pyramid Lake Tribe and shall be added to the Pyramid Lake Indian Reservation.

(C) APPROPRIATIONS AUTHORIZED.—

There are authorized to be appropriated such sums as may be required to implement the provisions of this title.

SPARK M. MATSUNAGA HYDROGEN RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACT

Mr. FOWLER. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 709, H.R. 4521, the Hydrogen Research and Development Act.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4521) to establish a hydrogen research and development program.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SEC. 101. SHORT TITLE.

This Act may be referred to as the "Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990".

SEC. 102. FINDING, PURPOSES, AND DEFINITION.

(a) *FINDING*.—Congress finds that it is in the national interest to accelerate efforts to develop a domestic capability to economically produce hydrogen in quantities that will make a significant contribution toward reducing the Nation's dependence on conventional fuels.

(b) *PURPOSES*.—The purposes of this Act are—

(1) to direct the Secretary to prepare a comprehensive 5-year comprehensive program management plan that will identify and resolve critical technical issues necessary for the realization of a domestic capability to produce, distribute, and use hydrogen economically within the shortest time practicable;

(2) to direct the Secretary to develop a technology assessment and information transfer program among the Federal agen-

APPENDIX I

Bulletin No. 83-11
"Ditches And Drainage In the Truckee Meadows"
Legislative Counsel Bureau, State of Nevada
November 1982
and
Assembly Bill 612
(Chapter 564, Statutes of Nevada, 1981)

APPENDIX I

D I T C H E S A N D D R A I N A G E I N T H E
T R U C K E E M E A D O W S

BULLETIN NO. 83-11

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

NOVEMBER 1982

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CHAPTER 400

AN ACT creating the Truckee Meadows committee on ditches and drainage; requiring the committee to study the problem of ditches and drainage in the Truckee Meadows and report to the legislature; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. The legislature finds that:

1. The Truckee Meadows in Washoe County was once crisscrossed with irrigation ditches, of which only four major ditches are still used to supply water for agricultural or commercial purposes.

2. Of those ditches which have lost their identity as agricultural ditches, some have collapsed, and others are used only as storm drains but are full of debris and cause flooding.

3. The ditches are owned and individually controlled by a variety of owners, including mutual ditch companies, water users' associations and public utilities.

4. The local governments in the Truckee Meadows need a plan to preserve, improve and maintain certain of these ditches as storm drains, and perhaps to relocate certain other ditches in developing a system of storm drains.

SEC. 2. 1. There is hereby created a Truckee Meadows committee on ditches and drainage consisting of:

(a) Three members each from the:

(1) Board of county commissioners of Washoe County;

(2) Governing body of the City of Reno; and

(3) Governing body of the City of Sparks,

or their designees, who are appointed to the committee by that board and those bodies.

(b) One member of the senate and one member of the assembly of the Nevada legislature, who are from Washoe County and are appointed to the committee by the legislative commission.

2. The member of the senate who is appointed to the committee is its chairman.

SEC. 3. 1. The committee, in cooperation with water users, ditch owners, Washoe County, the cities of Reno and Sparks and the Carson-Truckee water conservancy district, shall conduct a study of the ditches in the Truckee Meadows and develop a plan to:

(a) Preserve, improve and maintain existing ditches in the Truckee Meadows as storm drains;

(b) Relocate, as necessary, ditches used to supply water, without interfering with the water rights of the users; and

(c) Assist the owners and users of the ditches financially in removing debris from the ditches and installing necessary improvements.

2. The plan must contain a list of necessary projects, estimates of their cost and recommended methods of paying for them.

3. The committee shall report the results of its study, including the plan and any recommended legislation, to the legislative commission before November 1, 1982.

SEC. 4. The board of county commissioners of Washoe County and the governing bodies of the cities of Reno and Sparks are hereby authorized to grant money to the committee, and the committee may expend that money, to pay the necessary costs of the study. Such grants are hereby declared to be governmental expenditures.

REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 62ND SESSION OF THE NEVADA LEGISLATURE:

At its meeting of October 13, 1982, the legislative commission directed that the report of the study of ditches and drainage in the Truckee Meadows be printed as a legislative counsel bureau bulletin. The document is basically a staff report containing an explanation of issues and description of possible courses of action. Specific recommendations are not made.

Additional explanation of the manner in which the study was conducted is contained in the text of the bulletin. Staff of the research division of the legislative counsel bureau conducted the study and prepared the report. Of special assistance was Judi Scott, a legislative staff intern, who worked with the research staff on the project. Input was obtained from individuals who supported the bill which resulted in the study. Meetings were also held with officials from the public works departments of the three local governments in the Truckee Meadows, representatives of the ditch companies, and a group of professionals who work on water-related issues in the Truckee Meadows.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
November 1982

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REPORT TO THE LEGISLATIVE COMMISSION ON THE STUDY OF
DITCHES AND DRAINAGE IN THE TRUCKEE MEADOWS

I. BACKGROUND INFORMATION

Senate Bill 163, enacted during the 1981 legislative session, called for creation of a Truckee Meadows committee on ditches and drainage. This committee was directed to study and plan for the preservation, improvement, maintenance and possible relocation of the ditches in the Truckee Meadows. The act also authorized the local governments in Washoe County to grant money to the committee to pay the necessary costs of the study.

Because of the existing economic situation, it became evident that the local governments could not finance a planning effort of the magnitude which was outlined in the act. Rather than establish the committee under these circumstances, the legislative commission directed the staff of the legislative counsel bureau to compile background information on the subject, outline the relevant issues, and propose possible approaches for addressing each of the issues.

Legislative counsel bureau staff met individually with many of the people who had supported the bill which resulted in the study. Meetings were also held with officials from the public works departments of the three local governments in the Truckee Meadows, representatives of the ditch companies, and a group of professionals who work on water-related issues in the Truckee Meadows.

The initial effort was to identify the issues which are associated with ditches and drainage in the Truckee Meadows. Based upon their personal perspectives, different people have various concepts about what the problems are. After determining that there are three major issue areas, possible approaches for addressing these issues were discussed with the different groups. In all, the staff met with 10 to 15 people individually and held four group meetings.

ISSUES RELATIVE TO DITCHES AND DRAINAGE
IN THE TRUCKEE MEADOWS

ISSUE I. MAINTENANCE OF THE EXISTING SYSTEM

- A. Urban encroachment resulting in:
 - 1. Filling of ditches with debris;
 - 2. Increased runoff into ditches;
 - 3. Inadequate easements to allow cleaning;
 - 4. Lack of standards for culverts, street crossings and similar construction.
- B. Insufficient finances and inappropriate distribution of costs for:
 - 1. Cleaning of the ditches;
 - 2. Reconstruction after "breakouts" during storms;
 - 3. Insurance for flood hazards.

ISSUE II. PLANNING, CONSTRUCTION AND MANAGEMENT OF THE FUTURE SYSTEM

- A. Inability to determine (on a regional scale) how important planning and construction of storm drainage facilities are in comparison to the importance of other municipal activities.
- B. Lack of coordination in:
 - 1. Planning future uses of ditches, as part of the drainage system and as part of the water distribution system;
 - 2. Construction of needed facilities to effectuate the future (planned) uses;
 - 3. Proposing and establishing a management structure for the system.

ISSUE III. OVERALL REGIONAL WATER MANAGEMENT

- A. Inadequate supply of water for the Truckee Meadows.
- B. Possible need for additional upstream storage facilities.
- C. Proliferation of independent water companies.
- D. Problems associated with water rights in the Truckee Meadows.

II. ISSUES AND POSSIBLE APPROACHES

The chart on the facing page entitled "Issues Relative to Ditches and Drainage in the Truckee Meadows" outlines the major issues associated with ditches and drainage in the Truckee Meadows. The first issue is maintenance of the existing system. The second is planning, construction and management of the future system. The third is overall water management in the Truckee Meadows. Each of these broad issues is composed of a couple of types of problems which may be isolated and addressed individually.

A. ISSUE I: MAINTENANCE OF THE EXISTING SYSTEM

In the early years, agricultural development in the Truckee Meadows was extensive. Urbanization was minimal. Irrigation ditches and drainage were of major significance in the valley.

Discussion of the Issue:

As urbanization became dominant, there began to be encroachment on the ditches, and the local governments began to use the ditches as parts of their storm drainage systems. The urban encroachment has resulted in:

- (a) Filling of ditches with debris;
- (b) Increased runoff into ditches;
- (c) Inadequate easements to allow cleaning; and
- (d) Lack of standards for culverts, street crossings, and similar construction.

The local governments have ordinances which deal with littering and trash dumping, but these are not consistently enforced. The regional administrative planning agency has developed a "model" drainage ordinance that would call for elimination of any increased runoff which would otherwise have been caused by proposed new developments. If all three local governments were to adopt this ordinance, it would decrease future problems associated with urban runoff. In areas which have already been developed, it would be difficult to obtain additional easements along ditches to facilitate cleaning of the ditches. However, the local governments, by policy, are requiring that plats for new subdivisions receive a signature from the ditch companies

before they are approved. Very little progress has been made in the area of construction standards.

The most significant aspect of the issue of maintenance of the existing system is associated with financing. Debris and plant growth must be cleared from the ditches periodically. Reconstruction must be undertaken after "breakouts" which are caused by floods. Insurance to cover potential damages from floods is also necessary. These would be rather straightforward problems if the ditches were used solely to distribute water to agricultural enterprises. However, recent years have seen the ditches used more and more as public storm drainage channels. The public, through their local governments, have generally not paid for this service. The ditch companies, which consist of the water users, have paid for all ditch-related costs, except in the City of Sparks where the city owns and operates several ditches.

It is somewhat complex to determine the proportion to which each different ditch is used for storm drainages versus its use for water distribution. Agreement on this matter would indicate the relative portions of ditch maintenance that the ditch companies and the local governments should finance. Negotiation would also appear to be necessary in deciding who should pay for ditch reconstruction when increased runoff from urban development joins natural runoff to cause a rupture in a ditch. And it could be argued that carrying insurance for floods caused from this runoff should be jointly financed by the ditch companies and local governments. The difficult matter is determining the degree of responsibility which the local governments should bear for financing these aspects of ditch maintenance.

Representatives of the ditch companies indicate that the issue of maintaining the existing ditches is more important to them than are any other problems. The public works staff for the local governments acknowledge that the ditches are used to some degree for the public benefit as storm drainage channels. A negotiated agreement relative to responsibilities and financing for each ditch would appear to be necessary.

Possible Approaches:

Following are four possible ways that a negotiated agreement concerning distribution of responsibilities between the ditch companies and local governments might be achieved:

1. Ditch companies individually - Each ditch company could individually determine what it believes would be a fair distribution, review its proposal with the local public works departments, and then individually present its proposal to the local elected officials for their action.
2. Ditch companies collectively - The ditch companies could join together to prepare a single proposal for presentation to the local elected officials. The joint proposal would contain recommended distribution of responsibilities for each ditch separately.
3. Third party coordinator - A third party, who is not directly associated with the ditch companies or the individual local governments, could coordinate a unified effort among the interested parties to develop proposed distributions of responsibilities. This third party could be a state agency, an existing regional entity such as the regional administrative planning agency or the water conservation district, or one of several other possibilities.
4. Regional body - An existing or new regional body could officially be assigned duties which would include working with the interested parties to determine a distribution of responsibilities associated with maintenance of the existing ditch system. Rather than performing the role of coordinator as in alternative 3, the regional body would perform the responsibilities of arbitrator. However, for this option to be reasonable, the primary duties of the regional body probably would be associated with the other two types of issues relative to ditches and drainage in the Truckee Meadows--namely, planning, construction and management of the future system and overall regional water management.

B. ISSUE II: PLANNING, CONSTRUCTION AND MANAGEMENT OF THE FUTURE SYSTEM

Whereas Issue I addresses the existing system of ditches and drainage in the Truckee Meadows, Issue II deals with the future system.

Discussion of the Issue:

In the past, many of the ditches which once crossed the Truckee Meadows were abandoned when the agricultural uses that supported them were discontinued. As they fell into disrepair and were filled, any potential uses which these ditches might have had for storm drainage were eliminated. There has been almost no planning associated with the future uses or abandonment of the ditches in the Truckee Meadows, with the exception of the North Truckee Ditch which is now owned and maintained by the City of Sparks.

One of the difficulties in planning for the future of the ditches is the fact that most of them are located in more than one of the three political jurisdictions in the Truckee Meadows. Similarly, each ditch is owned and managed by a separate ditch company. The local entities have never gotten together to determine, on a regional scale, how important planning and construction of storm drainage facilities are in comparison to the importance of other municipal activities. When looking specifically at the future of the ditches, there has been a lack of coordination in planning for their utilization as part of the drainage and water distribution systems. Projecting future uses of the ditches requires coordination in planning, construction of facilities needed to effectuate the plans, and establishment of a management structure for the system.

Traditionally, the local public works departments have been responsible for planning of the local storm drainage systems. Although some areawide storm drainage planning has been undertaken, most of the activity is initiated when a development proposal is submitted. The ditch companies have been responsible for virtually all of the projections related to future uses of the ditches. The limited amount of regionwide planning for storm drainage and ditch usage is probably due to the complicated institutional/political structure and the significant engineering costs.

In recent years, there has been discussion of possibly redesigning the ditch system so that the Steamboat Ditch, Orr Ditch and the Highland Ditch, which occupy the highest elevations, would distribute all of the water for agricultural and municipal uses. Under this proposal, the remaining ditches would be retained for storm drainage purposes. Although the study outlined in S.B. 163 envisioned that a determination about this type of proposal would be made, the necessary funding for technical analyses was not available.

The procedure necessary to complete a major design like this one would be relatively complex. The initial step would be to determine the institutional/political feasibility and specify a scope of engineering analysis. A preliminary engineering study would be needed to determine technical feasibility, general construction projects, and estimated costs. This preliminary study would probably cost in the neighborhood of \$50,000 to \$150,000 to prepare. From it, a cost/benefit analysis could be drawn. If the decision to move forward with the proposal were made, it would be necessary to complete detailed engineering designs which would be more costly than the preliminary study. It is clear that pursuit of this proposal would be a major undertaking.

Also discussed has been the need for a reconnaissance level engineering study of the overall drainage system in the Truckee Meadows. In 1954, such a study generally called the "Kennedy Study" was compiled. Some additional work has been done since that time, including a couple of areawide surveys recently completed for southeastern Reno. However, no unified regional study has been undertaken. The estimates of costs for doing this type of regional storm drainage analysis are high, running in the range of \$300,000 to \$500,000.

Data collection and planning associated with major flood control activities in the Truckee Meadows have been undertaken by the U.S. Army Corps of Engineers. However, its programs have dealt primarily with the Truckee River and its major tributaries. Storm drainage has not been a part of its flood control studies.

The State of Nevada established a revolving flood control fund in Nevada Revised Statutes (NRS) 543.010 through 543.150. It is clear from NRS 543.030, 543.050 and 543.090

that money from this fund can only be used to finance state or local involvement in federal flood control projects which are undertaken by the U.S. Army Corps of Engineers or the U.S. Department of Agriculture. Professionals in the field indicate that planning and construction of the types of storm drainage projects discussed in this study would not be eligible under the federal programs. Therefore, money from the state flood control fund could not be used on any proposed ditches and drainage projects unless the stipulations of the state law were modified to allow this type of expenditure.

Possible Approaches:

Following are three ways that the issue of planning, construction and management of the future system of storm drainage and ditches might be addressed:

1. Public works departments individually - The local public works departments could continue to plan for their storm drainage systems individually. Areawide analyses within each jurisdiction would be made when finances permit. The future uses of the ditches as elements in the drainage systems would be determined as development projects were proposed or when the ditch companies decide to no longer use the ditches for water distribution.
2. Local governments collectively - If the local governments in the Truckee Meadows placed a high priority on the program, they could collectively finance a reconnaissance level engineering study of the storm drainage system in the basin. This study would outline the major elements of the future drainage system and could be designed to include projections regarding future uses of the ditches.
3. Regional body - An existing or new regional body could be assigned the duty of working with the local entities to coordinate their activities in identifying local and regional priorities relative to storm drainage in the Truckee Meadows. The regional body could also prepare a reconnaissance level study of the basin's storm drainage system and coordinate planning for future uses of the ditches. Their responsibilities could be limited to these planning activities, or the duties could include broader functions like management of any new regional storm drainage system or performing other duties associated with overall water management in the basin.

4. Legislative mandate with financing - The legislature could require the local entities or a regional body in the Truckee Meadows to perform the planning activities relative to ditches and storm drainage. Actual construction of the system might or might not be included in the mandate. Necessary financing would also be required in order to make this alternative feasible. A direct appropriation or modification of the limitations for usage of the money in the state flood control fund might be considered.

C. ISSUE III: OVERALL REGIONAL WATER MANAGEMENT

The issue of overall regional water management is considerably broader than are the first two issues. For the past several years, there has been unrest in the Truckee Meadows concerning the adequacy of the water supply and how the water allocation and distribution system should be administered.

Discussion of the Issue:

Unquestionably the largest water-related concern in the Truckee Meadows has been whether there is an adequate amount of water to meet present and future needs. A considerable amount of money has been invested in studies of the question, and a couple of major lawsuits are directly related to the issue. An associated question is the possible need for additional upstream water storage facilities.

The administration of the water system has also been a subject of increasing discussion. Sierra Pacific Power Company is the major purveyor of water in the Truckee Meadows at the present time. However, the proliferation of independent water companies to serve new development is often listed as a problem, and several issues associated with water rights have also been discussed by people in the Truckee Meadows.

The relationship between the ditches and drainage in the Truckee Meadows and overall water management in the basin is somewhat limited. The ditches and drainage are a part of the overall water management picture, but probably only a minor part in comparison to the major questions associated with municipal water distribution and overall adequacy of the water supply. For this reason, the issue of overall regional water management is only reviewed in a general way in the present study.

Possible Approaches:

A wide range of approaches to overall regional water management in the Truckee Meadows has been discussed in the area. There are those who believe that the existing system is the most efficient method of operation. Others have suggested that the water distribution facilities of Sierra Pacific Power Company should be purchased and a metropolitan water district formed. However, the costs of such an action are high. There has also been discussion of allocating the policy powers associated with water distribution to an existing or new regional body while leaving the facilities and day-to-day operation of the system with Sierra Pacific Power Company.

No consensus of opinion on these major types of approaches has been reached, and it is beyond the purview of this present study to review the subject more extensively.

III. CONCLUSION

The issues associated with ditches and drainages in the Truckee Meadows are more complex than might be realized upon initial review. The three major issues are:

- (a) maintenance of the existing system;
- (b) planning, construction and management of the future system; and
- (c) overall regional water management.

Because financing was not available for a planning effort of the magnitude which would be necessary to carry out the requirements of S.B. 163, staff of the legislative counsel bureau was directed to compile background information on the subject, outline the relevant issues, and propose possible approaches for addressing each of the issues. This work has been completed and is contained in the previous sections of this bulletin.

The issues associated with ditches and drainage in the Truckee Meadows are local and regional in character. It appears that changes in the state statutes generally are not necessary in order for these issues to be addressed. However, if it were the desire to establish a metropolitan water district similar to the Las Vegas Valley Water District in Clark County, legislative action would be required.

If a decision were made to address only the first issue of maintenance of the existing system of ditches and drainage, the approach of using a third party coordinator would probably be most effective. An entity like the regional administrative planning agency would have the broad geographic scope to undertake the role of coordinator. However, since the regional administrative planning agency is a creature of the local governments, the ditch companies might feel that their interests are not adequately represented. A state agency, probably the division of water planning, would also have the necessary characteristics to perform the role of coordinator. If the division of water planning were chosen, a bill directing the agency to perform the task would be appropriate. It should be recognized that there would be agency costs associated with such a task.

It appears that a decision to address the second issue of planning, construction and maintenance of the future system can appropriately be initiated only at the local level. The local public works departments traditionally have been responsible for planning, construction and maintenance of the storm drainage systems. Decisions relative to increased activities by the individual departments or cooperative efforts would logically come from the local governments. A decision to work through an existing entity such as the regional administrative planning agency would also come from the local governments which direct the regional body. Money from state and federal sources to assist in these types of programs does not appear to be available at this time. However, as is outlined in one of the possible approaches, the legislature could choose to appropriate money or could consider making money from the state flood control fund available for this planning and construction.

The third issue of overall regional water management in the Truckee Meadows is of major significance to the area. However, the breadth of the issue is beyond the scope of the present study of ditches and drainage.

a newspaper published and having general circulation within the county wherein the local government, or a major portion thereof, is situated. If no such newspaper is published in the county, then publication must be in any newspaper published in the state having general circulation in the county.

3. Such notice must state:

- (a) The nature, character or object of the contract.
- (b) If plans and specifications are to constitute part of the contract, where **[such]** the plans and specifications may be seen.
- (c) The time and place where bids will be received and opened.
- (d) Such other matters as may properly pertain to giving notice to bid.

Sec. 3. NRS 332.125 is hereby amended to read as follows:

332.125 1. **[Except as otherwise provided by law, a]** A governing body or its authorized representative may let a contract for the purchase of books, library materials or subscriptions of any nature without advertising if:

- (a) The estimated amount is greater than **[\$2,500;]** \$10,000;
- (b) Written requests for bids have been solicited from persons who are capable of performing the contract; and
- (c) All bids received are opened publicly at a time and place set by the governing body or its authorized representative.

2. Nothing in this section prohibits a governing body or its authorized representative from advertising for or requesting bids.

Sec. 4. Section 1 of this act shall become effective at 12:01 a.m. on July 1, 1983.

Assembly Bill No. 612—Committee on Government Affairs

CHAPTER 564

AN ACT relating to Washoe County; requiring negotiations between the local governments and the ditch companies concerning maintenance of ditches; and providing other matters properly relating thereto.

[Approved May 26, 1983]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. 1. The board of county commissioners of Washoe County and the governing bodies of the cities and towns within Washoe County shall enter into negotiations with local ditch companies to obtain agreements concerning the maintenance of ditches, the use of ditches for storm drainage, liability for damages associated with ditches, and other matters regarding ditches.

2. The negotiations required pursuant to section 1 must not affect the existing property rights of ditch companies.

3. Any agreement obtained pursuant to this act must be reevaluated by the parties if a local government considers urban development of an area affected by the agreement.

4. Within budgetary limitations and upon request, state agencies shall assist local governments in carrying out agreements reached pursuant to this act.

Sec. 2. This act shall become effective upon passage and approval.

Assembly Bill No. 631—Committee on Government Affairs

CHAPTER 565

AN ACT relating to towns; limiting the option to establish a town board form of government to towns in smaller counties; and providing other matters properly relating thereto.

[Approved May 26, 1983]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 269.011 is hereby amended to read as follows:

269.011 The provisions of NRS 269.016 to 269.022, inclusive, and 269.024 to 269.0248, inclusive, apply to each unincorporated town in a county having a population of less than ~~[250,000]~~ 100,000 which has not elected to accept the provisions of the Unincorporated Town Government Law.

Sec. 2. NRS 269.0165 is hereby amended to read as follows:

269.0165 1. A town board form of government may be adopted by means of initiative petition of the residents of the town.

2. The procedures established by NRS 295.085 to 295.125, inclusive, for the adoption of county ordinances by initiative petition must be followed by the residents and each document of the petition must set forth briefly the proposal to establish a town board form of government. The election required to be held if the proposal is not adopted by the board of county commissioners must be held not less than 30 days nor more than 60 days after the date of the final board vote thereon.

3. Members of the town board ~~[shall]~~ *must* be appointed and elected as provided in:

(a) NRS 269.017, if the proposal to adopt the town board form of government is approved by the board of county commissioners; or

(b) NRS 269.0171, if the proposal is submitted to the electors for their approval.

~~[4. This section does not apply to any county having a population of 100,000 or more.]~~

APPENDIX J

Resolution of the Western States
Water Council, Regarding Providing for
Recognition of Unique Conditions when
Implementing No Net Loss Wetlands Protection,
April 1990

APPENDIX J
RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
Providing for Recognition of Unique Conditions
when Implementing No Net Loss Wetlands Protection
April, 1990

WHEREAS, the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers have entered into a Memorandum of Agreement to achieve "no net loss" with respect to proposed development of the nation's wetlands; and

WHEREAS, unique conditions in each state must be considered as they relate to effective mitigation of wetlands loss; and

WHEREAS, the states have experienced the need to balance competing environmental and public health needs when addressing wetlands issues; and

WHEREAS, development is essential to the economic well-being of states, local governments, and private entities and alteration of wetlands is largely unavoidable; and

WHEREAS, the national focus should be to improve the balance between wetland development and protection;

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urge the federal administration to recognize unique conditions prevalent nationwide and provide flexibility when implementing its national "no net loss" wetlands policy.

APPENDIX K

Resolution of the Western States
Water Council, Regarding Support for
Continued Weather Modification Programs,
April 1990

APPENDIX K

**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
Support for Continued Weather Modification Programs
April, 1990**

WHEREAS, the long-term water supplies of most western rivers are over-committed; and

WHEREAS, one of the most cost-effective means of augmentation of river supplies is through weather modification; and

WHEREAS, weather modification benefits may enhance water supplies, increase hydro power production, improve instream flows and fishery and wildlife habitat and improve water quality; and

WHEREAS, ten western states have indicated intent to perform weather modification programs in cooperation with the Bureau of Reclamation (AZ, CA, KS, ND, OK, TX, UT, WY, MT); and

WHEREAS, the Bureau of Reclamation Atmospheric Resources Division is a leader in the science of weather modification and is competent to develop and demonstrate proven technology; and

WHEREAS, the President's 1991 budget contains no funds to support the Atmospheric Resources Research Program; and

WHEREAS, there is an urgent need to maintain, extend and transfer this important technology from the Bureau of Reclamation to the states and water suppliers through demonstration programs; and

WHEREAS, weather modification programs are consistent with the new goals of the Bureau of Reclamation to better manage existing projects to provide additional water supplies and hydro power generation.

NOW THEREFORE BE IT RESOLVED that the WSWC urge the Congress and the Administration to support the U.S. Bureau of Reclamation Division of Atmospheric Resources Research with continuing funding at a minimum level of \$3.2 million in the 1991 fiscal year to support current programs.

BE IT FURTHER RESOLVED that the Bureau of Reclamation Division of Atmospheric Resources continue to provide for operations and transfer of technology through at least 2000 to accommodate programs presently planned.

APPENDIX L

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SUMMARY--Authorizes state engineer to enter into interstate agreement for management of shared ground water basins. (BDR 48-325)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to ground water; authorizing the state engineer to enter into interstate agreements for the management of ground water basins shared with an adjoining state; and providing other matters properly relating thereto.

WHEREAS, It is the policy of this state to encourage and support interstate cooperation in the management of ground water basins which are shared with an adjoining state, if the adjoining state has an entity which is capable of managing the water resource adequately; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 532 of NRS is hereby amended by adding thereto a new section to read as follows:

The state engineer, with the approval of the director of the state department of conservation and natural resources, for and on behalf of the State of Nevada, is authorized to enter into agreements with neighboring states or their political subdivisions concerning cooperative management of ground water basins shared between the states.

Sec. 2. This act becomes effective upon passage and approval.

SUMMARY--Makes appropriation to state department of conservation and natural resources for continuing examination of certain ground water basins. (BDR S-326)

FISCAL NOTE: Effect on Local Government: No.
 Effect on the State or on Industrial Insurance: Contains
 Appropriation.

AN ACT making an appropriation to the state department of conservation and natural resources for the continuing examination of the undeveloped and partially developed ground water basins in Nevada to determine their potential as additional sources for water; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. There is hereby appropriated from the state general fund to the state department of conservation and natural resources the sum of \$200,000 for the continuing examination of undeveloped and partially developed ground water basins in Nevada to determine their potential as additional sources for water.

Sec. 2. Any remaining balance of the appropriation made by section 1 of this act must not be committed for expenditure after June 30, 1993, and reverts to the state general fund as soon as all payments of money committed have been made.

Sec. 3. This act becomes effective on July 1, 1991.

SUMMARY--Makes various changes regarding use of water. (BDR 58-327)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; requiring all suppliers of water to adopt a plan of water conservation; requiring the public service commission of Nevada to consider the efficient use of water resources when considering proposals for the construction or expansion of plants for the generation of power; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 704 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, each public utility which furnishes, for compensation, any water for domestic purposes shall adopt a plan of water conservation based on the climate and the living conditions in its service area. The provisions of the plan must apply to the public utility and its customers, but may also contain recommendations for the other residents and property within the boundaries of its service area.

2. *The plan:*

- (a) Must be adopted by the public utility before July 1, 1992;*
- (b) Must be available for inspection by members of the public during office hours at the office of the public utility;*
- (c) Must be filed with the commission before July 1, 1992; and*
- (d) May be revised from time to time to reflect the changing needs and conditions of the service area. Each such revision must be filed with the commission and made available for inspection by members of the public within 30 days after its adoption.*

3. *In lieu of adopting a plan pursuant to subsection 1, a public utility which is subject to the provisions of NRS 704.095 may elect to comply with a plan of water conservation adopted by the commission for this purpose.*

Sec. 2. NRS 704.746 is hereby amended to read as follows:

704.746 1. Not more than 60 days after a utility has filed its plan, the commission shall convene a public hearing on the adequacy of the plan.

2. At the hearing any interested person may make comments to the commission regarding the contents and adequacy of the plan.

3. After the hearing the commission shall determine whether:

(a) The forecast requirements of the utility are based on substantially accurate data and an adequate method of forecasting.

(b) The plan identifies and takes into account any present and projected reductions in the demand for energy that may result from measures to improve

energy efficiency in the industrial, commercial, residential and energy producing sectors of the area being served.

(c) The plan adequately demonstrates the economic, environmental and other benefits to this state and to the customers of the utility, associated with the following possible measures and sources of supply:

- (1) Improvements in energy efficiency;
- (2) Pooling of power;
- (3) Purchases of power from neighboring states or countries;
- (4) Facilities that operate on solar or geothermal energy or wind;
- (5) Facilities that operate on the principle of cogeneration or hydrogeneration; and
- (6) Other generation facilities.

[(d)] 4. The commission may give preference to the measures and sources of supply set forth in paragraph (c) of *subsection 3* that:

[(1)] (a) Provide the greatest economic and environmental benefits to the state;

[(2)] (b) Are consistent with the provisions of this section; and

[(3)] (c) Provide levels of service that are adequate and reliable.

5. The commission shall [adopt] :

(a) *Adopt* regulations which determine the level of preference to be given to those measures and sources of supply [.] ; *and*

(b) *Consider the value to the public of using water efficiently when it is determining those preferences.*

Sec. 3. Chapter 244 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Each county which is a supplier of water for municipal, industrial or domestic purposes to customers within the boundaries of the county shall adopt a plan of water conservation based on the climate and the living conditions of the county. The provisions of the plan must apply to the county's property and its customers, but may also contain recommendations for the other residents and property within the county.

2. The plan:

(a) Must be adopted before July 1, 1992;

(b) Must be available for inspection by members of the public during office hours at the offices of the county; and

(c) May be revised from time to time to reflect the changing needs and conditions of the county. Each such revision must be made available for inspection by members of the public.

Sec. 4. Chapter 268 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Each city which is a supplier of water for municipal, industrial or domestic purposes to customers within the boundaries of the city shall adopt a plan of water conservation based on the climate and the living conditions of the city. The provisions of the plan must apply to the city's property and its customers, but may also contain recommendations for the other residents and property within the city.

2. *The plan:*

(a) Must be adopted before July 1, 1992;

(b) Must be available for inspection by members of the public during office hours at the offices of the city; and

(c) May be revised from time to time to reflect the changing needs and conditions of the city. Each such revision must be made available for inspection by members of the public.

Sec. 5. Chapter 269 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *Each town which is a supplier of water for municipal, industrial or domestic purposes to customers within the boundaries of the town shall adopt a plan of water conservation based on the climate and living conditions of the town. The provisions of the plan must apply to the town's property and its customers, but may also contain recommendations for the other residents and property within the town.*

2. *The plan:*

(a) Must be adopted before July 1, 1992;

(b) Must be available for inspection by members of the public during office hours at the offices of the town; and

(c) May be revised from time to time to reflect the changing needs and conditions of the town. Each such revision must be made available for inspection by members of the public.

Sec. 6. Chapter 309 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Each local improvement district which is a supplier of water for municipal, industrial or domestic purposes to customers within the boundaries of the local improvement district shall adopt a plan of water conservation based on the climate and the living conditions of the local improvement district. The provisions of the plan must apply to the district's property and its customers, but may also contain recommendations for the other residents and property within the district.

2. The plan:

(a) Must be adopted before July 1, 1992;

(b) Must be available for inspection by members of the public during office hours at the offices of the local improvement district; and

(c) May be revised from time to time to reflect the changing needs and conditions of the local improvement district. Each such revision must be made available for inspection by members of the public.

Sec. 7. Chapter 318 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Each general improvement district which is a supplier of water for municipal, industrial or domestic purposes to customers within the boundaries of the district shall adopt a plan of water conservation based on the climate and the living conditions of the district. The provisions of the plan must apply to the

district's property and its customers, but may also contain recommendations for the other residents and property within the district.

2. The plan:

(a) Must be adopted before July 1, 1992;

(b) Must be available for inspection by members of the public during office hours at the office of the district; and

(c) May be revised from time to time to reflect the changing needs and conditions of the district. Each such revision must be made available for inspection by members of the public.

SUMMARY--Directs Director of State Department of Conservation and Natural Resources to develop program to give credits to holder of water right for water saved through plan of conservation.
(BDR R-328)

CONCURRENT RESOLUTION--Directing the Director of the State Department of Conservation and Natural Resources to develop and adopt a program which gives credits to a holder of a water right for water saved through a plan of conservation.

WHEREAS, It is the policy of the State of Nevada to encourage the conservation of water by its residents; and

WHEREAS, A program which gives credits to a holder of a water right for water saved through a plan of conservation would create an incentive for the holder of a water right to conserve water; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE

CONCURRING, That the Director of the State Department of Conservation and Natural Resources is hereby directed to develop and adopt a program in which water credits are provided to the holder of a water right whose efforts result in the conservation of water; and be it further

RESOLVED, That a copy of this resolution be transmitted by the of the to the Director of the State Department of Conservation and Natural Resources.

SUMMARY--Directs interagency cooperation to avoid duplication of regulation regarding water quality and management of waste water. (BDR R-329)

CONCURRENT RESOLUTION--Directing interagency cooperation to avoid duplication of regulation regarding the quality of water and the management of waste water.

WHEREAS, The Division of Environmental Protection of the State Department of Conservation and Natural Resources and the Health Division of the Department of Human Resources are both responsible for the regulation and review of potential water pollution and sewerage disposal associated with subdivisions and the regulation and review of individual sewage disposal systems; and

WHEREAS, This duplication of responsibilities is a burden on the community which is regulated and limits the efficiency of the regulation; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE

CONCURRING, That the Division of Environmental Protection of the State Department of Conservation and Natural Resources and the Health Division of the Department of Human Resources are hereby directed to cooperate to avoid the duplication of effort and review regarding water quality and the management of waste water; and be it further

RESOLVED, That this cooperation should include, if necessary, entering into interagency agreements; and be it further

RESOLVED, That a copy of this resolution be transmitted by the _____ of the _____ to the Administrator of the Division of Environmental Protection and the Administrator of the Health Division.

SUMMARY--Urges State Environmental Commission to increase certain fees it collects to finance program of monitoring quality of water throughout state. (BDR R-330)

CONCURRENT RESOLUTION--Urging the State Environmental Commission to increase certain fees it collects to be used by the Division of Environmental Protection of the State Department of Conservation and Natural Resources to monitor the quality of water throughout the state.

WHEREAS, The future growth and prosperity of this state depends upon the availability of an adequate supply of water of suitable quality; and

WHEREAS, The waters of this state must be accurately monitored to ensure that the quality of those waters does not adversely affect the public health and welfare or harm wildlife; and

WHEREAS, The Division of Environmental Protection of the State Department of Conservation and Natural Resources is the agency in this state which is designated to control, prevent, reduce and eliminate pollution in the waters of this state; and

WHEREAS, Additional personnel and an increase in the division's operating budget is needed to ensure that the division can properly monitor the quality of water throughout the state; now, therefore, be it

of the Division of Environmental Protection and the Division of Water Resources in Clark County; and be it further

RESOLVED, That the State Environmental Commission and the Division of Water Resources increase the fees and assessments they respectively set by regulation for the services of these divisions to finance the increase in staff and operating expenses required in Clark County; and be it further

RESOLVED, That a copy of this resolution be transmitted by the
of the to the chairman of the State Environmental Commission and
the State Engineer.

SUMMARY--Clarifies authority of state engineer relating to appropriation of certain kinds of water. (BDR 48-332)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; declaring the policy of this state regarding the use of effluent; clarifying the authority of the state engineer to approve applications and issue permits for the appropriation of certain kinds of water; clarifying the procedure and criteria to be used by the Colorado River commission in acting upon certain applications; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 533 of NRS is hereby amended by adding thereto a new section to read as follows:

The legislature declares that it is the policy of this state to encourage and promote the use of effluent, where such use is not contrary to the public health, safety or welfare.

Sec. 2. NRS 533.372 is hereby amended to read as follows:

533.372 1. Based upon the public interest and the economic welfare of the State of Nevada, the state engineer may approve or disapprove any application of water to beneficial use or any application which contemplates a change in the place or beneficial use of water to a use involving the industrial purpose of generating energy to be exported out of this state.

2. [The] *Except as otherwise provided in subsection 3, the state engineer shall not approve any application or issue any permit to appropriate the waters of the Colorado River held in trust by the Colorado River commission except after approval of the application by the commission. The commission and the state engineer may adopt such joint regulations as may be necessary for the purpose of carrying out the provisions of this subsection.*

3. *The state engineer has sole authority to approve any application or issue any permit to appropriate:*

(a) *Effluent; or*

(b) *Recharged water that contains water originally appropriated from the Colorado River and injected into ground water.*

4. *As used in this section, "recharged water" has the meaning ascribed to it in NRS 534.015.*

Sec. 3. NRS 538.171 is hereby amended to read as follows:

538.171 1. The commission shall receive, protect and safeguard and hold in trust for the State of Nevada all water and water rights, and all other rights, interests or benefits in and to the waters of the Colorado River and to the power generated thereon held by or which may accrue to the State of Nevada

under and by virtue of any Act of the Congress of the United States or any compacts or treaties between states to which the State of Nevada may become a party, or otherwise.

2. Applications to appropriate such waters must be made in accordance with chapter 533 of NRS and are subject to *such* approval by the commission as [set forth in NRS 533.370 and] *is required by NRS 533.372. The commission shall use the procedure and criteria set forth in NRS 533.370 when considering such applications.*

SUMMARY--Directs state engineer to establish program that credits water rights to public water systems for adding certain customers.
(BDR 48-333)

FISCAL NOTE: Effect on Local Government: No.
 Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; directing the state engineer to establish a program that credits water rights to a public water system for adding certain customers; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 534 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The state engineer shall adopt regulations establishing a program that credits water rights to public water systems as provided in this section.

2. A public water system is entitled to receive a credit under the program established pursuant to this section for each new customer added to the public water system who:

(a) Was obtaining water from a domestic well which is located in the same ground water basin as the public water system; and

(b) Ceases to draw water from the well.

3. The state engineer may require that the domestic well of the new customer be plugged.

4. Credits granted pursuant to this section authorize a public water system to increase the amount of its appropriation of ground water by the amount credited.

5. As used in this section, "public water system" has the meaning ascribed to it in NRS 445.376.

Sec. 2. The state engineer shall:

1. Adopt the regulations required pursuant to section 1 of this act before July 1, 1992; and

2. Begin awarding credits pursuant to section 1 of this act for qualified new customers added to a public water system on or after July 1, 1992.

SUMMARY--Authorizes local governing bodies to require certain provisions relating to water on all parcel maps of proposed divisions of land.
(BDR 22-334)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to the division of land; authorizing local governing bodies to require all parcel maps of proposed divisions of land to include such provisions for the supply and quality of water and for sewerage as are reasonably necessary; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 278.462 is hereby amended to read as follows:

278.462 The governing body may require:

1. [Street grading, drainage provisions and lot] *Provisions for grading streets, drainage, the supply and quality of water, sewerage and designs for lots* as are reasonably necessary.
2. [Offsite access, street] *Provisions for offsite access and for the alignment, surfacing and width [, water quality, water supply and sewerage provisions] of*

streets as are reasonably necessary and consistent with the existing use of any land zoned for similar use which is within 660 feet of the proposed parcel. If the proposed parcels are less than 1 acre, the governing body may require additional improvements which are reasonably necessary and consistent with the use of the land if it is developed as proposed.

3. For a second or subsequent parcel map with respect to a single parcel or contiguous tract of land under the same ownership any reasonable improvement, but not more than would be required if the parcel were a subdivision.

SUMMARY--Requires approval of certain state agencies as to water quantity and quality before certain parcel maps may be recorded.
(BDR 22-335)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to parcel maps; requiring the approval of certain state agencies as to water quantity and quality before parcel maps for the division of land which will not be served by a certain water system may be recorded; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 278 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A county recorder shall not accept for filing a parcel map unless the map is accompanied by:

(a) A written statement signed by the treasurer of the county in which the land to be divided is located indicating that no property taxes on the land are delinquent; and

(b) Except as otherwise provided in subsection 2, evidence that the land to be divided is within the service area of, and will be served by, a water system:

- (1) Created as a general improvement district;*
- (2) Owned or created by a county or city; or*
- (3) Regulated by the public service commission of Nevada.*

2. If the land to be divided is not within the service area of a water system created as a general improvement district, owned or created by a county or city, or regulated by the public service commission of Nevada, or is within such a service area but will not be served by the water system, the county recorder shall not accept the parcel map unless it is accompanied by:

(a) A certificate issued by the division of water resources of the state department of conservation and natural resources, indicating it approves the parcel map concerning the water quantity; and

(b) A certificate issued by the health division of the department of human resources, or a local health agency acting on its behalf, indicating it approves the parcel map concerning sewage disposal, water pollution, water quality and water supply facilities. The health division or local agency shall not issue such a certificate until it receives written verification from the division of environmental protection of the state department of conservation and natural resources that the map is approved with regard to water pollution and sewage disposal in accordance with the provisions of NRS 445.131 to 445.354, inclusive.

3. Any person aggrieved by the issuance or denial of approval with regard to water pollution and sewage disposal by the division of environmental protection

of the state department of conservation and natural resources may appeal to the state environmental commission, which shall affirm, modify or reverse the action of the division. The commission shall adopt regulations which set forth the time within which an appeal must be taken and the manner of taking the appeal to the commission.

4. A copy of the certificate, if any, issued by the division of water resources pursuant to subsection 2 must be furnished to the person proposing to divide the land, who in turn shall provide a copy of the certificate to each purchaser of land before the time the sale is completed. Any statement of approval issued pursuant to subsection 2 is not a warranty or representation in favor of any person as to the safety or quantity of the water.

Sec. 2. NRS 278.461 is hereby amended to read as follows:

278.461 1. A person who proposes to divide any land for transfer or development into four or fewer lots shall file a parcel map in the office of the county recorder, unless this requirement is waived or the provisions of NRS 278.471 to 278.4725, inclusive, apply. [The map must be accompanied by a written statement signed by the treasurer of the county in which the land to be divided is located indicating that no property taxes on the land are delinquent.]

2. A parcel map is not required when the division *of land* is for the express purpose of:

- (a) The creation or realignment of a public right of way by a public agency.
- (b) The creation or realignment of an easement.

(c) An adjustment of the boundary line or the transfer of land between two owners of adjacent property which does not result in the creation of any additional parcels.

(d) The purchase, transfer or development of space within an apartment building or an industrial or commercial building.

(e) Carrying out an order of any court or dividing land as a result of an operation of law.

3. A parcel map is not required for any of the following transactions involving land:

(a) The creation of a lien, mortgage, deed of trust or any other security instrument.

(b) The creation of a security or unit of interest in any investment trust regulated [under] *pursuant to* the laws of this state or any other interest in an investment entity.

(c) Conveying an interest in oil, gas, minerals or building materials, which are severed from the surface ownership of real property.

(d) Conveying an interest in land acquired by the department of transportation [under] *pursuant to* chapter 408 of NRS.

(e) Filing a certificate of amendment [under] *pursuant to* NRS 278.473.

4. When two or more separate lots, parcels, sites, units or plots of land are purchased, they remain separate for the purposes of this section and NRS 278.468, 278.590 and 278.630. When the lots, parcels, sites, units or plots are

resold or conveyed they are exempt from the provisions of NRS 278.010 to 278.630, inclusive, until further divided.

5. Unless a method of dividing land is adopted for the purpose or would have the effect of evading this chapter, the provisions for the division of land by a parcel map do not apply to a transaction exempted by paragraph (c) of subsection 1 of NRS 278.320.

Sec. 3. NRS 278.467 is hereby amended to read as follows:

278.467 1. If the parcel map is waived , the authority which granted the waiver may require the preparation and recording of a document which contains:

- (a) A legal description of all parts based on a system of rectangular surveys;
- (b) A provision for the dedication or reservation of any [road] right of way or easement [;] *for a road*; and
- (c) The approval of the authority which granted the waiver.

2. If a description by metes and bounds is necessary in describing the parcel division, it must be prepared by a professional land surveyor and bear his signature and stamp.

3. The person preparing the document may include the following statement:

This document was prepared from existing information (identifying it and stating where filed and recorded) and the undersigned assumes no responsibility for the existence of monuments or correctness of other information shown on or copied from any such prior documents.

4. [A document recorded pursuant to this section must be accompanied by a written statement signed by the treasurer of the county in which the land to be divided is located indicating that no property taxes on the land are delinquent.] *The county recorder shall not record a document pursuant to this section unless it is accompanied by the statement and evidence or certificates required pursuant to section 1 of this act.*

SUMMARY--Expresses Legislature's intention to maintain primary enforcement responsibility for program of safe drinking water.
(BDR R-336)

CONCURRENT RESOLUTION--Expressing the intention of the Legislature to maintain the primary enforcement responsibility at the state level for the program of safe drinking water.

WHEREAS, The Congress of the United States has enacted the Safe Drinking Water Act, which allows a state to have primary enforcement responsibility (primacy) for the Public Water System Supervision Program as established by the Act; and

WHEREAS, Retaining primacy permits a state to exercise discretion in establishing schedules for monitoring water quality, approving variances and exemptions, and conducting other activities which are authorized under the Act; and

WHEREAS, There is a need for the state to provide technical assistance and make available laboratory facilities to suppliers of water for use within the state; and

WHEREAS, There is a need for continuing support of the state program; and

WHEREAS, Safe drinking water is vitally important to the health of all Nevadans and of all the visitors to the state; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE

CONCURRING, That the Legislature of the State of Nevada hereby concludes that the primary enforcement responsibility for the Public Water System Supervision Program should remain at the state level; and be it further

RESOLVED, That Nevada's program should include provisions for making technical assistance and laboratory facilities available to suppliers of water for use within the state.

SUMMARY--Urges Congress and President to provide additional financial support for small water systems. (BDR R-337)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Urging Congress and the President to provide additional financial support for small water systems.

WHEREAS, Many small water systems that are required to meet the standards set forth in the federal Safe Drinking Water Act lack the financial ability to make the necessary changes to their systems; and

WHEREAS, Congress is considering or has considered the following legislation which would assist municipalities and states in financing investments in water systems:

1. The Environmental Infrastructure Bond Act, which assures tax-exempt status for bonds which finance sewage treatment facilities, drinking water and any other environmental control facilities, regardless of the amount of private participation in the project;

2. The Rural Water Supply Assistance Act of 1989, which allows federal capitalization grants to states for revolving loan funds to construct rural water systems and improvements for existing systems which serve less than 3,300 persons;

3. The Rural Partnership Act of 1989, which establishes grants and revolving federal loans for rural areas to secure adequate water supplies and meet federal drinking water standards; and

4. An amendment to the Tax Reform Act of 1986, which restores the tax-exempt status of bond financing for privately financed facilities if 95 percent of the bond proceeds are dedicated to eligible projects and the facility serves the general public; and

WHEREAS, There are existing federal programs, such as Community Development Block Grants and section 501 of the Disaster Assistance Act of 1989, which can provide additional support for small water systems; now, therefore, be it

RESOLVED BY THE AND OF THE STATE OF
NEVADA, JOINTLY, That the Legislature of Nevada urges the Congress and
President of the United States to adopt legislation which provides additional
financial support for small water systems; and be it further

RESOLVED, That Congress and the President are urged to provide additional funding through existing programs such as the Community Development Block Grants and section 501 of the Disaster Assistance Act of 1989; and be it further

RESOLVED, That a copy of this resolution be transmitted by the _____ of the _____ to the President of the United States, the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation.

SUMMARY--Establishes program of grants for capital improvements required of certain water systems. (BDR 30-338)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to water systems; establishing a program of grants for capital improvements required of certain water systems; authorizing the issuance of general obligation bonds to support the purposes of the program; levying a property tax to support the consolidated bond interest and redemption fund; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 349 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this act.

Sec. 2. *As used in sections 2 to 11, inclusive, of this act, unless the context otherwise requires:*

1. *"Board" means the board for financing water projects created pursuant to NRS 349.957.*

2. *"Community water system" means a public water system which:*

(a) Has 15 or more service connections; or

(b) Serves 25 or more persons,

at places which are intended for year-round occupancy.

3. *"Costs of capital improvements to community water systems and nontransient water systems" includes costs associated with the:*

(a) Consolidation of existing systems; and

(b) Transfer and connection of a public water system to a system owned by a purveyor of water or a public utility.

4. *"Fund" means the fund for grants to community and nontransient water systems.*

5. *"Nontransient water system" means a public water system that regularly serves 25 or more of the same persons for more than 6 months per year, but which is not a community water system.*

6. *"Public water system" has the meaning ascribed to it in NRS 445.376.*

7. *"Purveyor of water" means a political subdivision engaged in the business of furnishing water, for compensation, to persons within the political subdivision.*

Sec. 3. *There is hereby established a program to provide grants of money to purveyors of water to pay for costs of capital improvements to community water systems and nontransient water systems required by the state board of health pursuant to NRS 445.361 to 445.399, inclusive, or made necessary by the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.) and the regulations adopted pursuant thereto.*

Sec. 4. 1. The board shall administer the program and shall adopt regulations necessary for that purpose.

2. The regulations must provide such requirements for participation in the program as the board deems necessary.

3. The board may, by regulation, impose an administrative fee which must be collected from each recipient of a grant from the fund. If such a fee is imposed, all revenue derived from the fee must be used to defray the costs of administering the fund and the expenses of the board in administering the program.

Sec. 5. 1. Grants may be made under the program only for those community and nontransient water systems that are in operation on the effective date of this act.

2. In making its determination of which purveyors of water are to receive grants, the board shall give preference to those purveyors of water whose public water systems regularly serve fewer than 3,300 persons.

3. Each recipient of a grant shall provide, from a source other than the State of Nevada, an amount of money for the same purpose. The board shall develop a scale to be used to determine that amount, but in no case may the recipient be required to provide an amount less than 15 percent or more than 75 percent of the amount of the grant. The scale must be based upon the average household income of the customers of the recipient, and provide adjustments for the demonstrated economic hardship of those customers, the existence of an

imminent risk to public health and any other factor that the board determines to be relevant.

4. Except as otherwise provided in subsections 1 and 2, the determination of which purveyors of water are to receive grants is solely within the discretion of the board.

Sec. 6. *1. The fund for grants to community and nontransient water systems is hereby created.*

2. Except as otherwise provided by subsection 3 of section 4 of this act, the money in the fund must be used only to make grants in furtherance of the program.

3. All claims against the fund must be paid as other claims against the state are paid.

Sec. 7. *All money received for the fund from:*

1. The issuance of bonds pursuant to section 8 of this act; or

2. Any other source,

must be deposited with the state treasurer to the credit of the fund. The interest and income earned on the money in the fund, after deducting any applicable charges, must be credited to the fund.

Sec. 8. *The state board of examiners shall issue general obligation bonds of the State of Nevada in the face amount of not more than \$25,000,000 to support the purposes of the program. The net proceeds from the sale of the bonds must be deposited in the fund.*

Sec. 9. 1. *A tax ad valorem of .0102 cents on each \$100 of assessed valuation of taxable property is hereby levied for each fiscal year, commencing July 1, 1991, and ending June 30, 2011. The tax must be collected in the manner provided in chapter 361 of NRS on all taxable property in this state excluding such property as is by law exempt from taxation.*

2. *The proceeds of the tax levied by subsection 1 are hereby appropriated for each fiscal year to the consolidated bond interest and redemption fund to discharge the obligations of the State of Nevada arising from the bonds issued pursuant to section 8 of this act as they are respectively due in that fiscal year. The money appropriated by this section must be accounted for separately and any balance of such money remaining at the end of the respective fiscal years does not revert to the state general fund.*

Sec. 10. 1. *On or before July 1 of each fiscal year, commencing July 1, 1991, and ending June 30, 2011, the state controller shall estimate the amount of proceeds of the tax levied by section 9 of this act. If the amount is less than the total obligation of the State of Nevada for payment of the interest on and principal of the bonds issued pursuant to section 8 of this act that will become due in the fiscal year, he shall reserve in the state general fund an amount that is sufficient to pay the remainder of the total obligation. The state controller may revise the estimate and amount reserved.*

2. *If the money in the consolidated bond interest and redemption fund appropriated by section 9 of this act is insufficient to pay those obligations as they become due, the state controller shall cause the money in reserve to be*

transferred from the state general fund to the consolidated bond interest and redemption fund and accounted for together with the money appropriated by section 9 of this act. The amount reserved is hereby contingently appropriated for that purpose. Any balance of the sums appropriated by this subsection remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 and reverts to the state general fund as soon as all payments of money committed have been made.

3. The state controller shall report to the legislature or, if the legislature is not in session, to the interim finance committee:

(a) The amount of any estimate made pursuant to subsection 1 and the amount of money reserved in the state general fund based upon the estimate;

(b) The amount of money transferred from the state general fund pursuant to subsection 2; and

(c) The amount of money that reverts to the state general fund pursuant to subsection 2.

Sec. 11. *The provisions of NRS 349.935 to 349.956, inclusive, and 349.961 do not apply to the program or to any grants made or bonds issued pursuant to this act.*

Sec. 12. This act becomes effective upon passage and approval.

SUMMARY--Establishes program of loans for capital improvements required of community water systems. (BDR 30-339)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to community water systems; establishing a program of loans for capital improvements required of community water systems; authorizing the issuance of revenue bonds to support the purposes of the program; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 349 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

Sec. 2. *As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires:*

1. *"Board" means the board for financing water projects created pursuant to NRS 349.957.*

2. *"Community water system" means a public water system which:*

(a) Has 15 or more service connections; or

(b) Serves 25 or more persons,

at places which are intended for year-round occupancy.

3. *"Fund" means the revolving fund to finance capital improvements to community water systems created by section 5 of this act.*

4. *"Public water system" has the meaning ascribed to it in NRS 445.376.*

5. *"Supplier of water" has the meaning ascribed to it in NRS 445.377.*

Sec. 3. There is hereby established a program to provide loans at or below the market rate to suppliers of water to pay for costs of capital improvements to community water systems required or made necessary by the state board of health pursuant to NRS 445.361 to 445.399, inclusive, or by the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.) and the regulations adopted pursuant thereto.

Sec. 4. 1. The board shall administer the program and shall adopt regulations necessary for that purpose.

2. The regulations must provide such requirements for participation in the program as the board deems necessary.

3. The board may, by regulation, impose an administrative fee which must be collected from each recipient of a loan from the fund. If such a fee is imposed, all revenue derived from the fee must be used to defray the costs of administering the fund and the expenses of the board in administering the program.

Sec. 5. 1. Loans may be made under the program only for those community water systems that are in operation on the effective date of this act.

2. *In making its determination of which suppliers of water are to receive loans, the board shall give preference to those suppliers whose community water systems regularly serve fewer than 3,300 persons.*

3. *Except as otherwise provided in subsections 1 and 2, the determination of which suppliers of water are to receive loans is solely within the discretion of the board.*

4. *The board shall administer any money made available to this state by the Federal Government for the purposes of the program.*

Sec. 6. 1. *The revolving fund to finance capital improvements to community water systems is hereby created.*

2. *Except as otherwise provided by subsection 3 of section 4 of this act, the money in the fund must be used only to make loans in furtherance of the program.*

3. *All claims against the fund must be paid as other claims against the state are paid.*

Sec. 7. *All money received for the fund:*

1. *From the issuance of bonds pursuant to section 8 of this act;*

2. *As payment of principal or interest on loans made from the fund; or*

3. *From any other source,*

must be deposited with the state treasurer to the credit of the fund. The interest and income earned on the money in the fund, after deducting any applicable charges, must be credited to the fund.

Sec. 8. *1. The state board of examiners shall issue revenue bonds in the face amount of not more than \$100,000,000 to support the purposes of the program established by section 3 of this act. The net proceeds from the sale of the bonds, after deduction of the expenses related to the issuance of the bonds, must be deposited in the fund to finance capital improvements to community water systems.*

2. The bonds and the interest thereon are payable solely from the net revenues received for the fund as payment of principal and interest on loans made from the fund.

Sec. 9. *Money obtained by a supplier of water from a loan made pursuant to the program may not be used as any part of an amount of money required to be provided by the recipient as a condition of receiving a grant of money for similar purposes.*

Sec. 10. *The provisions of NRS 349.935 to 349.956, inclusive, and 349.961 do not apply to the program or to any loans made or bonds issued pursuant to this act.*

Sec. 11. *This act becomes effective upon passage and approval.*

SUMMARY--Proposes to amend Nevada constitution to authorize donation or loan of state money or credit to private organizations for public purposes. (BDR C-340)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Proposing to amend the Nevada constitution to authorize the donation or loan of state money or credit to private organizations for public purposes.

RESOLVED BY THE AND OF THE STATE OF NEVADA, JOINTLY, That section 9 of article 8 of the constitution of the State of Nevada be amended to read as follows:

[Sec:] Sec. 9. The State shall not donate or loan money, or its credit, *or* subscribe to or be [,] interested in the Stock of any company, association, or corporation, except *for a public purpose or to* corporations formed for educational or charitable purposes.

SUMMARY--Revises composition and duties of board for financing water projects. (BDR 30-341)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water projects; requiring the administrator of the health division of the department of human resources, or a person he designates, to serve ex officio as a nonvoting member of the board for financing water projects; requiring the board to request the administrator to comment on any proposed water projects which affect drinking water; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 349.957 is hereby amended to read as follows:

349.957 1. The board for financing water projects is hereby created. The board consists of *one ex officio member and* five members appointed by the governor.

2. The governor shall appoint:

(a) Four persons who are:

(1) Residents of this state; and

(2) Knowledgeable and experienced in the fields of planning and the development and reclamation of water resources.

(b) One person who is a resident of this state and knowledgeable in the field of municipal finance.

3. *The administrator of the health division of the department of human resources, or a person he designates, shall serve ex officio as a nonvoting member of the board.*

4. Not more than three *voting* members of the board may be members of the same political party and not more than two may be residents of the same county.

Sec. 2. NRS 349.958 is hereby amended to read as follows:

349.958 1. Each *voting* member of the board is entitled to receive a salary of not more than \$80 per day, as fixed by the board, for his services while actually engaged in the performance of his duties as a member of the board.

2. While engaged in the business of the board, each *voting* member and employee of the board is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 3. NRS 349.959 is hereby amended to read as follows:

349.959 The board shall:

1. At its first meeting and annually thereafter elect a chairman from among its *voting* members.

2. Meet regularly at least once in each calendar quarter and at other times upon the call of the chairman.

Sec. 4. NRS 349.961 is hereby amended to read as follows:

349.961 1. When any municipality or other obligor desires to undertake a water project it may present its preliminary plan to the board for approval. *If the proposed water project affects drinking water, the board shall request the administrator of the health division of the department of human resources to submit comments and recommendations regarding the project.* The board shall analyze the potential yield of the water project, and may tentatively approve it if it will preserve or increase the water available for beneficial use in this state.

2. If the board, after a public hearing on the issue, tentatively approves the water project, the municipality or other obligor may proceed to prepare a final plan and submit it for final approval. If the board finally approves the water project, the cost of the final plan may be included in the cost of the water project. If the board does not finally approve the water project, the director may, within the limits of money available for this purpose in the fund for the financing of water projects, reimburse a municipality for the costs incurred after the tentative approval.

SUMMARY--Creates advisory board on community water systems and requires operators of certain community water systems to be certified by state board of health. (BDR 40-342)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to water systems; creating an advisory board on community water systems; requiring operators of certain community water systems to be certified by the state board of health; requiring the state board of health to adopt related regulations; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 445 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *"Community water system" means a public water system which:*

1. Has 15 or more service connections; or

2. Serves 25 or more persons,

at places which are intended for year-round occupancy.

Sec. 3. "Operator" means a person regularly in charge of the day to day operations of a community water system.

Sec. 4. 1. An advisory board on community water systems, consisting of four members appointed by the governor, is hereby created.

2. The governor shall appoint:

(a) One member who has at least 3 years of experience as an operator of a public water system;

(b) One member who is an operator of a public water system certified by the American Water Works Association at the highest level of certification;

(c) One member who represents a municipality which employs an operator of a public water system; and

(d) One member who represents an area whose population is less than 5,000 which is served by a public water system.

3. Each member of the advisory board must be appointed to a term of 2 years and may be reappointed.

4. Each member of the advisory board is entitled to receive a salary of \$60 for each day's attendance at a meeting of the board.

5. Any member who is appointed to fill a vacancy must be appointed in the same manner and possess the same general qualifications as his predecessor in office.

Sec. 5. 1. The advisory board on community water systems shall meet at least twice annually at times and places specified by a call of the chairman or a majority of the advisory board.

2. *The advisory board shall select from its members a chairman and vice chairman who shall hold office for 2 years.*

3. *The advisory board may adopt such bylaws as it deems necessary for its operation.*

4. *The advisory board shall act in an advisory capacity to the state board of health in matters relating to the certification of operators of community water systems.*

Sec. 6. 1. *A person shall not act as an operator of a community water system which:*

(a) Serves 100 or more persons;

(b) Is designated by the health division as being supplied by surface water; or

(c) Is designated by the health division as being supplied by ground water that is under the direct influence of surface water, unless he has obtained a certificate to operate a community water system from the state board of health.

2. *An operator may be certified to operate more than one community water system.*

3. *No provision of this section requires that a certified operator be on site at a community water system during all hours of operation.*

Sec. 7. 1. *The state board of health shall adopt regulations to establish:*

(a) A system of classification of operators of community water systems;

(b) Requirements for certification for each class of operator; and

(c) Reasonable fees for issuing and renewing certificates.

2. *The fees so collected must only be used to:*

(a) Defray the cost of issuing and renewing certificates; and

(b) Pay any expenses incurred by the state board of health in carrying out its duties relating to operators of community water systems.

3. *The state board of health shall establish and administer examinations to determine the eligibility of any person who applies for certification. An applicant is entitled to certification upon satisfaction of the requirements of the state board of health and payment of the applicable fee.*

Sec. 8. NRS 445.363 is hereby amended to read as follows:

445.363 As used in NRS 445.361 to 445.399, inclusive, *and sections 2 to 7, inclusive, of this act*, unless the context otherwise requires, the terms defined in NRS 445.366 to 445.377, inclusive, *and sections 2 and 3 of this act*, have the meanings ascribed to them in those sections.

Sec. 9. NRS 445.381 is hereby amended to read as follows:

445.381 [The] *In addition to the regulations required to be adopted pursuant to section 7 of this act, the state board of health may:*

1. Adopt such regulations as may be necessary to govern the construction, operation and maintenance of public water systems if those activities affect the quality of water, but the regulations do not supersede any regulation of the public service commission of Nevada.

2. Establish by regulation a system for the issuance of operating permits for suppliers of water and set a reasonable date after which a person shall not

operate a public water system without possessing a permit issued by a health authority.

Sec. 10. NRS 445.387 is hereby amended to read as follows:

445.387 1. The state health officer and health authorities shall:

(a) Enforce the provisions of NRS 445.361 to 445.399, inclusive, *sections 2 to 7, inclusive, of this act*, and regulations adopted pursuant thereto; and

(b) Make such investigations and inspections as are necessary to [insure] *ensure* compliance with those sections and regulations.

2. Any representative of a health authority may enter the property of any public water system at any reasonable time for the purpose of inspecting and investigating the adequacy and sanitary condition of the system and the quality of its water.

3. Except in an emergency, a health authority shall notify and permit the supplier of water to be present when an inspection or investigation is being conducted.

Sec. 11. NRS 445.395 is hereby amended to read as follows:

445.395 1. A health authority may apply to a court of competent jurisdiction to enjoin the continuance or occurrence of any act or practice which violates the provisions of NRS 445.361 to 445.399, inclusive, *sections 2 to 7, inclusive, of this act*, or of any regulation adopted or order issued pursuant thereto.

2. On a showing by the health authority that such a violation has occurred or will occur, the court may issue, without bond, such prohibitory or mandatory injunction as the facts may warrant.

Sec. 12. NRS 445.397 is hereby amended to read as follows:

445.397 1. Any supplier of water who willfully:

(a) Violates any standard established pursuant to NRS 445.379;

(b) Violates or fails to comply with an emergency order issued pursuant to NRS 445.389;

(c) Violates any condition imposed by the state board of health upon granting a variance or exemption under NRS 445.391; or

(d) Fails to give a notice as required by NRS 445.393,

shall pay a civil penalty of not more than \$5,000 for each day of such violation.

2. The civil penalties prescribed in this section may be imposed in addition to any other penalties or relief prescribed in NRS 445.361 to 445.399, inclusive [.] , *and sections 2 to 7, inclusive, of this act.*

Sec. 13. NRS 445.399 is hereby amended to read as follows:

445.399 Any person who violates the provisions of NRS 445.361 to 445.399, inclusive, *sections 2 to 7, inclusive, of this act*, or any regulation adopted by the state board of health pursuant to those provisions is guilty of a misdemeanor. Each day of violation constitutes a separate offense.

Sec. 14. The state board of health shall issue, without examination, to an operator who is in charge of a community water system on July 1, 1992, a

provisional certificate to operate a community water system for the appropriate classification. The provisional certificate must be valid:

1. For a reasonable period to allow the operator to obtain certification from the state board of health.

2. Only at community water systems where he is employed on July 1, 1992.

Sec. 15. 1. This section and sections 1 to 5, inclusive, 8, and 10 to 14, inclusive, of this act become effective on October 1, 1991.

2. Sections 7 and 9 of this act become effective on January 1, 1992.

3. Section 6 of this act becomes effective on July 1, 1992.

SUMMARY--Requires owner of newly constructed water system to obtain permit to operate from state board of health. (BDR 40-343)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water systems; requiring the owner of a newly constructed water system to obtain a permit to operate from the state board of health; requiring the state board of health to adopt regulations establishing procedures for the issuance of permits; requiring surety and authorizing assessments to ensure continued operation of water systems; providing remedies for unsatisfactory service or violations of conditions; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 445 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this act.

Sec. 2. *"Water system" means any system which provides more than one single-family residence with piped water for human consumption. The term includes public water systems.*

Sec. 3. Except as otherwise provided in section 4 of this act, no water system which is constructed on or after July 1, 1991, may operate unless the owner of the water system receives a permit to operate the water system from the state board of health or health authority designated by the state board of health. The owner of such a water system is entitled to a permit to operate the water system upon satisfaction of the requirements set forth in sections 2 to 9, inclusive, of this act and the requirements set forth in the regulations adopted by the state board of health pursuant to NRS 445.381.

Sec. 4. A water system subject to the jurisdiction of the public service commission of Nevada is exempt from the provisions of sections 2 to 9, inclusive, of this act.

Sec. 5. A permit to operate a water system may not be issued pursuant to section 3 of this act unless all of the following conditions are met:

1. Neither water provided by a public utility nor water provided by a municipality or other public entity is available to the persons to be served by the water system.

2. The applicant fully complies with all of the conditions of sections 2 to 9, inclusive, of this act.

3. The local governing body assumes:

(a) Responsibility in case of default by the builder or developer of the water system for its continued operation and maintenance in accordance with all of the terms and conditions of the permit.

(b) The duty of assessing the lands served as provided in subsection 5.

4. *The applicant furnishes the local governing body sufficient surety in the form of a bond, certificate of deposit, investment certificate or any other form acceptable to the governing body, to ensure the continued maintenance and operation of the water system:*

(a) For 5 years following the date the system is placed in operation; or

(b) Until 75 percent of the lots or parcels served by the system are sold, whichever is later.

5. *The owners of the lands to be served by the water system record a declaration of covenants, conditions and restrictions, which is an equitable servitude running with the land and which must provide that each lot or parcel will be assessed by the local governing body for its proportionate share of the cost of continued operation and maintenance of the water system if there is a default by the applicant or operator of the water system and a sufficient surety, as provided in subsection 4, is not available.*

6. *The declaration of covenants, conditions and restrictions recorded by the owners of the lands further provides that if the local governing body determines that:*

(a) The water system is not satisfactorily serving the needs of its users; and

(b) Water provided by a public utility or a municipality or other public entity is reasonably available,

the local governing body may, pursuant to section 16 or 17 of this act, require all users of the water system to connect into the available water system provided by a public utility or a municipality or other public entity, and each lot or

parcel will be assessed by the local governing body for its proportionate share of the cost of connecting into that water system. These assessments are not subject to the jurisdiction of the public service commission of Nevada.

7. Provision has been made for disposition of the water system and the land on which it is situated after the local governing body requires all users to connect into an available water system provided by a public utility or a municipality or other public entity.

Sec. 6. No lien for the assessments provided by the covenants, conditions and restrictions described in section 5 of this act is binding upon the property until the local governing body, after a hearing, establishes the costs, apportions them to each lot or parcel and records a notice of lien in the office of the county recorder in the county in which the property is located.

Sec. 7. 1. The proceeds of any assessments upon lots or parcels must be deposited with the treasurer of the local governing body which received them, and they may be expended only for the:

(a) Continued maintenance and operation of the water system;

(b) Replacement of the water system if necessary; and

(c) Payment of the costs of connection to any water system provided by a public utility or a municipality or other public entity that becomes reasonably available.

2. If any surplus exists in the proceeds of assessments after all purposes of the assessments have been fully met, the surplus must be refunded to the persons who paid the assessments, in the proportion that their respective assessments

bear to the gross proceeds of all assessments collected by the local governing body.

Sec. 8. 1. If the state board of health has found that any of the conditions of a permit to operate such a water system are being violated and has notified the holder of the permit that he must bring the water system into compliance, but the holder of the permit has failed to comply within a reasonable time after the date of the notice, the local governing body may take the following actions independently of any further action by the state board of health:

(a) Give written notice, by certified mail, to the owner of the water system and the owners of the property served by the system that if the violation is not corrected within 30 days after the date of the notice, the local governing body will seek a court order authorizing it to assume control; and

(b) After the 30-day period has expired, if the water system has not been brought into compliance, apply to the district court for an order authorizing the local governing body to assume control of the system and assess the property for the continued operation and maintenance of the system as provided in subsection 5 of section 5 of this act.

2. If the local governing body determines at any time that immediate action is necessary to protect the public health and welfare, it may assume physical control and operation of a water system without complying with any of the requirements set forth in subsection 1. The local governing body may not maintain control of a water system pursuant to this subsection for a period

greater than 30 days unless it obtains an order from the district court authorizing an extension.

Sec. 9. *No provision of sections 2 to 9, inclusive, of this act, prevents:*

1. A local governing body or a health district from imposing its own conditions for approval of the operation of any water system located within its jurisdiction, which may be more stringent than those authorized by sections 2 to 9, inclusive, of this act.

2. A local governing body from requiring the prior approval of a proposed water system by a local committee created for that purpose.

3. A local governing body from converting connections to water systems into connections to water systems provided by a public utility or a municipality or other public entity.

Sec. 10. NRS 445.363 is hereby amended to read as follows:

445.363 As used in NRS 445.361 to 445.399, inclusive, *and sections 2 to 9, inclusive, of this act*, unless the context otherwise requires, the terms defined in NRS 445.366 to 445.377, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 11. NRS 445.381 is hereby amended to read as follows:

445.381 The state board of health [may:

1. Adopt such] :

1. Shall adopt regulations establishing procedures for a system of permits to operate water systems which are constructed on or after July 1, 1991.

2. *May adopt such other* regulations as may be necessary to govern the construction, operation and maintenance of public water systems if those activities affect the quality of water, but the regulations do not supersede any regulation of the public service commission of Nevada.

[2. Establish]

3. *May establish* by regulation a system for the issuance of operating permits for suppliers of water and set a reasonable date after which a person shall not operate a public water system *constructed before July 1, 1991*, without possessing a permit issued by a health authority.

Sec. 12. NRS 445.387 is hereby amended to read as follows:

445.387 1. The state health officer and health authorities shall:

(a) Enforce the provisions of NRS 445.361 to 445.399, inclusive, *sections 2 to 9, inclusive, of this act*, and regulations adopted pursuant thereto; and

(b) Make such investigations and inspections as are necessary to [insure] *ensure* compliance with those sections and regulations.

2. Any representative of a health authority may enter the property of any public water system at any reasonable time for the purpose of inspecting and investigating the adequacy and sanitary condition of the system and the quality of its water.

3. Except in an emergency, a health authority shall notify and permit the supplier of water to be present when an inspection or investigation is being conducted.

Sec. 13. NRS 445.395 is hereby amended to read as follows:

445.395 1. A health authority may apply to a court of competent jurisdiction to enjoin the continuance or occurrence of any act or practice which violates the provisions of NRS 445.361 to 445.399, inclusive, *sections 2 to 9, inclusive, of this act*, or of any regulation adopted or order issued pursuant thereto.

2. On a showing by the health authority that such a violation has occurred or will occur, the court may issue, without bond, such prohibitory or mandatory injunction as the facts may warrant.

Sec. 14. NRS 445.397 is hereby amended to read as follows:

445.397 1. Any supplier of water who willfully:

(a) Violates any standard established pursuant to NRS 445.379;

(b) Violates or fails to comply with an emergency order issued pursuant to NRS 445.389;

(c) Violates any condition imposed by the state board of health upon granting a variance or exemption under NRS 445.391; or

(d) Fails to give a notice as required by NRS 445.393,
shall pay a civil penalty of not more than \$5,000 for each day of such violation.

2. The civil penalties prescribed in this section may be imposed in addition to any other penalties or relief prescribed in NRS 445.361 to 445.399, inclusive [.] , *and sections 2 to 9, inclusive, of this act*.

Sec. 15. NRS 445.399 is hereby amended to read as follows:

445.399 Any person who violates the provisions of NRS 445.361 to 445.399, inclusive, *sections 2 to 9, inclusive, of this act*, or any regulation adopted by the

state board of health pursuant to those provisions is guilty of a misdemeanor. Each day of violation constitutes a separate offense.

Sec. 16. Chapter 244 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the board of county commissioners determines that:

(a) A water system which is located in the county is not satisfactorily serving the needs of its users; and

(b) Water provided by a public utility or a municipality or other public entity is reasonably available to those users, the board may require all users of the system to connect into the available water system provided by a public utility or a municipality or other public entity, and may assess each lot or parcel served for its proportionate share of the cost of connecting into that water system. These assessments are not subject to the jurisdiction of the public service commission of Nevada.

2. As used in this section, "water system" means any system which provides more than one single-family residence with piped water for human consumption. The term does not include a water system subject to the jurisdiction of the public service commission of Nevada.

Sec. 17. Chapter 268 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the governing body of the city determines that:

(a) A water system which is located within the city limits is not satisfactorily serving the needs of its users; and

(b) Water provided by a public utility or a municipality or other public entity is reasonably available to those users, the governing body may require all users of the system to connect into the available water system provided by a public utility or a municipality or other public entity, and may assess each lot or parcel served for its proportionate share of the cost of connecting into that water system. These assessments are not subject to the jurisdiction of the public service commission of Nevada.

2. As used in this section, "water system" means any system which provides more than one single-family residence with piped water for human consumption. The term does not include a water system subject to the jurisdiction of the public service commission of Nevada.

Sec. 18. This act becomes effective upon passage and approval.

SUMMARY--Urges cities and counties to protect sources of drinking water in their communities from contamination. (BDR R-344)

CONCURRENT RESOLUTION--Urging cities and counties in this state to establish zones to protect wells which supply water to public water systems from contamination.

WHEREAS, The Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.) requires the monitoring of public water systems to determine the level of contaminants in that drinking water; and

WHEREAS, The Safe Drinking Water Act also permits a designated state agency (currently, the Division of Environmental Protection of the State Department of Conservation and Natural Resources) to modify the frequency of required monitoring based upon assessments of the vulnerability of the sources of water to pollution; and

WHEREAS, There is a need to protect the surface and subsurface areas surrounding a water well which supplies water to a public water system from contaminants which may reach the well; and

WHEREAS, The establishment of zones for the protection of such surface and subsurface areas may be considered in determining the vulnerability of sources of water to pollution and may, therefore, be a factor in determining the frequency of required monitoring activities; now, therefore, be it

RESOLVED BY THE _____ OF THE STATE OF NEVADA, THE

CONCURRING, That the Nevada Legislature hereby urges the governing bodies of cities and counties in this state to protect the quality of sources of drinking water in their communities by establishing, pursuant to the authority granted to them by NRS 278.020, 278.150, 278.160 and 278.250, zones for the protection of surface and subsurface areas surrounding water wells that supply water to public water systems in order to ensure that contaminants do not reach such wells; and be it further

RESOLVED, That a copy of this resolution be transmitted by the _____ of the _____ to the Nevada Association of Counties and to the Nevada League of Cities.

SUMMARY--Provides additional penalties for violating certain statutes and regulations governing public water systems. (BDR 40-345)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; authorizing the imposition of a civil penalty for a willful violation of certain regulations governing the construction, operation and maintenance of public water systems; authorizing the state board of health to impose an administrative fine against a supplier of water who willfully violates certain provisions and regulations governing public water systems; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 445.397 is hereby amended to read as follows:

445.397 1. Any supplier of water who willfully:

(a) Violates any standard established pursuant to NRS 445.379;

(b) Violates or fails to comply with an emergency order issued pursuant to NRS 445.389;

(c) Violates any condition imposed by the state board of health upon granting a variance or exemption under NRS 445.391; [or]

(d) *Violates a regulation adopted by the state board of health pursuant to NRS 445.381; or*

(e) Fails to give a notice as required by NRS 445.393, shall pay a civil penalty of not more than \$5,000 for each day of [such] *the* violation.

2. *In addition to the civil penalty prescribed in subsection 1, the state board of health may impose an administrative fine against a supplier of water who willfully commits any violation enumerated in subsection 1. The administrative fine imposed may not be more than \$5,000 per day for each such violation.*

3. The civil [penalties] *penalty and administrative fine* prescribed in this section may be imposed in addition to any other penalties or relief prescribed in NRS 445.361 to 445.399, inclusive.

SUMMARY--Makes appropriation to health division of the department of human resources for inventory of quality of community public water systems. (BDR S-346)

FISCAL NOTE: Effect on Local Government: No.
 Effect on the State or on Industrial Insurance: Contains
 Appropriation.

AN ACT making an appropriation to the health division of the department of human resources for an inventory of the quality of community public water systems; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. There is hereby appropriated from the state general fund to the health division of the department of human resources the sum of \$300,000 for the preparation of an inventory of the quality of Nevada's community public water systems. The inventory must include an assessment of the projected needs of the systems to comply with the requirements of the federal Safe Drinking Water Act.

Sec. 2. Any remaining balance of the appropriation made by section 1 of this act must not be committed for expenditure after June 30, 1993, and reverts

to the state general fund as soon as all payments of money committed have been made.

Sec. 3. This act becomes effective on July 1, 1991.

SUMMARY--Requires certain public utilities to obtain permission of public service commission of Nevada before disposing of or encumbering property. (BDR 58-347)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to public utilities; requiring certain public utilities to obtain the permission of the public service commission of Nevada before disposing of or encumbering their property; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 704 of NRS is hereby amended by adding thereto a new section to read as follows:

1. It is unlawful for any public utility which furnishes water or services for the disposal of sewage, or both, to:

(a) Sell, lease or otherwise dispose of; or

(b) Encumber by mortgage, deed of trust, security agreement or otherwise, any or all of its real property or goods, including fixtures, or any combination thereof which are necessary or useful in the present or future performance of its

duties to the public regarding water or sewage without first obtaining approval from the commission which authorizes the public utility to do so. This limitation applies to any interest in real property, including, without limitation, easements and water rights.

2. Any such action:

(a) Which is not taken in accordance with the approval of the commission; or

*(b) Which is taken without obtaining the approval from the commission,
is void.*

3. The commission shall adopt regulations which set forth the types and quantities of property and goods that are necessary or useful in the performance of the duties of the various classes of public utilities.

Sec. 2. This act does not apply to any disposition or encumbrance of property which was executed before the effective date of this act.

Sec. 3. This act becomes effective upon passage and approval.

SUMMARY--Directs Regional Water Planning and Advisory Board of Washoe County to work with ditch companies and local governments to develop agreements concerning future of ditches in Truckee Meadows. (BDR R-349)

CONCURRENT RESOLUTION--Directing the Regional Water Planning and Advisory Board of Washoe County to work with the ditch companies and local governments to develop agreements concerning the future of ditches in the Truckee Meadows.

WHEREAS, Irrigation ditches have played a vital role in the economy and development of the Truckee Meadows since the early days of its settlement by pioneers; and

WHEREAS, A major portion of the land which was once used in agriculture has been converted to urban uses; and

WHEREAS, This change in land use places a financial strain on the operators of the ditches and on those who still depend upon the ditches for irrigation water; and

WHEREAS, The irrigation ditches are now being used for other purposes in addition to the function they originally served; and

WHEREAS, The new uses of the irrigation ditches clearly provide a public benefit; now, therefore, be it

RESOLVED BY THE _____ OF THE STATE OF NEVADA, THE
CONCURRING, That the Nevada Legislature hereby directs the
Regional Water Planning and Advisory Board of Washoe County, or its
successor, to work with the ditch companies located in Washoe County to
develop agreements with local governmental entities concerning the future of
the ditches in the Truckee Meadows; and be it further

RESOLVED, That the agreements must include:

1. Provisions which address the benefits and financial responsibilities
associated with:

- (a) The maintenance of ditches;
- (b) Liability insurance;
- (c) The use of ditches for storm drainage; and
- (d) Any other factors which are agreed upon by the parties;

2. Provisions which protect the existing property rights of the ditch
companies and permit them to continue to operate the ditches; and

3. A description of the extent to which alternative uses, consolidation and
the retirement of the ditches were considered;

And be it further

RESOLVED, That a copy of this resolution be prepared and transmitted by
the _____ of the _____ to the Regional Water Planning and Advisory
Board of Washoe County.

SUMMARY--Urges Congress to adopt generally applicable definition of "wetland" for use in federal laws and regulations. (BDR R-350)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Urging Congress to adopt a generally applicable definition of "wetland" for use in federal laws and regulations.

WHEREAS, Approximately 95 million acres of wetlands currently exist in the lower 48 states of this nation; and

WHEREAS, The federal policy toward those wetlands has been reversed in the past few years; and

WHEREAS, The regulatory policies of several federal governmental agencies affect land determined to fall within the definition of "wetland"; and

WHEREAS, Several differing definitions of the term "wetland" have been adopted by those agencies; and

WHEREAS, Many Nevadans are adversely affected by the overlapping of these inconsistent and occasionally incomplete definitions; now, therefore, be it

RESOLVED BY THE AND OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature hereby urges the Congress of the United States to adopt legislation that will provide a universal definition

of the term "wetland" generally applicable to all federal laws and regulations referring to wetlands and the related issues; and be it further

RESOLVED, That the definition so adopted should specify that "wetland" means a naturally occurring area of predominantly hydric soils that presently support hydrophytic vegetation not common to cultivated land or farming practices; and be it further

RESOLVED, That for the purposes of the "wetland" definition the phrase "hydric soil" should be defined to mean soil which is consistently wet enough to maintain an anaerobic condition that supports primarily hydrophytic vegetation, and "hydrophytic vegetation" should be defined to mean plants that grow in water or in soils which are made deficient of oxygen because of excessive water content and are generally considered to be a swamp or bog; and be it further

RESOLVED, That the definition of "wetland" should specifically exclude land previously converted to farming as well as small acreages below a stated size; and be it further

RESOLVED, That the definition of "wetland" should also specifically exclude areas created artificially by irrigation that would no longer meet the definition of "wetland" if the irrigation ceased, unless the artificial wetland was created specifically to replace a natural wetland no longer regulated as such because of that replacement; and be it further

RESOLVED, That the Congressional approach to a wetlands program should protect private property rights as defined in federal Executive Order No. 12630, including water rights; and be it further

RESOLVED, That the Congressional approach to a wetlands program should not consider farming practices such as leveling the land, regardless of the method used, as "dredge and fill" operations subject to regulation; and be it further

RESOLVED, That the Congressional approach to a wetlands program should recognize that unique conditions exist in each state which require flexibility in the application of the federal policy toward wetlands of "no net loss"; and be it further

RESOLVED, That a copy of this resolution be transmitted by the _____ of the _____ to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval.

SUMMARY--Makes various changes regarding planning use of water by division of water planning of the state department of conservation and natural resources. (BDR 48-351)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to water resources; declaring the policy of the legislature concerning the relationship between quantity and quality in water planning; requiring the division of water planning of the state department of conservation and natural resources to consider that relationship in its planning; requiring the division to analyze potential sites for the development of facilities for the storage of water upstream; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 540.011 is hereby amended to read as follows:

540.011 1. The legislature determines that it is the policy of the State of Nevada to continue to recognize the critical nature of the state's limited water resources. It is acknowledged that many of the state's surface water resources are committed to existing uses, under existing water rights, and that in many

areas of the state the available ground water supplies have been appropriated for current uses. It is the policy of the State of Nevada to recognize and provide for the protection of these existing water rights. It is also the policy of the state to encourage efficient and nonwasteful use of these limited supplies.

2. The legislature further recognizes the relationship between the critical nature of the state's limited water resources and the increasing demands placed on these resources as the population of the state continues to grow.

3. *The legislature further recognizes the relationship between the quantity of water and the quality of water, and the necessity to consider both factors simultaneously when planning the uses of water.*

Sec. 2. NRS 540.051 is hereby amended to read as follows:

540.051 The division shall:

1. Provide political subdivisions and private enterprises in arid regions with information, alternatives and recommendations bearing upon regional shortages of water including feasible selections or courses of planning and action for acquiring additional water or for conserving water now available, or both.

2. Include in its planning [the] :

(a) *The investigation of new sources of water such as desalinization, importation and conservation, and means of transporting existing water [.] ; and*

(b) *Consideration of the factors relating to the quality of water in this state and the importance of considering the issues of quantity and quality*

simultaneously, but the state environmental commission and division of environmental protection of the state department of conservation and natural resources retain full responsibility for the management of water quality.

3. *Analyze potential sites to determine their suitability for development as facilities for the storage of water upstream.*

4. Develop forecasts of supply and demand for future needs.

[4.] 5. Advise the state department of conservation and natural resources and the legislature concerning economic and social effects of water policy.

[5.] 6. Suggest changes in water policy which may be necessary to meet new requirements of law or of the people of the state.

[6.] 7. Cooperate with the state engineer in dealings with the Federal Government and other states, but the state engineer is solely responsible for litigation.

[7.] 8. Provide the board for financing water projects and the director of the department of commerce with necessary technical and clerical assistance in financing water projects.

update and reevaluate the "Alternative Plans for Water Resource Use," and to compile a plan for the management of water resources for each of the six river basin areas within the state; and be it further

RESOLVED, That the Division of Water Planning is directed to seek local input through means which include, but are not limited to, public hearings and working directly with the affected local governments; and be it further

RESOLVED, That a copy of this resolution be transmitted by the
of the to the Administrator of the Division of Water Planning of the
State Department of Conservation and Natural Resources.

SUMMARY--Directs division of water planning of the state department of conservation and natural resources to emphasize provision of technical assistance to local governments. (BDR R-353)

CONCURRENT RESOLUTION--Directing the division of water planning of the state department of conservation and natural resources to emphasize the provision of technical assistance to local governments in Nevada.

WHEREAS, As the population of this state increases, the planned use of Nevada's limited supply of water becomes even more critical; and

WHEREAS, Recent changes in state law which stress the relationship between applications for the appropriation of water and the need to plan for future demands for water have made water planning especially important, particularly at the local level; and

WHEREAS, Many local governmental entities, particularly in rural Nevada, do not possess the professional expertise in water planning that is necessary to face this important task; and

WHEREAS, Much of the information necessary for water planning is not readily accessible in the rural areas of this state, but is easily available to the division of water planning of the state department of conservation and natural resources; now, therefore, be it

RESOLVED BY THE

OF THE STATE OF NEVADA, THE

CONCURRING, That the Legislature of the State of Nevada hereby directs the division of water planning of the state department of conservation and natural resources to consider the provision of technical assistance to local governments as one of the division's highest priorities; and be it further

RESOLVED, That a copy of this resolution be transmitted by the

of the to the administrator of the division of water planning of the state department of conservation and natural resources.

SUMMARY--Authorizes state engineer to require additional information on certain applications for diversion of water. (BDR 48-355)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; authorizing the state engineer to require certain information from applicants submitting multiple applications for diversions of water for a single project; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 533.375 is hereby amended to read as follows:

533.375 Before either approving or rejecting the application, the state engineer may require such additional information as will enable him to guard the public interest properly, and may, in *the* case of an application proposing to divert more than 10 cubic feet per second of water, *or in the case of multiple applications whose cumulative diversions for a single project total more than 10 cubic feet per second of water*, require a statement of the following facts:

1. In *the* case of an incorporated company he may require the submission of the articles of incorporation, and the names and places of residence of directors and officers, and the amount of its authorized and of its paid-up capital.

2. If the applicant is not an incorporated company, he may require a statement as to the name [or names] of the person [or persons] proposing to construct the work, and a showing of facts necessary to enable him to determine whether [or not they have] *he has* the financial ability to carry out the proposed work, and whether [or not] the application has been made in good faith.

Sec. 2. The amendatory provisions of this act apply to any application which is not approved or rejected before the effective date of the act.

Sec. 3. This act becomes effective upon passage and approval.