

# Use, Management, and Allocation of Water Resources



January 2007

*Legislative Counsel  
Bureau*

*Bulletin No.  
07-11*





LEGISLATIVE COMMISSION'S COMMITTEE TO STUDY THE  
USE, MANAGEMENT, AND ALLOCATION OF WATER RESOURCES

BULLETIN NO. 07-11

JANUARY 2007



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## SUMMARY OF RECOMMENDATIONS

### **Legislative Commission's Committee to Study the Use, Management, and Allocation of Water Resources**

(Senate Concurrent Resolution 26, File No. 100, *Statutes of Nevada 2005*)

This summary presents the recommendations approved by the Legislative Commission's Committee to Study the Use, Management, and Allocation of Water Resources (Senate Concurrent Resolution 26, File No. 100, *Statutes of Nevada 2005*) at its June 21, 2006, meeting.

## WATER LAW AND ADMINISTRATION

**RECOMMENDATION NO. 1** — **Amend statutes** to authorize the State Engineer in the Division of Water Resources (DWR), State Department of Conservation and Natural Resources, to order any person in violation of the provisions of *Nevada Revised Statutes* (NRS) Chapters 533, 534, 535, and 536 and *Nevada Administrative Code* (NAC) Chapters 534 and 535 to: (a) pay an administrative fine not to exceed \$10,000 per day for each violation; and (b) be liable for any expense incurred by the Division of Water Resources in investigating and stopping the violation. Any appeal of a violation would be done through the courts under NRS 533.450. Administrative details for addressing violations, assessing fines or penalties, and procedures would be done through the promulgation of rules and regulations. [BDR 48-206]

**RECOMMENDATION NO. 2** — **Include a statement in the final report** noting, for the record, the State Engineer's testimony on the recommendation to authorize administrative fines for certain violations of Nevada water law. Specifically, the State Engineer testified that he does not enforce residential watering restrictions and administrative fines would not be imposed for violations of residential watering restrictions or other local ordinances. Further, the State Engineer testified that the regulations implementing the fines will create a sliding scale of fines based on the severity of the violation. Finally, the Committee directed the State Engineer to provide examples of the proposed regulations at the time the bill amending the statutes to authorize administrative fines is heard by the Legislature.

**RECOMMENDATION NO. 3** — **Include a statement in the final report** noting the Committee's strenuous endorsement of the State's policy against speculation in water rights, including without limitation, the findings required by NRS 533.370 that were added in 1995 to prevent speculation in water rights.

**RECOMMENDATION NO. 4** — **Include a statement in the final report** noting that the public often needs assistance in understanding the water rights application process, including protests, and that education is critical to avoiding or resolving unnecessary conflicts. Further, the Committee considers this an important issue that may be appropriate for further study.

## **WELL AND GROUNDWATER ISSUES**

**RECOMMENDATION NO. 5** — **Amend the statutes** to require the State Engineer to give notice in all basins prior to forfeiture for nonuse of water. In the absence of pumping records in certain basins, the State Engineer may base a notice of forfeiture on other evidence of nonuse. As currently set forth in NRS 534.090, prior to forfeiture the State Engineer must give notice of four years of nonuse only in basins for which the State Engineer has pumping records, also referred to as inventoried basins. [BDR 48-208]

**RECOMMENDATION NO. 6** — **Amend the statutes** to set the priority date for all domestic wells as the completion date of the well as stated on the well log submitted to the DWR by the well driller. For wells drilled prior to the requirement for submittal of well logs, other competent evidence shall be used to determine the completion date. [BDR 48-208]

**RECOMMENDATION NO. 7** — **Amend the statutes** to address water service to auxiliary dwellings, e.g., caretaker's quarters or mother-in-law units, from a domestic well if: (a) local ordinances allow for such uses; and (b) with the condition that a meter be installed on the well to measure usage to ensure the total water pumped does not exceed two acre feet (see NRS 534.013 and 534.180). In addition, the proposed amendment would quantify the limit on domestic use as two acre-feet per year instead of 1,800 gallons per day (gpd). This change recognizes that typically domestic use increases in the summer months and decreases in the winter months and, further, that the total annual pumpage from a domestic well is used for planning purposes. [BDR 48-208]

**RECOMMENDATION NO. 8** — **Amend the statutes** to authorize the State Engineer to designate basins in jurisdictions that do not require a certain minimum dedication of water rights for parcel maps creating one or more parcels that are less than 40 acres and eligible to drill a domestic well. Further, in such designated basins, authorize the State Engineer to impose a requirement, if appropriate, for a minimum dedication of water rights for such parcel maps. [BDR 48-208]

**RECOMMENDATION NO. 9** — **Adopt a resolution** directing the State Engineer, and the counties and cities that acquire water rights dedications when new parcels are created, to work together on a process for consolidation of such water rights into a single permit, or other appropriate document, and on a process for adding future water rights dedications as they occur. The intent of this collaboration is to save time and money for the counties, cities, and State in the processing of applications for extensions of time to put such water rights to beneficial use, while addressing priority dates and other considerations. [BDR R-204]



**RECOMMENDATION NO. 10** — **Send a letter** to the State Engineer requesting the development of policies for mitigation for over-appropriations of groundwater and asking the State Engineer to report his findings to the 2009 Legislature.

**RECOMMENDATION NO. 11** — **Include a statement in the final report** asking the State Engineer to consider, where appropriate, the use of new technology or updated information to determine perennial or basin yields.

## **WATER RESOURCE STUDIES AND DATA**

**RECOMMENDATION NO. 12** — **Adopt a resolution** directing collaboration between the State Engineer, local governments, water districts and authorities, water purveyors, large commercial/agricultural users, and other water users, and the sharing of water use data, with the goal of implementing a statewide information management system to assist in the development and management of groundwater resources. [BDR R-204]

**RECOMMENDATION NO. 13** — **Send a letter** to Nevada's Congressional Delegation, Desert Research Institute, the University of Nevada, Reno, and University of Nevada, Las Vegas, urging them to work together to obtain funding for development of a statewide research program on sustainable groundwater development, including agricultural and urban conservation, policy research, and governance structures.

**RECOMMENDATION NO. 14** — **Include a statement in the final report** noting the Committee's interest in the conjunctive use of surface and groundwater and recommending this issue for future study by the interim committee on water resources. Conjunctive use is the coordinated management of surface water and groundwater to maximize the yield of the overall water resource and to avoid negative impacts. Conjunctive use is especially relevant if the surface and groundwater sources are hydrologically interconnected.

## **WATER CONSERVATION AND PLANNING**

**RECOMMENDATION NO. 15** — **Request an appropriation** of \$1 million to continue the Water Rights Technical Support Fund, as enacted by Senate Bill 62 (Chapter 493, *Statutes of Nevada 2005*) through the next biennium and to expand the Fund to include need-based grants for local water resource planning and information management. The legislation would create a framework for long-term funding and provide clear direction for program administration by the State Board of Financing Water Projects. In addition, priority would be given to rural counties and local governments outside the urban areas within Clark and Washoe Counties. The Legislature's intent to consistently fund water resource planning and information management should be explicit in the bill. [BDR 48-207]

**RECOMMENDATION NO. 16** — **Amend the statutes** to expand the eligible uses of the Fund for Grants for Water Conservation, Capital Improvements to Certain Water Systems and Improvements to Certain Sewage Disposal Systems to include requests for need-based funding for water resource plan implementation, e.g., infrastructure development. This fund is administered by the State Board for Financing Water Projects and is commonly referred to as the A.B. 198 program (NRS 349.984). Although new development must always be encouraged to pay for its own infrastructure, communities that lack the financial capacity, that is, an established body of rate-payers to supply primary infrastructure necessary to properly locate development, may need assistance. In addition, priority would be given to rural counties and local governments outside the urban areas within Clark and Washoe Counties. Appropriate assistance for these communities can be provided by allowing the A.B. 198 program to make need-based grants or low-interest loans aimed at expanding supply and transmission capability to meet future growth needs as identified in water resource plans. [BDR 48-207]

**RECOMMENDATION NO. 17** — **Include a statement in the final report** noting that the State Engineer has never commenced forfeiture proceedings based on the nonuse of water due to the application of conservation measures and further that the Committee strongly supports the continuation of this policy.

**RECOMMENDATION NO. 18** — **Adopt a resolution** encouraging rural development that matches the availability of water resources with new businesses and industry. [BDR R-204]

## **INTERBASIN TRANSFERS**

**RECOMMENDATION NO. 19** — **Include a statement in the final report** urging consideration of the following issues in connection with an interbasin transfer: (1) development of a clear description of the project; (2) identification and investigation of the potential environmental and socio-economic impacts of the project; (3) future development of rural communities have adequate water; (4) development and implementation of a rigorous monitoring program; and (5) consideration of the conveyance of water by lease rather than transfer of ownership.

**RECOMMENDATION NO. 20** — **Include a statement in the final report** to recommend further consideration of a concept to authorize the counties to set aside up to \$2 of the fee on intercounty transfers to be used for compensating private parties impacted by water exports (see NRS 533.438). The counties would adopt ordinances setting forth the application process and criteria to be used for dispersal of the funds and for the administration of the set-aside, including any provisions for reversion to the county. According to testimony, protection of senior water rights would be a priority of such “reparations” set-asides. Further, the Committee recommends this issue for future study by the interim committee on water resources.

## **DIVISION OF WATER RESOURCES**

**RECOMMENDATION NO. 21** — **Send a letter of support** to the Governor and the Chairmen of the Senate Committee on Finance and Assembly Committee on Ways and Means for the State Engineer's budget request for additional funding for water planning activities, including funding for the position of Chief of the Water Planning Section (NRS 540.036).

**RECOMMENDATION NO. 22** — **Send a letter of support** to the Governor and the Chairmen of the Senate Committee on Finance and Assembly Committee on Ways and Means for the State Engineer's budget request for additional funding to activate the Advisory Board on Water Resources Planning and Development (NRS 540.111).

**RECOMMENDATION NO. 23** — **Send a letter of support** to the Governor and the Chairmen of the Senate Committee on Finance and Assembly Committee on Ways and Means recommending funding or other support for increased resources and staff within the DWR to address staffing and other needs as determined by the State Engineer.

## **OTHER ACTIONS**

**RECOMMENDATION NO. 24** — **Amend the statutes** to create an ongoing interim Legislative Committee on Water Resources with a sunset date of June 30, 2015. [BDR 17-205]

**RECOMMENDATION NO. 25** — **Adopt a proclamation** from the Committee commending Hugh Ricci for his years of State service and retirement as State Engineer.



**REPORT TO THE 74th SESSION OF THE NEVADA LEGISLATURE BY THE  
LEGISLATIVE COMMISSION'S COMMITTEE ON THE USE, ALLOCATION, AND  
MANAGEMENT OF WATER RESOURCES**

**I. INTRODUCTION**

The work of the Legislative Commission's Committee on the Use, Allocation, and Management of Water Resources underscores the importance of water resources in both the driest state and the fastest-growing state in America.

In 2005, the Legislature enacted Senate Concurrent Resolution No. 26 (File No. 100, *Statutes of Nevada 2005*) creating an interim study on the use, management, and allocation of water resources. Establishment of the interim study committee was in response to a recommendation from the Legislative Committee on Public Lands to the 2005 Legislature. Senate Concurrent Resolution No. 26 established an eight-member Committee on the Use, Allocation, and Management of Water Resources (Water Resources Committee) to review: (1) the laws, regulations and policies regulating water resources in Nevada; (2) the status of existing information and studies on water resources; (3) the need for additional studies of water resources; (4) recommendations on statutory provisions for administrative penalties for water law violations; (5) the ramifications of initiating adjudication procedures; (6) the feasibility and desirability of quantifying Nevada's groundwater resources; (7) statewide water use and efficiency; (8) the effectiveness of existing water systems for distributing and protecting water resources; (9) the potential for the State to provide technical assistance and services to local governments and increased access to informational and educational services to residents; and (10) the advisability of creating a statutory Legislative Committee on Water Resources. Appendix A contains Senate Concurrent Resolution No. 26, which created the Committee and makes provisions for its membership, powers, duties, and related matters.

Members of the Committee during the 2005-2006 interim included the following legislators:

Senator Dean A. Rhoads, Chair  
Assemblyman Jerry D. Claborn, Vice Chair  
Senator Mark E. Amodei  
Senator Warren B. Hardy  
Senator Dina Titus  
Assemblyman Kelvin D. Atkinson  
Assemblyman Pete Goicoechea  
Assemblyman David R. Parks

Legislative Counsel Bureau staff services for the Committee were provided by:

Susan E. Scholley, Chief Principal Research Analyst, Research Division  
Lucinda Benjamin, Senior Research Secretary, Research Division  
Kimberly Marsh Guinasso, Senior Principal Deputy Legislative Counsel, Legal Division  
Matthew G. France, Deputy Legislative Counsel, Legal Division

The Committee held a total of seven meetings during the interim: one in 2005, and six in 2006. Three of the Committee's meetings were held in cities in rural eastern Nevada: Caliente, Ely, and Elko. The Committee received several overview presentations by the Office of the State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources. Other entities making presentations included the United States Geological Survey (USGS), the U.S. Bureau of Land Management (BLM), the Colorado River Commission, the Southern Nevada Water Authority, the Truckee Meadows Water Authority, Washoe County's Division of Water Resources, the Lincoln County Water District, the Moapa Valley Water District, and the Virgin Valley Water District.

Regional water entities appearing before the Committee were the Central Nevada Regional Water Authority and the Humboldt River Basin Water Authority. Several local governments made presentations including the cities of Carson City, Fallon, and Fernley, and Churchill, Elko, and White Pine Counties. The Committee invited out-of-state experts to speak on water rights adjudications in Idaho, desalination, water conservation, and the Owens Valley water exportation in eastern California. Other speakers included representatives from Coyote Springs and Aqua Trac, LLC.

The Committee approved 25 proposals with regard to the use, allocation, and management of water resources in Nevada. Major recommendations approved include proposals to:

- Authorize the State Engineer to order persons violating State water law to pay an administrative fine and to be liable for expenses incurred by the Division of Water Resources to investigate and stop the violation;
- Require notice – in all groundwater basins – of forfeitures for nonuse of water rights;
- Define the priority date for a domestic well as the date the well was drilled;
- Clarify that ancillary residential uses must comply with the limits on domestic wells and convert the domestic well limitation from 1,800 gallons per day to 2 acre feet annually;
- Seek an appropriation of \$1 million to continue the Water Resources Technical Support Fund and expand the use of the Fund to include water resource planning, as well as data collection and management;
- Expand the uses of the Fund for Grants for Water Conservation, Capital Improvements to Certain Water Systems and Improvements to Certain Sewage Disposal Systems (commonly known as the Assembly Bill 198 program) to include water resource plan implementation projects;
- Address the need for local regulation of water rights dedications for parcel maps and to provide for state regulation, if warranted;

- Recommend the creation of an ongoing interim Legislative Committee on Water Resources that would sunset in 2015;
- Urge the Governor and the Chairmen of the Senate Committee on Finance and Assembly Committee on Ways and Means to fund additional water planning staff in the Division of Water Resources, the Advisory Board on Water Resources Planning and Development, and such other positions or resources deemed necessary by the State Engineer; and
- Adopt a resolution supporting various water resource management activities, including collaborating on information management, consolidating water rights for certain domestic wells, and encouraging the location of new development in areas with available water resources.

## **II. BACKGROUND**

The idea for an interim study on water resources came from a recommendation of the Legislative Committee on Public Lands during the 2003-2004 interim. In the 2005 Session, over three dozen bills addressed a wide variety of water resource issues, including the governance structure for statewide management and planning, inventories of water resources, and funding for adjudications and studies. In addition, concerns about proposed interbasin transfers of water from eastern Nevada to the Las Vegas Valley prompted proposals to amend State water law. Given the variety and complexity of the water resource issues raised in the 2005 Session, the Legislature concluded that an interim study on water resources was needed to allow adequate time for review and consideration of the many issues.

Senate Concurrent Resolution No. 26 created the Water Resources Committee for the purpose of an in-depth review of current water resource issues in Nevada during the 2005-2006 interim. As set forth in S.C.R. 26, the membership was appointed as follows, with the Chair and Vice Chair being elected by the members of the Committee.

The members who served based on their appointment as a chairman of a 2005 Legislative Session committee were:

- Senator Warren B. Hardy – Chair, Senate Committee on Government Affairs
- Assemblyman David R. Parks – Chair, Assembly Committee on Government Affairs
- Senator Dean A. Rhoads – Chair, Senate Committee on Natural Resources
- Assemblyman Jerry D. Claborn – Chair, Assembly Committee on Natural Resources, Agriculture and Mining

The members who served by virtue of leadership appointments were:

- Senator Mark E. Amodei – appointed by Senate Majority Leader
- Senator Dina Titus – appointed by Senate Minority Leader
- Assemblyman Kelvin D. Atkinson – appointed by the Speaker of the Assembly
- Assemblyman Pete Goicoechea – appointed by the Assembly Minority Leader

### III. REVIEW OF MAJOR ISSUES AND COMMITTEE ACTIVITIES

The availability of water in the arid West is a matter of critical importance. The criticality of water in Nevada is evident in the number of prior legislative studies on water. The earliest published study was in the 1950s and other studies have followed with increasing frequency:

- *The Beneficial Use of Water in Nevada*, LCB Bulletin No. 35 (1959)
- *Regional Water and Sewer in Washoe County*, LCB Bulletin No. 77-14 (1977)
- *Water Problems in the State*, LCB Bulletin No. 81-5 (1981)
- *Regional Water Authorities and Other Water Issues*, LCB Bulletin No. 85-10 (1985)
- *Study of the Laws, Regulations and Policies Relating to Water and Waste Water Resources in Nevada*, LCB Bulletin No. 91-8 (1991)
- *Use, Allocation and Management of Water*, LCB Bulletin No. 95-4 (1995)

In 2003, the duties of the Legislative Committee on Public Lands were expanded to include reviews of the Colorado River Commission, water districts, and other entities involved with the distribution, planning, and development of water resources in Nevada. Those duties in subsection 4 of NRS 218.5368, are due to sunset on June 30, 2007. Because the jurisdictions of the Legislative Committee on Public Lands and the Water Resources Committee overlapped on water resource issues for the 2005-2006 interim, the Legislative Committee on Public Lands deferred, for the most part, to the Water Resources Committee, thereby avoiding duplicate presentations and overlapping recommendations.

As directed by S.C.R. 26, the Water Resources Committee considered a wide range of topics relating to water resources, including water rights adjudications, interbasin transfers, existing water data and reports, federal water studies, pending applications for transfers of water rights, and water law in other states. The Committee also spent a significant portion of its time receiving testimony from regional water authorities and local governments. More information on the Water Resources Committee's activities, including minutes and copies of the presentations and other exhibits, may be accessed on the Committee's Web site at: <http://www.leg.state.nv.us/73rd/Interim/Studies/Water/>

#### A. *Water Resource Issues in Nevada*

According to NRS 533.025 and NRS 534.020, all sources of water within Nevada, whether above or below the surface of the ground, belong to the people of Nevada. Therefore, with the exception of domestic wells, all uses of water require a permit from the State.



Nevada water law, like most other western states, is based on the prior appropriation doctrine. The prior appropriation doctrine is premised on the following three principles:

- Beneficial use is the basis, measure, and limit of a water right;
- The right to use water is lost if the water is not actually used – “use or lose it”; and
- The rule of priority controls in times of shortage – “first in time, first in right.”

The Nevada Legislature enacted statutes related to water as early as 1866. In 1913 the water laws were rewritten and the resulting principles continue to form the basis for Nevada’s water law. Groundwater was included within the statutory framework beginning in 1939, much earlier than many other western states.

Like many other western states, Nevada’s population growth and increasing urbanization is putting greater and greater demands on the limited water resources within the State. Communities throughout Nevada are working to find a balance between growth and limited water resources. Conversions of water rights from agricultural to municipal use will present challenges for rural communities and transfers of water from one basin or county to another will sometimes become matters of statewide interest.

As in other western states, the cumulative impact of domestic wells on groundwater supplies is an ongoing concern. Because domestic wells do not require a permit from the State Engineer but are deemed by Nevada law to be a “protectible interest,” the relative priority of domestic wells to other water rights is not clear. Drought and growth have combined to create increasingly contentious water resource issues related to domestic wells.

Virtually all of the surface waters in Nevada are appropriated and administered in accordance with civil, federal, or state decrees. New growth – be it residential, commercial, tourist, industrial, mining, or agricultural – generally looks to unappropriated groundwater or to changes in use of existing water rights.

In the first part of the twentieth century, southern Nevada relied exclusively on groundwater. Today, the Las Vegas Valley gets 90 percent of its water from the Colorado River, which is controlled by an interstate compact limiting Nevada to 300,000 acre-feet annually (a.f.a.). However, the water allocations of the Colorado River Compact were negotiated in the 1920s when the population of Las Vegas was about 5,000. With the population of Las Vegas about to reach 2 million, demand for water is projected to exceed the current supply. Other areas of the State are also experiencing high demand for water, including the Truckee Meadows, Churchill County, and communities along the Carson River, such as Carson City and Dayton.

In Nevada, the Office of the State Engineer in the Division of Water Resources, State Department of Conservation and Natural Resources (SDCNR) is responsible for the appropriation, distribution and adjudication of water resources in the State. The State Engineer is appointed by the Director of the SDCNR who is appointed by the Governor. Appeals from decisions of the State Engineer go to the state district courts. Federal courts may also have jurisdiction over certain water resource decisions, such as federal decrees, interstate disputes, and other adjudications.

## B. *Existing Water Resources Data and Studies*

The adequacy of data and studies related to water rights and usage, particularly groundwater resources, was the subject of several bills during the 2005 Session. Proposals to transfer large quantities of water from rural eastern Nevada to urban southern Nevada have raised questions about the quantity of groundwater available for transport and the potential impacts of interbasin transfers on the sending basins. Economic and social concerns include impacts on future residential, commercial and industrial development, agriculture, and mining, in the sending basin. Environmental concerns include the potential lowering of groundwater levels with resulting impacts on seeps, springs, meadows, and wildlife.

In accordance with S.C.R. 26, the Water Resources Committee devoted a substantial amount of time to reviewing existing data and studies. The Division of Water Resources reported on its collection of data on groundwater, including crop and pumpage inventories and precipitation levels. The State Engineer also monitors groundwater levels in certain hydrologic basins. Much of the available data is available online on the Division of Water Resources' Web site at: <http://www.water.nv.gov/>.

The USGS conducts many of the water resource studies in Nevada and has approximately 11 studies underway or near completion. In addition, the USGS has published a number of papers over the years on groundwater resources in Nevada and adjacent states. In accordance with the federal Lincoln County Conservation, Recreation and Development Act of 2004 and a \$6 million appropriation, the USGS is conducting a three-year study of groundwater quantity, quality, and flow characteristics in the deep carbonate and alluvial aquifers of White Pine County, and any groundwater basins located in White Pine or Lincoln Counties, and adjacent areas in Utah. The study is named the Basin and Range Carbonate Aquifer System Study or BARCASS. The draft study must be submitted to the U.S. Congress by June 2007 and the final study is due December 2007. More information is available on BARCASS at: <http://nevada.usgs.gov/barcass/index.htm>.

## C. *Transfers of Water*

Against the backdrop of the Southern Nevada Water Authority's (SNWA) applications to appropriate and transport groundwater from eastern Nevada to Las Vegas, several bills during the 2005 Session proposed to add procedural or other requirements prior to approving interbasin water transfers. Senate Bill 35 (Chapter 146, *Statutes of Nevada 2005*) raised the fee on interbasin transfers from \$6 to \$10 per acre foot annually, effective January 1, 2007, but other proposals to change the interbasin transfer statutes were not successful.

The SNWA has assumed the applications filed in 1989 by the Las Vegas Valley Water District to transfer over 180,000 a.f.a of groundwater from White Pine and Lincoln Counties to the Las Vegas Valley. Since that time, 32 applications in ten basins have been withdrawn and 12 applications have been approved for a total of 15,305 a.f.a. Additional groundwater transfers from six basins in eastern Nevada are a key part of SNWA's in-state groundwater resources development plan designed to reduce dependency on Colorado River resources. Due to the continuing drought in the Colorado River system, SNWA is moving forward with plans to

develop groundwater in eastern Nevada by building a 250-mile pipeline to transport the water to users in the Las Vegas Valley. More information about the SNWA and its water resource plan are available online at: [www.snwa.com](http://www.snwa.com).

Currently, the SNWA is actively pursuing 34 applications seeking permits for over 175,000 a.f.a. The State Engineer held a hearing on 19 applications for groundwater appropriations in Spring Valley in September 2006. In an intermediate order dated March 8, 2006, the State Engineer stated that he will schedule two more hearings on the remaining applications – one for the applications in Snake Valley and another for the applications in Cave Valley, Delamar Valley, and Dry Valley. In addition, the U.S. Bureau of Land Management (BLM) is preparing an environmental impact statement on rights-of-way for the pipeline and wells (see [www.nvgroundwaterproject.com](http://www.nvgroundwaterproject.com)) needed to transport the water to Las Vegas. Completion of the BARCASS study and negotiations with Utah are also underway and are part of the process for final implementation of the water transfers.

The Committee also heard testimony about ongoing interbasin transfers in Carson City as well as other approved or proposed interbasin transfers in Pershing and Washoe Counties.

#### **IV. FINDINGS AND RECOMMENDATIONS**

At the June 21, 2006, work session meeting of the Water Resources Committee in Carson City, the newly-appointed State Engineer, Tracy Taylor, provided the Committee with his written comments on the “Work Session Document.” The State Engineer’s comments are attached as Appendix B and, where appropriate, are referenced below.

##### **A. *Water Law and Administration***

1. Administrative Fines: The ability of the State Engineer to enforce State water law and the need for additional authority has been raised in the past several legislative sessions. In the 2003 Session, the Legislature enacted Assembly Bill 213 (Chapter 113, *Statutes of Nevada 2003*) directing the State Engineer to review whether his “administrative powers are sufficient for the essential welfare of those basins designated for as in need of additional administration under NRS 534.030.” The bill went on to ask the State Engineer to identify additional administrative powers, such as assessment of monetary fines, that may be necessary to carry out his duties.

In his January 31, 2005, letter submitted in accordance with A.B. 213 to the Director of the LCB, the State Engineer suggested that authority to levy fines may be a useful tool and further suggested that the best way to address the topic would be to submit the matter to an interim legislative committee.

The issue of fines for water law violations, particularly over-pumping of domestic wells, has been a longstanding topic of concern for the well owners in the Las Vegas Valley. The Advisory Committee for Groundwater Management in the Las Vegas Valley also brought forward a recommendation to the Water Resources Committee asking that well owners be

brought into compliance with permit or statutory limits on groundwater pumping through a graduated assessment structure based upon the quantity of water over-pumped and the duration of noncompliance, with an allowance for meter error. Further, for certain residential properties with allocations of less than 1,000 gallons per day (gpd) per residence, the Advisory Committee recommended that penalties only be applied to water use over 1,000 gpd.

The State Engineer made a presentation on domestic wells and related issues at the Water Resources Committee's January 2006 meeting in Las Vegas. The Committee also received testimony from the Nevada Well Owners Association in opposition to the proposal to impose fines for over-pumping and the Association proposed several alternatives to address the problem. The State Engineer's recommendation on bill draft requests to the Committee included a request for a bill authorizing the imposition of administrative fines for violations of Nevada water law. See State Engineer's letter dated June 2, 2006, attached as Appendix C.

Therefore, the Committee recommended that the Legislature:

**RECOMMENDATION NO. 1 — Amend statutes to authorize the State Engineer in the Division of Water Resources (DWR), State Department of Conservation and Natural Resources, to order any person in violation of the provisions of *Nevada Revised Statutes* Chapters 533, 534, 535, and 536 and *Nevada Administrative Code* Chapters 534 and 535 to: (a) pay an administrative fine not to exceed \$10,000 per day for each violation; and (b) be liable for any expense incurred by the DWR in investigating and stopping the violation. Any appeal of a violation would be done through the courts under NRS 533.450. Administrative details for addressing violations, assessing fines or penalties, and procedures would be done through the promulgation of rules and regulations. [BDR 48-206]**

To clarify the record on its intent, the Committee voted to:

**RECOMMENDATION NO. 2 — Include a statement in the final report noting, for the record, the State Engineer's testimony on the recommendation to authorize administrative fines for certain violations of Nevada water law. Specifically, the State Engineer testified that he does not enforce residential watering restrictions and administrative fines would not be imposed for violations of residential watering restrictions or other local ordinances. Further, the State Engineer testified that the regulations implementing the fines will create a sliding scale of fines based on the severity of the violation. Finally, the Committee directed the State Engineer to provide examples of the proposed regulations at the time the bill amending the statutes to authorize administrative fines is heard by the Legislature.**

2. Water Rights Speculation: As water becomes an increasingly valuable commodity, the potential for speculation in water rights also increases. Nevada law states that the water belongs to the people of the State, and it is generally accepted that the State's continued well being depends, in part, upon maximizing the use of water to sustain and promote industry, agriculture, recreation, and the residential and tourist populations, among other things. Since

applying for water rights or otherwise tying up water for speculative purposes means that water is not being put to beneficial use, the State has an interest in avoiding speculation in water.

The 1993-1994 interim legislative study on water resources considered the problem of speculation at length. Pursuant to the interim study's recommendation, the 1995 Legislature enacted Senate Bill 98 (Chapter 192, *Statutes of Nevada*) amending NRS 533.370 to require a water rights applicant to prove "his financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence."

The Water Resources Committee heard testimony throughout the interim from persons concerned about speculation in water rights. The State Engineer testified that the current statutes were adequate to avoid speculation and did not object to including a statement of support. (See Appendix B, No. 5 on page 35.)

Therefore, the Committee voted to:

**RECOMMENDATION NO. 3 — Include a statement in the final report noting the Committee's strenuous endorsement of the State's policy against speculation in water rights, including without limitation, the findings required by NRS 533.370 that were added in 1995 to prevent speculation in water rights.**

3. Ombudsman: One of the recommendations from the Central Nevada Regional Water Authority and the Great Basin Water Network was to create an ombudsman position within the Division of Water Resources. The Director of the SDCNR opposed the concept on the grounds it would be "detrimental to the neutrality of the Department" and might put the SDCNR in the role of "legal counsel" to applicants or protestants. (See Appendix B, No. 8 at page 37.) The Water Resources Committee members discussed the proposal at length. Some members thought that assistance could be given in a non-adversarial way and the position could also be used to educate members of the public to avoid problems and unnecessary protests and litigation. Other members echoed the Director's concerns that creation of an ombudsman position to assist persons with applications or other procedures might result in conflicts within the Division and suggested, as an alternative, that later recommendations for additional resources for the Division may be a better way to address the problem. Overall, the Committee was sympathetic to the difficulties faced by the average person when navigating the water rights application process or other procedures related to water rights.

Therefore, the Committee voted to:

**RECOMMENDATION NO. 4 — Include a statement in the final report noting that the public often needs assistance in understanding the water rights application process, including protests, and that education is critical to avoiding or resolving unnecessary conflicts. Further, the Committee considers this an important issue that may be appropriate for further study.**

## B. *Wells and Groundwater Issues*

1. Forfeiture: In its opening presentation on Nevada water law, the State Engineer discussed the statutes on forfeiture proceedings based on the nonuse of water. In response to a question from the Committee, the State Engineer advised that the statutes do not require advance notice of forfeiture proceedings in basins in which pumping inventories are not conducted (so-called “non-inventoried” basins). Water Resources Committee members expressed concern that, because of the onerous nature of forfeiture proceedings, notice of forfeiture proceedings should be given in all basins. The State Engineer did not oppose expansion of the notice requirements to all groundwater basins although he asked that the record be clear that amending NRS 534.090 would not “restart the clock” on the calculation of nonuse of water that is ongoing. (See Appendix B, No. 35 at pages 48-49.)

Therefore, the Committee recommended that the Legislature:

**RECOMMENDATION NO. 5 — Amend the statutes to require the State Engineer to give notice in all basins prior to forfeiture for nonuse of water. In the absence of pumping records in certain basins, the State Engineer may base a notice of forfeiture on other evidence of nonuse. As currently set forth in NRS 534.090, prior to forfeiture the State Engineer must give notice of four years of nonuse only in basins for which the State Engineer has pumping records, also referred to as inventoried basins. [BDR 48–208]**

2. Priority Date: As the populations of western states continue to grow, the proliferation of domestic wells is causing concerns about the cumulative effect of such water use. At the January 2006 meeting in Las Vegas, the State Engineer gave a presentation on the issue of domestic wells and the problems being experienced or anticipated in several areas of the state. According to the Division of Water Resources, there are approximately 47,000 domestic wells in Nevada. As in some other western states, these domestic wells are exempt from permitting requirements although Assembly Bill 16 (Chapter 736, *Statutes of Nevada 1981*) instituted a requirement for registering wells, including domestic wells. In 1993, the Legislature created a “protectible interest” in domestic wells as set forth in NRS 533.024. However, the State Engineer has testified that, in the case of a conflict between permitted water rights and domestic wells, the statutes are silent on which interest has priority.

In its testimony at the March 2006 meeting, the Central Nevada Regional Water Authority suggested the need for clarifying “protectible interest” and establishing priority dates for domestic wells. At the May 2006 meeting, the State Engineer asked the Committee to consider legislation setting priority dates for domestic wells. (See Appendix C.)

Therefore, the Committee recommended that the Legislature:

**RECOMMENDATION NO. 6 — Amend the statutes to set the priority date for all domestic wells as the completion date of the well as stated on the well log submitted to the DWR by the well driller. For wells drilled prior to the requirement for submittal of well logs, other competent evidence shall be used to determine the completion date. [BDR 48–208]**

3. Auxillary Uses: Another issue related to domestic wells that has been a continuing subject of legislative water studies, is the treatment of an ancillary or auxillary use to a single family residence with a domestic well. The statutes define “domestic purposes” in relation to a single family dwelling but do not address ancillary uses. Further, domestic well pumping is generally limited to 1,800 gallons per day (NRS 534.180). Construction of a caretaker’s quarters or a mother-in-law unit results in additional burdens on the domestic well from the second kitchen, additional bathrooms, and other water consuming appliances in the second residence. Since domestic wells can only supply a single family residence, it appears that a quasi-municipal permit is needed for a secondary residence to be served by an existing domestic well. However, as noted by the State Engineer, some basins are over-appropriated and subject to an order denying future permits. The State Engineer presented his concerns on auxillary uses to the Water Resources Committee at its January 2006 meeting and proposed a bill draft on the issue. (See Appendix C.)

Another issue raised by well users was the “gallons per day” standard. Enforcement of a daily standard is problematic and, as noted by the State Engineer, annual usage is the standard used for planning purposes. Further, water usage fluctuates seasonally and so substitution of a comparable annual standard was suggested by the State Engineer. The Nevada Well Owners Association also recommended a change to an annual rather than a daily standard.

Therefore the Committee recommended that the Legislature:

**RECOMMENDATION NO. 7 — Amend the statutes to address water service to auxiliary dwellings, e.g., caretaker’s quarters or mother-in-law units, from a domestic well: (a) if local ordinances allow for such uses; and (b) with the condition that a meter be installed on the well to measure usage to ensure the total water pumped does not exceed two acre feet (see NRS 534.013 and 534.180). In addition, the proposed amendment would quantify the limit on domestic use as two acre-feet per year instead of 1,800 gallons per day (gpd). This change recognizes that typically domestic use increases in the summer months and decreases in the winter months and, further, that the total annual pumpage from a domestic well is used for planning purposes. [BDR 48–208]**

4. Parcel Maps: The proliferation of domestic wells is due, in part, to local government approvals of parcel maps. Under Nevada law, parcel maps are defined as subdivisions of land of four or less parcels that are less than 40 acres in size. Unlike subdivision maps, State law does not require parcel maps to demonstrate the availability of water and the newly-created parcels are eligible to drill domestic wells. At the January 2006 presentation on domestic

wells, the State Engineer testified that he did not know the exact number of vacant parcels eligible to drill domestic wells without a water right but estimated it to be a significant number. The State Engineer has the authority under NRS 534.120, in designated basins, to prohibit the drilling of domestic wells if water can be furnished by a water district or municipality. The State Engineer may also limit deepening and repair of domestic wells in some situations and may require a well owner to hook up to a municipal water supply if certain conditions are met.

As demonstrated by testimony at the Elko meeting in April 2006, some local jurisdictions have enacted ordinances to address this issue. Some local ordinances require a dedication of water rights as a condition of approval of a parcel map. In this way, the local jurisdiction avoids the cumulative impact of domestic wells on its water supply. Further, if and when the parcel is connected to and served by the municipal water system, the dedication of water rights will avoid an undue impact on the municipal water supply. However, not all jurisdictions have enacted such ordinances despite possible future water shortages.

According to testimony, such regulation is best done at the local level but, if a jurisdiction is experiencing or is about to experience water supply problems, the State Engineer should be able to step in and address the matter. The State Engineer supported the recommendation but asked that his authority to require a dedication of water rights be discretionary rather than mandatory. (See Appendix B, No. 40 at page 50.)

Therefore the Committee recommended that the Legislature:

**RECOMMENDATION NO. 8 — Amend the statutes to authorize the State Engineer to designate basins in jurisdictions that do not require a certain minimum dedication of water rights for parcel maps creating one or more parcels that are less than 40 acres and eligible to drill a domestic well. Further, in such designated basins, authorize the State Engineer to impose a requirement, if appropriate, for a minimum dedication of water rights for such parcel maps. [BDR 48-208]**

5. Consolidation of Water Rights: In the context of requiring dedications of water rights for parcel maps, the Water Resources Committee was advised that the State Engineer's office and various cities and counties are working to address the problem of multiple filings for extensions of time to put water rights associated with parcel maps to beneficial use. When a local government requires dedicated water rights for a parcel map, a change application (for future municipal use of the water right and to transfer ownership to the municipality) must be submitted and approved by the State Engineer. Until such time as the local government can serve the newly-created parcels, it must file annual requests for extensions of time to put the water to beneficial use, along with a filing fee of \$100. Each dedicated water right requires a separate extension application and associated fee. The time, effort, and expense involved in monitoring and preparing the extension applications is significant, and there is always the potential for losing track of one or more water rights. Consolidation of such water rights into a single permit would streamline the process and result in fewer fees being paid by local governments. While the State Engineer supports this effort, certain details, such as tracking multiple priority dates in a single permit, must be worked out.



Therefore, the Committee recommended that the Legislature:

**RECOMMENDATION NO. 9 — Adopt a resolution directing the State Engineer, and the counties and cities that acquire water rights dedications when new parcels are created, to work together on a process for consolidation of such water rights into a single permit, or other appropriate document, and on a process for adding future water rights dedications as they occur. The intent of this collaboration is to save time and money for the counties, cities, and State in the processing of applications for extensions of time to put such water rights to beneficial use, while addressing priority dates and other considerations. [BDR R-204]**

6. Mitigation for Over-Appropriation: The Central Nevada Regional Water Authority testified at the March 2006 meeting in Ely on rural counties' concerns about over-appropriation of groundwater. Noting that some groundwater basins are fully or over-appropriated, the Authority observed that currently the primary "cure" is regulation and that regulation is an "expensive, long and litigious solution that does not always best serve the public interest." The Authority suggested development of a menu of mitigation options, such as water rights buyout, water banking, or water conservation provisions, to provide alternatives to regulation.

The State Engineer expressed concern that development of mitigation policies would divert staff from other activities and be a time-consuming effort. Furthermore, the State Engineer felt the statutes already contain sufficient options to deal with over-appropriation and many such situations were best addressed through negotiation on a case-by-case basis. For these and other reasons, he opposed the recommendation. (See Appendix B, No. 47 at page 52.)

Therefore the Committee voted to:

**RECOMMENDATION NO. 10 — Send a letter to the State Engineer requesting the development of policies for mitigation for over-appropriations of groundwater and asking the State Engineer to report his findings to the 2009 Legislature.**

7. Perennial/Basin Yield: The calculation of perennial or basin yields is a critical component of the decision-making process for water rights allocations. Determining the amount of water available for appropriation is a difficult task and, since groundwater supplies cannot be quantified with absolute certainty, the science of making such determinations continues to evolve. The State Engineer testified that his office uses a variety of sources when determining perennial yield, including USGS models and studies. At its April 2006 meeting in Elko, the Committee heard from a water development company, Aqua Trac, LLC. According to Aqua Trac, new methodologies and more current data may result in more accurate estimates of perennial yield. The State Engineer cautioned that new methodologies are not necessarily more reliable and assured the Committee that he uses the best available methodologies and data in making his decisions and would continue to do so. (See Appendix B, No. 7 at page 36.)

Therefore, the Committee recommended to:

**RECOMMENDATION NO. 11 — Include a statement in the final report asking the State Engineer to consider, where appropriate, the use of new technology or updated information to determine perennial or basin yields.**

*C. Water Resources Studies and Data*

1. Collaboration on Data: The Central Nevada Regional Water Authority testified on its efforts to collect data and create a centralized system to optimize the knowledge of Nevada's water resources. Noting that data is collected at a variety of levels from the State Engineer to irrigation districts, the Authority intends to pursue its goal of a statewide database for use by water regulators and users alike. The State Engineer noted that collaboration was occurring and that the DWR's Web site made much of the information collected by the State available to the public. He expressed concern about the fiscal impact of a statewide information management system. (See Appendix B, No. 18 at page 41 and No. 19 at page 42.)

Water Resources Committee members questioned the availability of data from water entities and the withholding of such data from public record requests.

Therefore, the Committee recommended that the Legislature:

**RECOMMENDATION NO. 12 — Adopt a resolution directing collaboration between the State Engineer, local governments, water districts and authorities, water purveyors, large commercial/agricultural users, and other water users, and the sharing of water use data, with the goal of implementing a statewide information management system to assist in the development and management of groundwater resources. [BDR R-204]**

Further, the Committee voted to:

**RECOMMENDATION NO. 13 — Send a letter to Nevada's Congressional Delegation, Desert Research Institute, the University of Nevada, Reno, and University of Nevada, Las Vegas urging them to work together to obtain funding for development of a statewide research program on sustainable groundwater development, including agricultural and urban conservation; policy research; and governance structures.**

2. Conjunctive Use and Management: Conjunctive use is the coordinated management of surface water and groundwater to maximize the yield of the overall water resource and to avoid negative impacts. The benefits of conjunctive use of surface and groundwater are being recognized throughout the West and several states have enacted legislation implementing conjunctive management of surface and groundwater.

At the Water Resources Committee's Elko meeting in April 2006, Churchill County made a presentation. Two of the County's more urgent concerns were that not enough attention is being given to the interrelationship of surface and groundwater and that surface and groundwater are administered separately by the State Engineer. According to Churchill County representatives, the State Engineer has largely ignored the Nevada Supreme Court ruling in *Griffin v. Westergard*, 96 Nev. 627 (1980), in which the Court noted the connectivity of groundwater and surface water in Smith Valley. Churchill County and others recommended that conjunctive use and management be studied further.

Therefore, the Committee voted to:

**RECOMMENDATION NO. 14 — Include a statement in the final report noting the Committee's interest in the conjunctive use of surface and groundwater and recommending this issue for future study by the interim committee on water resources. Conjunctive use is the coordinated management of surface water and groundwater to maximize the yield of the overall water resource and to avoid negative impacts. Conjunctive use is especially relevant if the surface and groundwater sources are hydrologically interconnected.**

*D. Water Conservation, Planning, and Development*

1. Additional Funding: During the 2005 Session, several proposals to fund various activities related to water were considered. Senate Bill 62 (Chapter 493, *Statutes of Nevada* 2005) created the Water Rights Technical Support (WRTS) Fund and appropriated \$1 million for grants to local governments to assist rural counties working to protect existing water rights. The Water Resources Committee heard testimony about additional needs for funding related to water planning, studies, and data collection. The Central Nevada Regional Water Authority, the Great Basin Water Network, Humboldt River Basin Water Authority and others, urged the Committee to continue the funding for the WRTS Fund and to create another fund for groundwater studies and additional assistance for rural counties.

The Central Nevada Regional Water Authority suggested an appropriation of \$1 million for a new fund similar to the WRTS Fund to make grants for studies and other assistance. The Authority noted that, although funding for implementation of water plans is available, funding for water planning and information management is not. The proposed new fund would focus on water planning and information management. Like the WRTS Fund, this new fund would be administered by the State Board of Financing Water Projects that is staffed by the Nevada's Division of Environmental Protection (NDEP) within the SDCNR.

The Administrator of NDEP testified that the duties of the State Board of Financing Water Projects have been increasing but the level of staff support level remains the same (one engineer and a secretary). He expressed concerns that continuing administration of the WRTS Fund and adding administration of a second fund would raise issues about the adequacy of resources. The NDEP has not included more positions in its budget proposals but if the Board's duties are expanded, then expansion of staff support should be considered also.

The Water Resources Committee complimented the Board and NDEP staff on the criteria for grants and administration of the WRTS Fund. Although not part of the original request from the Central Nevada Regional Water Authority, the Committee included a priority that funds be used in rural counties or in rural areas of Clark County and Washoe County. Due to fiscal concerns, the Committee suggested renewing the prior (S.B. 62) funding level of \$1 million and combining the existing WRTS Fund with the proposed new fund.

Therefore, the Committee recommended that the Legislature:

**RECOMMENDATION NO. 15 — Request an appropriation of \$1 million to continue the Water Rights Technical Support Fund, as enacted by Senate Bill 62 (Chapter 493, *Statutes of Nevada 2005*) through the next biennium and to expand the Fund to include need-based grants for local water resource planning and information management. The legislation would create a framework for long-term funding and provide clear direction for program administration by the State Board of Financing Water Projects. In addition, priority would be given to rural counties and local governments outside the urban areas within Clark and Washoe Counties. The Legislature's intent to consistently fund water resource planning and information management should be explicit in the bill. [BDR 48-207]**

2. Infrastructure Funding: Another recommendation from the Central Nevada Regional Water Authority pertained to funding for water infrastructure implementation to enable local governments or water entities to more actively guide future development compatible with water planning goals. The Authority testified that the A.B. 198 program (NRS 349.984) generally finances retrofit of existing water systems or treatment facilities, but is not currently available for construction of certain infrastructure to ensure compatibility with local land use plans and consistency with water planning goals. After some discussion, funding was not included since the bonding cap for the A.B. 198 program was increased last session to \$125 million through Assembly Bill 20 (Chapter 71, *Statutes of Nevada 2005*). The Administrator of NDEP noted that his comments on Recommendation No. 15, above, pertained equally to an expansion of the A.B. 198 program and the corresponding increase in duties for the Board and NDEP staff.

Therefore, the Committee recommended that the Legislature:

**RECOMMENDATION NO. 16 — Amend the statutes to expand the eligible uses of the Fund for Grants for Water Conservation, Capital Improvements to Certain Water Systems and Improvements to Certain Sewage Disposal Systems to include requests for need-based funding for water resource plan implementation, e.g., infrastructure development. This fund is administered by the State Board for Financing Water Projects and is commonly referred to as the A.B. 198 program (NRS 349.984). Although new development must always be encouraged to pay for its own infrastructure, communities that lack the financial capacity, that is, an established body of rate-payers to supply primary infrastructure necessary to properly locate development, may need assistance. In addition, priority would be given to rural counties and local governments outside the urban**

areas within Clark and Washoe Counties. Appropriate assistance for these communities can be provided by allowing the A.B. 198 program to make need-based grants or low-interest loans aimed at expanding supply and transmission capability to meet future growth needs as identified in water resource plans. [BDR 48–207]

3. Conservation Incentives: Throughout the interim, the Water Resources Committee received testimony on water conservation. Noting on many occasions that Nevada law did not include incentives for water conservation, the Committee looked to models from other states for ideas. Utah water law includes a specific provision that non-use of water due to implementation of conservation measures is not considered grounds for forfeiture. The State Engineer testified that, although there is not a specific provision in Nevada law, that no water rights have been forfeited in Nevada due to non-use resulting from water conservation. Further, the State Engineer stated his intent to continue that policy. (See Appendix B, No. 22 at page 43.)

Therefore, the Committee voted to:

**RECOMMENDATION NO. 17 — Include a statement in the final report noting that the State Engineer has never commenced forfeiture proceedings based on the non-use of water due to the application of conservation measures and further that the Committee strongly supports the continuation of this policy.**

4. Economic Development: The Humboldt River Basin Water Authority testified at the Committee’s April 2006 meeting in Elko on a number of issues and concerns, including economic development in the rural counties. The Authority noted that when water resources were available in rural areas, siting new development near water was more efficient than transporting water to an urban area.

Therefore, the Committee recommends that the Legislature:

**RECOMMENDATION NO. 18 — Adopt a resolution encouraging rural development that matches the availability of water resources with new businesses and industry. [BDR R–204]**

#### *E. Water Transfers*

1. Water Transfers: Interbasin and intercounty transfers have generated legislative concern for many years. Transporting water from one basin to another raises issues and transferring water from one county to another (even within the same groundwater basin) raises another set of issues. In both situations, the State Engineer must balance competing interests. On one hand, it is generally thought to be in the best interests of the State to have its waters put to beneficial use. On the other hand, transporting water out of a basin or county may hamper future development in the sending area and result in undesirable environmental impacts.

The proposal by the SNWA to transport large quantities of water via a pipeline from eastern Nevada to the Las Vegas Valley has raised both interbasin and intercounty issues. The State Engineer held a hearing in September 2006 on the first group of applications for water rights in Spring Valley in White Pine County. The remaining SNWA transfer applications will be scheduled for hearings in 2007 or later. The BLM is preparing an environmental impact statement on the proposed pipeline and wells to be located on BLM property and the USGS is working on the BARCASS (water study) due to Congress in December 2007.

The Water Resources Committee heard testimony on other interbasin and intercounty transfers occurring in Nevada as well as how other states handle water transfers. The Committee was reminded that interbasin transfer issues have been considered during earlier interim studies and Senate Bill 108 (Chapter 236, *Statutes of Nevada 1999*) set forth review criteria for interbasin transfers in subsection 5 of NRS 533.370. A speaker at the May 2006 meeting testified on the Owens Valley experience that involved transporting water from eastern California to Los Angeles at the environmental expense of the Owens River and surrounding areas. To avoid the environmental impacts caused by the Owens Valley water transfers, the speaker had several suggestions for policies on interbasin transfers.

Therefore, the Committee voted to:

**RECOMMENDATION NO. 19 — Include a statement in the final report urging consideration of the following issues in connection with an interbasin transfer: (1) development of a clear description of the project; (2) identification and investigation of the potential environmental and socio-economic impacts of the project; (3) that rural communities have adequate water for future development; (4) development and implementation of a rigorous monitoring program; and (5) consideration of the conveyance of water by lease rather than transfer of ownership.**

2. Intercounty Transfer Fees: At the March 2006 meeting in Ely, county representatives addressed mitigation for interbasin transfers as provided for in NRS 533.438, which authorizes the imposition of a fee by the county of origin on groundwater transfers to another county. Effective January 1, 2007, the fee increases from \$6 per acre-foot per year to \$10 per acre-foot per year. Under current law, the fee proceeds are remitted to the county and may only be used for health, education or economic development. The testimony centered on concerns that there is no provision for mitigation of impacts to individual landowners or businesses. The conceptual recommendation made at the Ely meeting was to amend the statutes to permit a portion of the intercounty transfer fee to be used for “reparations” to individuals.

The State Engineer expressed concerns that the proposal might have unintended consequences and opposed the recommendation. (See Appendix B, No. 28 at page 45.) The Committee felt the concept merited further consideration.

Therefore, the Committee voted to:

**RECOMMENDATION NO. 20** — Include a statement in the final report to recommend further consideration of a concept to authorize the counties to set aside up to \$2 of the fee on interbasin transfers to be used for compensating private parties impacted by water exports (see NRS 533.438). The counties would adopt ordinances setting forth the application process and criteria to be used for dispersal of the funds and for the administration of the set-aside, including any provisions for reversion to the county. According to testimony, protection of senior water rights would be a priority of such “reparations” set-asides. Further, the Committee recommends this issue for future study by the interim committee on water resources.

*F. Division of Water Resources*

At the Committee’s meeting in October 2005, the State Engineer provided an overview of his office’s activities. During the 2005 Session, the State Engineer received funding for 11 new positions and reported to the Committee on the progress in filling those positions and reducing the backlog of applications. The State Engineer announced his intent to fund a water planner position created in the 2005 Session that had not been funded at that time and to seek funding for an advisory board that exists in statute but is not currently functioning. (See Appendix C.)

Therefore, the Committee voted to:

**RECOMMENDATION NO. 21** — Send a letter of support to the Governor and the Chairmen of the Senate Committee on Finance and Assembly Committee on Ways and Means for the State Engineer’s budget request for additional funding for water planning activities, including funding for the position of Chief of the Water Planning Section (NRS 540.036).

**RECOMMENDATION NO. 22** — Send a letter of support to the Governor and the Chairmen of the Senate Committee on Finance and Assembly Committee on Ways and Means for the State Engineer’s budget request for additional funding to activate the Advisory Board on Water Resources Planning and Development (NRS 540.111).

Throughout the interim, various other persons and organizations testified as to the need for adding staff or hiring staff with certain expertise, due to the increasing complexity of water rights transactions. In particular, several persons and organizations expressed a desire for more studies and for more oversight or analysis by the DWR of such studies.

Therefore, the Committee also voted to:

**RECOMMENDATION NO. 23 — Send a letter of support to the Governor and the Chairmen of the Senate Committee on Finance and Assembly Committee on Ways and Means recommending funding or other support for increased resources and staff within the DWR to address staffing and other needs as determined by the State Engineer.**

G. *Other Actions*

1. Interim Committee: Senate Bill 216 (Chapter 408, *Statutes of Nevada 2003*), added the review of water authorities, water districts; and other public and private entities involved in water resources, to the duties of the Legislative Committee on Public Lands (NRS 218.5368). However, that provision expires on June 30, 2007, and the Legislative Committee on Public Lands is not recommending continuation of its review of water resource issues and entities. Further, in S.C.R. 26, the Water Resources Committee was directed to consider the advisability of creating an ongoing interim Legislative Committee on Water Resources to monitor water resource issues between sessions and to formulate recommendations to the Legislature.

Therefore, the Committee recommended that the Legislature:

**RECOMMENDATION NO. 24 — Amend the statutes to create an ongoing interim Legislative Committee on Water Resources with a sunset date of June 30, 2015. [BDR 17-205]**

2. Retirement of State Engineer: At the May 2006 meeting of the Committee, Hugh Ricci announced his retirement from the Office of the State Engineer effective in June 2006 and advised the Committee that the Director of the SDCNR had appointed Tracy Taylor as the new State Engineer. Appendix D contains Mr. Ricci's proclamation.

Therefore, the Committee acted to:

**RECOMMENDATION NO. 25 — Adopt a proclamation from the Committee commending Hugh Ricci for his years of State service and retirement as State Engineer.**



## V. APPENDICES

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## APPENDIX A

Senate Concurrent Resolution No. 26 (File No. 100, *Statutes of Nevada 2005*)



## APPENDIX A

### Senate Concurrent Resolution No. 26 Committee on Natural Resources

#### FILE NUMBER 100

SENATE CONCURRENT RESOLUTION—Creating an interim study of the use, allocation and management of water resources in Nevada.

WHEREAS, The waters of the State of Nevada are among its most precious and vital resources; and

WHEREAS, The State of Nevada is the most arid state in the country and has relatively few supplies of surface water and ground water, a condition which is periodically exacerbated by drought conditions in Nevada and in the Rocky Mountains which supply the headwaters of the Colorado River; and

WHEREAS, Adequate, long-term supplies of water are essential to maintaining stable economic growth and the development of rural and urban areas of this State; and

WHEREAS, The conservative and prudent use of supplies of water is necessary to promote adequate, long-term supplies and to protect the environment of this State; and

WHEREAS, The rapid growth in the population and the economy of this State within the last 30 years has placed growing demands on the limited water supplies and has resulted in an increasing number of projects for the reallocation of water resources from areas of supply to areas of demand; and

WHEREAS, The residents of this State are vitally interested in the decisions made relating to the use, management and allocation of Nevada's scarce water resources; and

WHEREAS, The Nevada Legislature has conducted several interim studies on the general topic of laws and activities related to water resources and large amounts of information concerning Nevada's water resources have been compiled through the years and the degree to which these materials fill the current needs is not immediately evident; and

WHEREAS, The provision of services related to water, including the supply of safe water for municipal and industrial uses, the management of wastewater and storm drainage, the management of floodplains and the administration of water reclamation projects, in an efficient manner is critical to the current and future welfare of the citizens of Washoe County; and

WHEREAS, In Washoe County, these water-related services are presently provided through several governmental entities; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the Legislative Commission is hereby directed to appoint a committee to conduct an interim study of the use, management and allocation of water resources in this State; and be it further

RESOLVED, That the committee must:

1. Be composed of eight Legislators as follows:

- (a) The Chairman of the Senate Standing Committee on Government Affairs;
- (b) The Chairman of the Senate Standing Committee on Natural Resources;

- (c) One member appointed by the Majority Leader of the Senate;
  - (d) One member appointed by the Minority Leader of the Senate;
  - (e) The Chairman of the Assembly Standing Committee on Government Affairs;
  - (f) The Chairman of the Assembly Standing Committee on Natural Resources, Agriculture, and Mining;
  - (g) One member appointed by the Speaker of the Assembly; and
  - (h) One member appointed by the Minority Leader of the Assembly.
2. Select a chairman and vice chairman from among its members; and be it further RESOLVED, That the study must include, without limitation:
- 1. An analysis of the laws, regulations and policies regulating the use, allocation and management of water in this State;
  - 2. A review of the status of existing information and studies relating to water use, surface water resources, and groundwater resources in this State;
  - 3. An evaluation of the need, if any, for additional information or studies of water use and water resources in this State, including, without limitation, an analysis of whether:
    - (a) A need exists for additional field investigations to quantify surface water resources, groundwater resources and water uses, and if so, the procedures and costs associated with such investigations; and
    - (b) Valuable information can be obtained through placing groundwater basins, or portions thereof, under hydrologic stress by drilling and pumping wells over a period of time within those basins, and if so, the procedures and costs associated with these actions;
  - 4. A review of the report of the State Engineer provided pursuant to Assembly Bill 213 of the 2003 Session of the Nevada Legislature;
  - 5. Development of recommendations concerning appropriate statutory provisions for administrative procedures and penalties to be imposed upon a person who violates the provisions of NRS 533.460;
  - 6. An analysis of the potential ramifications of initiating procedures for the adjudication of existing rights within hydrologic basins in the State;
  - 7. An evaluation of the feasibility and desirability of quantifying the groundwater resources of this State using existing information;
  - 8. A review of statewide water use and the efficiency of water use, including, without limitation:
    - (a) Per capita water consumption;
    - (b) Water use by the economic sector; and
    - (c) Potential methods of increasing the efficiency of water use in this State;
  - 9. An analysis of the effectiveness of existing water systems for administering, controlling, allocating, distributing and protecting the water resources of this State;
  - 10. An evaluation of the potential for the government of this State to provide:
    - (a) Technical assistance and information services regarding water resources to local governments within the State; and
    - (b) Increased access to informational and educational services regarding water resources to the residents of the State;

11. An evaluation of the feasibility and advisability of creating a statutory Legislative Committee on Water Resources and prescribing its membership and duties; and be it further

RESOLVED, That the Legislative Commission is hereby directed to appoint a subcommittee of the committee to study the feasibility and advisability of consolidating the water-related services in Washoe County; and be it further

RESOLVED, That the subcommittee must:

1. Be composed of six Legislators as follows:

- (a) One member of the Senate appointed by the Chairman of the Committee;
- (b) One member of the Assembly appointed by the Chairman of the Committee;
- (c) One member appointed by the Majority Leader of the Senate;
- (d) One member appointed by the Minority Leader of the Senate;
- (e) One member appointed by the Speaker of the Assembly; and
- (f) One member appointed by the Minority Leader of the Assembly;

2. Select a chairman and vice chairman from among its members; and be it further

RESOLVED, That the study conducted by the subcommittee must include, without limitation:

1. An analysis of relevant financial considerations, ownership and operation of facilities, and potential management and staffing structures;

2. A review of potential alternatives including, without limitation, consolidation of:

(a) All water supply, wastewater treatment, flood control, storm drainage and water reclamation programs;

(b) Only water supply and wastewater treatment programs;

(c) Only the water supply programs;

(d) Only the responsibilities for procuring water and water rights, treating the water and providing the water to the existing distributors; and

(e) Only the responsibilities for procuring water and water rights and providing the water to the water treatment facilities managed by the various distributors; and be it further

RESOLVED, That the entities providing water-related services in Washoe County are hereby directed to participate and cooperate in the study and furnish all necessary assistance to the subcommittee; and be it further

RESOLVED, That any recommended legislation proposed by the committee or subcommittee must be approved by a majority of the members of the Senate and a majority of the members of the Assembly appointed to that committee or subcommittee; and be it further

RESOLVED, That the Legislative Commission shall submit a report of the results of the studies and any recommendations for legislation to the 74th Session of the Nevada Legislature.





## APPENDIX B

State Engineer's Comments on the S.C.R. 26, June 21, 2006,  
"Work Session Document"



KENNY C. GUINN  
Governor

APPENDIX B  
STATE OF NEVADA



ALLEN BIAGGI  
Director

HUGH RICCI, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

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MEMORANDUM

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Date: June 21, 2006

To: Members of the Legislative Commission's Committee to Study the Use,  
Management and Allocation of Water Resources  
(S.C.R. 26, File No. 100, *Statutes of Nevada 2005*)

Through: Susan Scholley, Chief Principal Research Analyst, Research Division

From: Tracy Taylor, P.E., State Engineer

Subject: Comments to Work Session Document Recommendations

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The attached document is our comments to the fifty-one (51) recommendations posed in the Work Session Document.

We look forward to working through any and all language you will be considering for bill drafts. As always, thank you for all your help during this interim-study period.



**STATE ENGINEER'S COMMENTS ON THE SCR 26  
JUNE 21, 2006, WORK SESSION DOCUMENT**

**WATER LAW AND ADMINISTRATION**

1. PROTESTS – REOPENING OF PROTEST PERIOD. **Amend the statutes** relating to the protest procedures for water rights applications to require that the protest period be reopened for 30 days if an application is not processed within 7 years. Further, if a protest is based on impacts to a specific property, amend the statutes to allow successorship of protestant status to successive owners of the property (by sale or inheritance). The burden of notifying the Division of Water Resources, State Department of Conservation and Natural Resources (SDCNR), of a claim of succession and any change of address shall be on the person seeking successor status. See NRS 533.365. (Central Nevada Regional Water Authority, Las Vegas, May 2006)

Note: The effective date of any change to the protest period should be considered. Options include making the changes effective as to: (1) all pending applications; (2) pending applications for which hearings have not been scheduled; or (3) only applications filed after effective date of bills.

COMMENTS: The State Engineer supports this type of action in concept; however, there are a number of details that would require further consideration.

This suggestion would require the State Engineer to re-publish an application in the appropriate newspaper in order to assure everyone was aware of the dates for filing new protests. However, re-publication indicates a fiscal impact and there is no indication as to who will be responsible for the costs incurred in the re-publication. Is it contemplated that the applicant will be responsible for said costs; otherwise, the State Engineer's budget will require additional funding to provide for the cost of re-publishing applications.

Nevada Revised Statute 533.365 requires that protests must set forth with reasonable certainty the grounds of such protest and are to be verified by the affidavit of the protestant, his agent or attorney. The State Engineer takes no issue with clarifying the succession of a protest to a specific property owner when the protest was addressed to the impacts to water rights to a specific property; however, perhaps general protest grounds also asserted by that property owned should also be considered.

The State Engineer would recommend the period of time be set at 10 years as re-publication and processing of new protests will take a substantial amount of effort and a decade is a reasonable amount of time for changes in landownership and new information to have been presented. The State Engineer believes the request is to address the larger proposed water projects; therefore, he suggests that the provision only apply to requests that singularly or in multiple applications request to appropriate an amount of water equal to or greater than 500 acre-feet annually and for which hearings have not been held or scheduled.

2. **FINES. Amend statutes** to authorize the State Engineer to order any person in violation of the provisions of NRS Chapters 533, 534, 535, 536 and *Nevada Administrative Code* (NAC) Chapters 534 and 535 to: (a) pay an administrative fine not to exceed \$10,000 per day for each violation; and (b) be liable for any expense incurred by the Division of Water Resources, SDCNR, in investigating and stopping the violation. Any appeal of a violation would be done through the courts under NRS 533.450. Administrative details for addressing violations, assessing fines or penalties, and procedures would be done through the promulgation of rules and regulations. (State Engineer, Las Vegas, May 2006)

COMMENTS: The State Engineer originated this recommendation and continues to support it. Please note that Recommendations No. 38 is encompassed in this item and is somewhat related to Item No. 42.

Please see the memorandum from the State Engineer attached to the Work Session Document under Tab A.

3. **LOCAL GOVERNMENTS HOLDING WATER RIGHTS. Amend the statutes** to allow local governments to “hold” water rights for a longer time recognizing their extended planning horizon and give private parties less time to prove beneficial use. (Bevan Lister, Caliente, February 2006)

COMMENTS: The State Engineer does not believe this recommendation is necessary because such considerations are already provided for in Nevada water law

Current law provides the State Engineer flexibility in the determining timeframes initially granted a permittee for perfecting a water right and provides the State Engineer with discretionary authority in considering requests for extensions of time. Nevada Revised Statute 533.380 provides that applicants have 5 years in which to complete the construction of their works of diversion and 10 years for placing the water to beneficial use. Nevada Revised Statute 533.380 provides the State Engineer with the discretion to shorten the time for the completion of work and, for good cause shown, to extend the time in which the construction of the works of diversion must be completed. In a request for extension of time, a permittee must provide evidence of reasonable diligence and good faith in pursuing perfection of the application. Nevada Revised Statute 533.390 provides a similar provision with respect to the filing of proof of beneficial use. Since every permittee may present a different factual scenario, the State Engineer recommends this discretion not be limited by statute.

Nevada Revised Statute 533.380(4) already provides the State Engineer with many factors to consider in granting the holders of municipal or quasi-municipal water rights extensions of time for perfecting such rights. These factors include whether the holder of the water right permit has shown good cause for not having placed the water to beneficial use, the number of parcels or commercial or residential units to be served by the county, city, town, public water district or public water company, any economic conditions which affect the water right holder’s ability to make complete application of the water to beneficial use, any delays in the development of the land or the area being served which were caused by unanticipated natural

conditions, and the period contemplated in the plan for the development of a project approved by the local government, or plan for development of a planned unit development.

4. **100 YEAR SUPPLY. Amend the statutes** to require evidence of a 100-year water supply as a condition of approving new subdivisions, using the Arizona model. (Val Taylor for Snake Valley Citizens Alliance, Ely, March 2006) See relevant Arizona statutes under Tab B.

COMMENTS: The State Engineer does not support this recommendation as Nevada water law is already more protective and restrictive.

Arizona's water law presents a completely different method as to the use of water and the State Engineer does not believe statutes from other states should be readily adopted without focusing on the difference in those laws. Water rights in Nevada are administered on the perennial yield analysis of the quantity of water that can be appropriated from a groundwater basin year to year. This analysis as to the quantity of water available provides greater assurance as to a long-term supply than the 100-year supply recommended.

5. **Include a statement in the final report** urging the State Engineer to be mindful of the state policy against speculation in water rights and to prevent speculation for profit. (Val Taylor for Snake Valley Citizens Alliance, Ely, March 2006)

COMMENTS: The State Engineer takes no issue with such a statement being included in the final report because Nevada water law already directs him to consider whether applications for speculative purposes.

Nevada Revised Statute 533.370(1)(c) was enacted in reaction to the Legislature's concern about speculation in water rights. This statutory provision requires an applicant provide proof satisfactory of his intention in good faith to construct any work necessary to apply water to its intended beneficial use and the financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence. These provisions are sufficient for the State Engineer to determine whether an application has been filed merely for the purpose of sale.

6. SUBORDINATION OF APPLICATIONS. **Include a statement in the final report** requesting the State Engineer to consider taking action on subsequent applications when earlier filed applications are held in abeyance, if appropriate, given the specific circumstances of the affected applications. (Bevan Lister, Ely, March 2006)

COMMENTS: The State Engineer supports this recommendation only if it applies to basins with pending interbasin transfers. Otherwise, the State Engineer believes the prior appropriation system should govern.

The State Engineer is aware that water right applications filed for large interbasin transfers of water have held up the consideration of smaller applications for uses of water within the basin of origin for a number of years due to the prior appropriation system established under Nevada water law. However, the interbasin transfer statute found in Nevada Revised Statute 533.370(6) requires the State Engineer to consider whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported. The State Engineer would not oppose clarification that he can act on applications junior to the exportation project for uses of water within the basin of origin prior to acting on the request for the interbasin transfer of water.

7. NEW TECHNOLOGY OR UPDATED INFORMATION. **7. Include a statement in the final report** asking the State Engineer to consider, where appropriate, the use of new technology or updated information to determine perennial or basin yields. (Aqua Trac LLC, Elko, April 2006)

COMMENTS: The State Engineer supports such a statement in the final report because the State Engineer always wants to consider the best available science.



## DIVISION OF WATER RESOURCES

8. OFFICE OF WATER RESOURCE USERS ADVOCATE. **Amend statutes** to create the Office of Water Resource Users Advocate in the State Department of Conservation and Natural Resources. This position is intended to: (a) help filter tenuous charges of injury or mismanagement related to water resources; (b) provide guidance to individuals or interests who feel injured, but may not have the sophistication to act on their concerns; and most importantly, (c) build a sense of parity among parties engaged in emerging water resource disputes. (Central Nevada Regional Water Authority and Great Basin Water Network, Las Vegas, May 2006)

COMMENTS: The State Engineer must oppose this recommendation as drafted as it presents the potential for internal conflict within the Department of Conservation and Natural Resources and would be detrimental to the neutrality of the Department. The State Engineer's office is always available to the public in order to educate those who do not have the level of sophistication to act on their concerns. The Department should not take on the role of legal counsel the individuals who wish to protest a particular application.

9. FUNDING FOR WATER PLANNING. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees for the State Engineer's budget request for additional funding for water planning activities, including funding for the position of the Chief of the Water Planning Section within the Division of Water Resources, SDCNR. See NRS 540.036. (State Engineer, Las Vegas, May 2006)

COMMENTS: The State Engineer originated this recommendation and continues to support funding the position of a Chief of Water Planning.

10. FUNDING FOR ADVISORY BOARD ON WATER RESOURCES PLANNING AND DEVELOPMENT. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees for the State Engineer's budget request for additional funding to activate the Advisory Board on Water Resources Planning and Development. See NRS 540.111. (State Engineer, Las Vegas, May 2006)

COMMENTS: The State Engineer originated this recommendation and continues to support it.

11. FUNDING FOR INCREASED TECHNICAL CAPACITY OF THE DIVISION OF WATER RESOURCES. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees recommending funding or other support for an increase in the technical capacity of the Division of Water Resources, SDCNR, (e.g. hiring persons with degrees in hydrology or hydrogeology) to allow greater monitoring, evaluation and oversight. According to testimony, this recommendation is aimed at improving the public's confidence that impacts caused by rapid water resource development will be: (a) timely recognized by the State Engineer; and (b) addressed when impacts emerge, and before they become disruptive and costly. (Central Nevada Regional Water Authority and Great Basin Water Network, Las Vegas, May 2006)

COMMENTS: The State Engineer supports the Governor's Budget as proposed, but recognizes the need for additional technical capacity in the Office of the State Engineer and would put any additional funding to use for the benefit of the public.

The State Engineer has knowledge of the concern that the appropriation of water be based on technical analyses that are supported by a conclusive data and would be in support of increasing the number of hydrologists or hydrogeologists on staff. However, while recognizing the concern, the State Engineer understands there are significant fiscal impacts associated with this recommendation. The use of such personnel is becoming increasingly important in the review of information being presented by applicants in order to support their water right applications, particularly where the filings are for substantial quantities of water far in excess of the amount of water historically believed to be available for appropriation as established in the United States Geological Reports. However, even if these positions are supported, it must be recognized the State Engineer finds it challenging to find such skilled personnel willing to work under present salary constraints.

12. FUNDING TO INCREASE ABILITY TO CONDUCT INVENTORIES. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees recommending the addition of staff in the Division of Water Resources, SDCNR, to increase the capacity of the Office of the State Engineer to conduct and maintain water resource inventories, through monitoring and identification of water sources, including without limitation, wells, large local springs, and surface waters. (Assemblyman Pete J. Goicoechea, District No. 35, Ely, March 2006)

COMMENTS: The State Engineer supports the Governor's Budget as proposed, but is aware of the need for additional water resource inventories and would put any additional funding to use for the benefit of the public.

The State Engineer recognizes the concern for collection of additional data and the public's request that significant amounts of data be accumulated prior to the State Engineer acting on pending applications. However, the State Engineer recognizes that associated with this recommendation there are significant fiscal impacts.

13. FUNDING TO UPDATE AND CREATE WATER RESOURCE INVENTORIES AND TO EXPEDITE HEARINGS. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees recommending funding for additional staff in the Division of Water Resources, SDCNR, to handle the backlog of pending requests for adjudications and other hearings. (Brent Eldridge, White Pine County Commissioner, Ely, March 2006)

COMMENTS: The State Engineer supports the Governor's Budget as proposed, but is aware that additional resources are needed to handle the backlog of pending adjudications and other hearings and would put any additional funding to use for the benefit of the public, but notes that this recommendation has significant fiscal impacts.

14. FUNDING TO UPDATE AND CREATE WATER RESOURCE INVENTORIES AND EXPEDITE HEARINGS. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees recommending additional funding for the Division of Water Resources, SDCNR, to facilitate the update and creation of water resource inventories and to expedite hearings. (Bob Erickson, Fallon City Council Member, Elko, April 2006)

COMMENTS: The State Engineer supports the Governor's Budget as proposed, but is aware that additional resources are needed to facilitate the updating and creation and to expedite hearings and would put any additional funding to use for the benefit of the public, but notes that this recommendation has significant fiscal impacts.

## STUDIES/DATA

15. \$1 MILLION TO CONTINUE WATER RIGHTS TECHNICAL SUPPORT FUND. **Request an appropriation** of \$1 million to continue the Water Rights Technical Support Fund, as enacted by Senate Bill 62 (Chapter 493, *Statutes of Nevada 2005*) through the next biennium and until 2009. (Central Nevada Regional Water Authority, Ely, March 2006; Great Basin Water Network, Las Vegas, May 2006)

COMMENTS: The State Engineer is neutral as to this recommendation as it does not directly affect the Office of the State Engineer.

16. **FUNDING FOR BASIN INVENTORIES.** **Request an appropriation** to the Division of Water Resources for the purpose of contracting for groundwater basin studies to inventory surface, ground and domestic well water in basins where conflicts are identified and prioritized. The approximate cost is \$1.6 million per basin study or about \$3.2 to \$4.8 million annually (2-3 studies). Studies would take approximately three years to complete and include the following:

- (a) Phase 1 comprised of geochemical studies; aerial photos of phreatophytes (vegetation which may provide evapotranspiration estimates); samplings of existing wells and springs for quantity and quality (water level measurements); precipitation information (collection of new data using USGS, PRIZM, or other calibrated models); installation of stream gages on perennial streams, estimation of non-perennial streams, and definition of existing uses: crops, livestock needs, wildlife needs, phreatophyte needs to prevent air quality/soil erosion problems; and
- (b) Phase 2 (for priority basins) with aquifer testing (well drilling, pumping and monitoring); recharge estimates from precipitation and from irrigation; hydrogeologic mapping to determine the framework or geometry of the aquifer or saturation of alluvial fills and bedrock limits; complete inflows or chloride mass balance tests; develop a groundwater budget of input and output to reach a balance; and use all the collected data and assumptions to create a full numerical model that can be used as a management tool to test water management scenarios.

This should assist the Office of the State Engineer in meeting the requirements of NRS 532.165. (Great Basin Water Network, Las Vegas, May 2006)

**COMMENTS:** The State Engineer supports the Governor's Budget as proposed, but recognizes the need for funding additional studies that may be required. However, the State Engineer would propose a less restrictive funding structure and more flexibility on the types and length of studies than outlined under Recommendation No. 16. The State Engineer suggests an approach similar to the revolving fund that found in NRS 532.320.

The State Engineer recommends the Committee consider a \$5 million dollar fund that is to be replenished every biennium, which provides the State Engineer the discretion to determine the priority of basin studies and the type of study needed. These studies should be approached individually and it cannot be categorically stated that a particular basin study will require a specific amount of money or can be completed within a specific timeframe. The State Engineer understands the need for additional study, but suggests that a constant source of funding be provided that would assure the State Engineer the flexibility needed to determine which basin should be considered for study.

17. **LEGISLATIVE COUNSEL BUREAU COMPARATIVE STUDY. Direct the Legislative Counsel Bureau (LCB)** to undertake a comparative study of water resource organizational structures for several western states (Utah, Idaho and Arizona) to identify: (a) responsibilities for groundwater studies and conservation programs; (b) required water commitments for development; and (c) methods of how each state constructs the definitions of public benefits and public interests. The LCB study would be submitted to the 2009 Legislature. **ALTERNATIVELY OR IN ADDITION TO SUBMITTAL TO THE LEGISLATURE**, the Committee could direct that the report be submitted by January 1, 2008, to the interim committee assigned to review water resource issues. (Great Basin Water Network, Las Vegas, May 2006)

**COMMENTS:** The State Engineer is neutral as to what areas the Legislative Counsel Bureau should be studying, but also believes this recommendation is unnecessary.

The State Engineer is presently a member of the Western States Water Council that meets yearly to discuss the issues the various states are addressing and holds workshops twice a year where the State Engineer meets with other state engineers to discuss specific issues. The State Engineer is also a member of the Western State Engineers Association, which also annually holds a spring workshop and a fall meeting. Therefore, as part of the State Engineer's current job he has ongoing discussions with the western states as to their organizational structures and the other issues referenced.

18. **ADOPT OF RESOLUTION DIRECTING COLLABORATION IN SHARING OF DATA. Adopt a resolution** directing collaboration between the State Engineer, local governments, water districts and authorities, water purveyors, large commercial/agricultural users, other water users, and the sharing of water use data, with the goal of implementing a statewide information management system to assist in the development and management of groundwater resources. (Central Nevada Regional Water Authority, Ely, March 2006)

**COMMENTS:** The State Engineer believes this recommendation is unnecessary as there is already significant collaboration between entities within Nevada. We recommend the Committee not consider this recommendation under the time consuming process of adopting a resolution, but rather only as a statement in the report.

The State Engineer already makes every effort to make the data possessed by the Division of Water Resources readily available to the public. A considerable amount of time and effort has gone into the creation of databases of information that are now available to the general public over the internet. The State Engineer presently has the ability to enter into cooperative agreements with the United States Geological Survey and other entities for the sharing of data and sharing is taking place; therefore, the State Engineer believes there is already a mechanism in place for collaboration and it is being done. The State Engineer believes this recommendation has substantial fiscal impacts with regard to the maintenance of a statewide information management system and questions the anticipated funding source and staffing to maintain such a system.

19. **LETTER FOR SUSTAINABLE GROUNDWATER DEVELOPMENT.** **Send a letter** to Nevada's Congressional Delegation, Desert Research Institute, the University of Nevada Reno, and University of Nevada Las Vegas, urging them to work together to obtain funding for development of a statewide research program on sustainable groundwater development, including agricultural and urban conservation, policy research, and governance structures. (Central Nevada Regional Water Authority, Ely, March 2006)

COMMENTS: The State Engineer provides no comment regarding this recommendation because this office is unclear as to what objective this item hopes to achieve.

## **CONSERVATION/PLANNING**

20. **FUND FOR LOCAL WATER RESOURCE PLANNING.** **Amend the statutes and request an appropriation** of \$1 million to create a permanent need-based fund for local water resource planning and information management. The fund would provide grants similar to the grants provided by the Water Rights Technical Support Fund (S.B. 62) but the legislation would create a framework for long-term funding and provide clear direction for program administration by the State Board of Financing Water Projects. In addition, priority would be given to rural counties and local governments outside the urban areas within Clark and Washoe Counties. The Legislature's intent to consistently fund water resource planning and information management should be explicit in the bill. (Central Nevada Regional Water Authority and Great Basin Water Network, Las Vegas, May 2006)

COMMENTS: The State Engineer takes no position with regard to this recommendation.

21. **FUND FOR GRANTS FOR WATER CONSERVATION, CAPITAL IMPROVEMENTS TO CERTAIN WATER SYSTEMS AND IMPROVEMENTS TO CERTAIN SEWAGE DISPOSAL SYSTEMS.** **Amend the statutes** to expand the eligible uses of the Fund for Grants for Water Conservation, Capital Improvements to Certain Water Systems and Improvements to Certain Sewage Disposal Systems to include requests for need-based funding for water resource plan implementation, e.g., infrastructure development. This fund is administered by the State Board for Financing Water Projects and is commonly referred to as the A.B. 198 program (See NRS 349.984). Although new development must always be encouraged to pay for its own infrastructure, communities that lack the financial capacity, that is, an established body of rate-payers to supply primary infrastructure necessary to properly locate development may need assistance. In addition, priority would be given to rural counties and local governments outside the urban areas within Clark and Washoe Counties. Appropriate assistance for these communities can be provided by allowing the A.B. 198 program to make need-based grants or low interest loans aimed at expanding supply and transmission capability to meet future growth needs as identified in water resource plans. (Central Nevada Regional Water Authority and Great Basin Water Network, Las Vegas, May 2006)

COMMENTS: The State Engineer takes no position with regard to this recommendation.

22. NO FORFEITURE FOR CONSERVATION. **Amend the statutes** to prohibit forfeiture of water rights due to implementation of conservation measures, using Utah Code §73-1-4 as a model. (Water Resources Committee)

See attached Utah statute with pertinent sections highlighted under Tab C.

COMMENTS: The State Engineer does not oppose the concept that conserved water is not subject to the forfeiture provisions of Nevada water law; however, the specific provisions found in the Utah law may not translate appropriately into Nevada law. Nevada water law already provides a mechanism whereby a water right holder can file a request for extension of time to prevent forfeiture. The State Engineer would be more than willing to work with the bill drafters on the details and definitions of any proposed bill, but this is a very intricate area of the law and should be approached thoughtfully.

23. ROTATIONAL CROP MANAGEMENT. **Amend the statutes** to allow the State Engineer to approve rotational crop management contracts that thereby permit other uses of the conserved water, including leasing of such conserved water rights. The program would be based on recent Colorado legislation. See attached Colorado House Bill 06-1124 under Tab D. (Water Resources Committee)

COMMENTS: The State Engineer supports the concept of rotational crop management and Nevada Revised Statute 533.075 already provides for the rotation of surface water. However, the specific provisions found in the Colorado law may not translate appropriately into Nevada law. The State Engineer would be more than willing to work with the bill drafters on the details and definitions of any proposed legislation, but this is a very intricate area of the law and should be approached thoughtfully.

24. CONSERVATION PLANS. **Amend the statutes** to require water conservation plans to include what steps will be, and have been, taken to use water more efficiently and how much water may have been saved in various water use sectors, including urban, residential, commercial, agriculture, golf courses, and public facilities, such as schools, colleges, public buildings' indoor and outdoor use, and athletic fields. (Great Basin Water Network, Las Vegas, May 2006)

COMMENTS: The State Engineer believes this recommendation is unnecessary because Nevada Revised Statute 540.141 already define the factors that should be considered in a conservation plan.

25. ANNUAL REPORTING OF WATER USE. **Amend the statutes** to require annual reports from water providers serving 600 or more customers in counties whose population is greater than 100,000. These reports would accompany the annual water quality report and be distributed to ratepayers and the appropriate local government. Reports would include: (a) locations and amounts of water supplied by source; (b) total and average use of water by user groups, e.g., single-family, multi-family, commercial, resort-hotel casino, public facilities, golf courses; (c) total water loss in the water supply system; and (d) totals for income, expenditures, and debts of the water provider, as well as anticipated costs for each project planned within the upcoming 10 years. (Great Basin Water Network, Las Vegas, May 2006)

COMMENTS: The State Engineer is neutral on this recommendation as written, the State Engineer does recognize the value of this type of information on a statewide basis for regional planning and studies. The State Engineer already has the ability to require and has required annual reporting from many permittees.

26. RESOLUTION SUPPORTING WATER CONSERVATION. **Adopt a resolution** emphasizing the importance of and encouraging water conservation and further urging water providers to demonstrate water savings and to implement conservation (tiered) pricing. (Great Basin Water Network and Snake Valley Citizens Alliance, Ely, March 2006)

COMMENTS: While the State Engineer supports water conservation as an important element of planning, the State Engineer believes it would be wise to change this recommendation from the time consuming process of adopting a resolution to a statement in the report.

27. RESOLUTION ENCOURAGING RURAL DEVELOPMENT. **Adopt a resolution** encouraging rural development that matches the availability of water resources with new businesses and industry. (Humboldt River Basin Water Authority, Elko, April 2006; Val Taylor for Snake Valley Citizens Alliance, Ely, March 2006)

COMMENTS: While the State Engineer supports the concept that the availability of water resources should be considered in water planning and already reviews water plans submitted, the State Engineer believes it would be wise to change this recommendation from the time consuming process of adopting a resolution to a statement in the report.



## INTERBASIN TRANSFERS

28. COUNTY SET ASIDE OF FEE FOR COMPENSATION FOR IMPACTS. **Amend the statutes** to authorize the counties to set aside up to \$2 of the fee on interbasin transfers to be used for compensating private parties impacted by water exports (See NRS 533.438). The counties shall adopt ordinances setting forth the application process and criteria to be used for dispersal of the funds and for the administration of the set-aside, including any provisions for reversion to the County. According to testimony, protection of senior water rights would be a priority of any such “reparations” set-aside. (Brent Eldridge, White Pine County Commissioner, Ely, March 2006)

COMMENTS: Recommendation No. 28 appears only to affect local government and the distribution of funds under NRS 533.438; however, it appears to the State Engineer that the recommendation could have unintended consequences that will likely affect the Office of the State Engineer. The Legislature has already directed the State Engineer to review impacts to existing water rights as part of the application review process and an application cannot be granted if the State Engineer believes there will be impacts to existing rights. The State Engineer does not believe this recommendation is as simple as it appears and cannot support the recommendation at this time.

29. CONSUMPTIVE USE CAN ONLY BE TRANSFERRED. **Amend the statutes** to clarify that only consumptive use can be transferred between water basins. (Brent Eldridge, White Pine County Commissioner, Ely, March 2006)

COMMENTS: The State Engineer supports consumptive use limitations and under his current authority has been placing consumptive use limitations on the transfer of water to municipal purposes that has been previously used for irrigation. The State Engineer would like to work with the bill drafter on details and definitions as this a complex concept.

30. TEMPORARY INTERBASIN TRANSFERS. **Amend the statutes** to allow issuance of temporary permits for interbasin transfers and require data reports for three to five years as a condition of the permit. Data reports shall include water levels, recharge rates, impacts to habitat, and environmental impacts. At the end of the monitoring period the State Engineer shall hold a public hearing and determine whether to issue a final permit. (Warren Russell, Elko County Commissioner, Elko, April 2006)

COMMENTS: The State Engineer does not support this recommendation. Water developed under a temporary transfer should not be used for a permanent use, such as development in our cities and towns. The State Engineer signs off on subdivision maps and questions how those maps can be signed if the water rights are only considered to be temporary. The State Engineer has tools at his disposal to acquire data from the use of water permitted under an interbasin transfers and such a tool was utilized in State Engineer's Order No. 1169, wherein water right holders were required to pump existing rights and gather data before additional water going to be considered for appropriation.

31. RESOLUTION ON FACTORS STATE ENGINEER TO CONSIDER IN PERMITTING INTERBASIN TRANSFER. **Adopt a resolution** directing the State Engineer to consider the following during the permitting process for interbasin or intercounty transfer projects that result in the exportation of a significant portion of the groundwater resources: (1) a comprehensive baseline inventory of historical and current water uses and related environmental factors; (2) an in-place, continuing monitoring system to ascertain impacts; (3) incorporation of the baseline inventory and monitoring into the project, along with the hydrogeology studies; (4) implementation of testing; and (5) incremental development of the project. (Dean Baker for Snake Valley Citizens Alliance, Las Vegas, May 2006)

COMMENTS: The State Engineer believes this recommendation is unnecessary because he already has the statutory authority to perform these functions and can take these into account when reviewing interbasin transfer applications.

The State Engineer is not sure what a resolution hopes to accomplish, but this resolution is similar to legislation proposed last session that called for the adjudication of water rights in a basin before the allowance of an interbasin transfer. A comprehensive baseline inventory of historical and current water uses is the work that is performed in an adjudication. Requiring a comprehensive baseline inventory (an adjudication) and related environmental factors would have an enormous economic impact on Nevada in that it would essentially halt development all over the state in areas such as Reno, Sparks, Churchill County, Las Vegas and Mesquite, which are all looking outside the basins in which they are physically located for water to support their communities and would essentially stop all interbasin transfers from many years.

To complete a comprehensive baseline inventory of historical and current water uses and related environmental factors would first mean funding and finding dozens and dozens of qualified employees that would require significant training, would require millions of dollars on an annual basis for their salaries and equipment and would require support staff for data entry, and would require years of fieldwork. The State Engineer is already requiring monitoring plans for interbasin transfers of water and it is not clear what the recommendation means by implementation testing.

32. RESOLUTION DIRECTING BASELINE INVENTORY. **Adopt a resolution** directing the Division of Water Resources, SDCNR, to establish a baseline inventory over time, including: (a) information and data on certificated rights; (b) historical and actual uses; (c) proof of beneficial uses; and (d) itemization of acres affected by surface/subsurface flows or water tables that create meadows or pastures. Further, direct the Division to implement monitoring systems. (Connie Simkin, Caliente, February 2006)

COMMENTS: The State Engineer believes this recommendation is unnecessary because he already has the statutory authority to perform these functions and much of the information currently exists within the Division of Water Resources.

The Division of Water Resources already has information on certificated water rights in its database. In basins where annual pumpage inventories are performed, the Division of Water Resources has information on historical and actual water use. Where pre-statutory water right holders have filed claims of vested water rights, that information is also available in the Division of Water Resources. All permittees are required to file proof of beneficial use during the certification process. As to the itemization of acres affected by surface/subsurface flows or water tables that create meadows or pastures, in Nevada it is most likely that a claim of pre-statutory vested right exists and would be considered during the adjudication process. This request, like the one in Item No. 31 would require a substantial increase in the workforce and budget of the Division of Water Resources. To inventory every basin every year would require an extremely large financial expansion of the budget for the Division of Water Resources for fieldwork and furtherance of the adjudication of every basin.

33. NEW MODELS. **Send a letter** requesting the State Engineer to investigate new models estimating impacts from interbasin transfers of large quantities of water. (Brent Eldridge, White Pine County Commissioner, Ely, March 2006)

COMMENTS: The State Engineer has no objection to a letter being issued as he always considers the newest models.

34. STATEMENT TO SOUTHERN NEVADA WATER AUTHORITY. **Include a statement in the final report** urging the Southern Nevada Water Authority and the State Engineer, in connection with an interbasin transfer, to: (1) develop a clear description of the project; (2) identify and investigate the potential environmental and socio-economic impacts of the project; (3) ensure that rural communities have adequate water for future development; (4) develop and implement a rigorous monitoring program; (5) regulate purchases from urban areas; and (6) consider conveyance of water by lease rather than transfer of ownership. (Greg James, Attorney, Las Vegas, May 2006)

COMMENTS: The State Engineer believes this recommendation is unnecessary, as he is already required by statute to perform the functions suggested in this proposal.

The State Engineer believes the potential environmental impacts will be addressed during the water rights hearing process and the federal environmental review process conducted under the National Environmental Policy Act. Nevada water law found in NRS 533.370(6) requires the State Engineer to address whether an interbasin transfer is environmentally sound as it relates to the basin from which the water is exported and whether the proposed interbasin transfer is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported. The State Engineer is already requiring monitoring programs on interbasin transfers of water. The State Engineer is not clear as to what the proposal is attempting to address as to regulating purchases from urban areas, and therefore, makes no comment on this provision. It is unclear what the person proposing the conveyance of water by lease rather than transfer of ownership meant and therefore makes no comments on this provision.

## WELLS/GROUNDWATER ISSUES

35. FORFEITURE NOTICE. **Amend the statutes** to require that the State Engineer to give notice in all basins prior to forfeiture for nonuse of water. In the absence of pumping records in certain basins, the State Engineer may base a notice of forfeiture on other evidence of nonuse. Currently, prior to forfeiture the State Engineer must give notice of four years of nonuse only in basins for which the State Engineer has pumping records, also referred to as inventoried basins. See NRS 534.090. (Assemblyman Pete J. Goicoechea, District No. 35, Las Vegas, October 2005)

COMMENTS: The State Engineer will support this recommendation with considerations similar to those discussed during the previous amendments of NRS 534.090. This provision should not be used to re-start the clock on water rights having more than 5 consecutive years of non-use at the time any legislation is enacted. The recommendation also raises a number of practical considerations described below.

In basins where the State Engineer does not conduct pumpage inventories, a person or entity outside the Office of the State Engineer may initiate a forfeiture proceeding. In order to determine if there was any validity to the allegation, the State Engineer would be required to hold a hearing to determine if there is clear and convincing evidence of non-use. Under this provision the person would then get notice after the hearing of the potential forfeiture? Another example is where a water right permit holder has filed extensions of time to prevent forfeiture. It is the water right holder themselves that has informed the State Engineer that the water is not being used. If use of the water is not timely resumed, is the water right forfeited or would this provision then require an additional notice of possible forfeiture? The State Engineer would be concerned about the retroactive application of such as statute, as he was when the statute applicable to inventoried basins was enacted.

36. PRIORITY DATE ON DOMESTIC WELL. **Amend the statutes** to set the priority date for a domestic well as the completion date of the well as stated on the well log submitted to the Division of Water Resources, SDCNR, by the well driller. (State Engineer, Las Vegas, May 2006; Central Nevada Regional Water Authority, Ely, March 2006)  
See attached memorandum from State Engineer under Tab A.

COMMENTS: The State Engineer originated this recommendation and continues to support it. Please see the memorandum from the State Engineer attached to the Work Session Documents as Tab A.

37. MOTHER-IN-LAW QUARTERS: **Amend the statutes** to address water service to auxiliary dwellings, e.g., caretaker's quarters or mother-in-law unit, from a domestic well if: (a) local ordinances allow for such uses; and (b) with the condition that a meter be installed on the well to measure usage to ensure the total water pumped does not exceed 2 acre feet. In addition, the proposed amendment would quantify the limit on domestic use as 2 acre-feet per year instead of 1,800 gallons per day (gpd). This change recognizes that more water is usually needed in the summer months than in the winter months and that the total annual use from a domestic well is what is used for planning purposes. See NRS 534.013 and 534.180.  
(State Engineer, Las Vegas, May 2006)

COMMENTS: The State Engineer originated this recommendation and continues to support it. Please see the memorandum from State Engineer attached to the Work Session Documents as Tab A.

38. FINING AUTHORITY. **Amend the statutes** to authorize the State Engineer to order any person in violation of the provisions of NRS Chapter 534 and NAC Chapter 534 to: (a) pay an administrative fine not to exceed \$10,000 per day for each violation; and (b) be liable for any expense incurred by the Division of Water Resources, SDCNR, in investigating and stopping the violation. Any appeal of a violation will be done through the courts pursuant to NRS 533.450. The details for addressing violations, assessing fines or penalties, and procedures will be done through the promulgation of rules and regulations. (State Engineer, Las Vegas, May 2006)  
Note: This recommendation may be moot if the Committee approves Recommendation No. 2. See attached memorandum from State Engineer under Tab A.

COMMENTS: The State Engineer originated this recommendation and continues to support it. Please see the memorandum from State Engineer attached to the Work Session Documents as Tab A.

39. CEASE PUMPING ORDER. **Amend the statutes** to clarify that the State Engineer can order a groundwater permittee to cease pumping if monitoring shows significant impacts. (Senator Mark E. Amodei, Capital Senatorial District; Warren Russell, Elko County Commissioner, Elko, April 2006)

COMMENTS: The State Engineer supports this recommendation as it clarifies his present authority.

Under NRS 534.110 the State Engineer can regulate the use of water under a municipal, quasi-municipal or industrial permit to limit or prohibit the pumping of water to prohibit any unreasonable adverse effect on an existing domestic well located within 2,500 feet of the well, unless the holder of the permit and the owner of the domestic well have agreed to alternative measures to mitigate the adverse effects. The State Engineer may currently order a water right holder to cease pumping if adverse impacts are being caused to a senior water right holder.

40. DEDICATION FOR DOMESTIC WELLS. **Amend the statutes** to require a minimum dedication of water rights for parcel maps if local ordinances do not regulate domestic wells. ALTERNATIVELY, amend the statutes to require the State Engineer to initiate designation of basins in jurisdictions without local regulation of domestic wells and to require the dedication of water rights for parcel maps in designated basins. See NRS 278.462 and NRS 534.430. (Senator Mark E. Amodei, Capital Senatorial District, Elko, April 2006)

COMMENTS: The State Engineer supports this recommendation but the authority to require the dedication of water rights should be discretionary instead of being required.

41. DOMESTIC WELL IMPACTS. **Adopt a resolution** urging counties and cities concerned about the impact of domestic wells on water resources to enact local ordinances that require water rights for drilling of domestic wells on newly created parcels. Furthermore the water right dedicated for the domestic well, held by the county or city, could be transferred to a public utility when or if the parcel is served by a municipality or a water purveyor regulated by the Public Utilities Commission or the Nevada Division of Environmental Protection, SDCNR. (Steve Walker, Ely, March 2006)

COMMENTS: The State Engineer supports urging cities and counties to consider the impacts of domestic wells on water resource availability.

42. GROUNDWATER PUMPING. **Send a letter** to the State Engineer urging him to consider the recommendations of the Advisory Committee for Groundwater Management in the Las Vegas Valley to bring well owners into compliance with permit terms or statutory limits on groundwater pumping through a graduated assessment structure based upon the quantity of water overpumped and the duration of non-compliance with permit or statutory limits, with an allowance for meter error. Further, for certain residential properties with allocations of less than 1,000 gpd per residence, urge the State Engineer to support the Advisory Committee's recommendation that penalties only be applied to water use over 1,000 gpd.

Note: This letter would be sent upon the passage of a bill amending the statutes to authorize the State Engineer to levy fines for overpumping. (John Hiatt, Advisory Committee for Groundwater Management, Las Vegas, May 2006)

COMMENTS: Please see the State Engineer's comments as to Recommendation No. 2 – fining authority for overpumping.

The State Engineer does not agree there should be any provision for graduated assessment. Either a permit holder is pumping within the conditions of the water right permit or the limitations on domestic wells or he is not. The proposal confuses water right permits with the statutory limitations placed on domestic wells and the two should not be mixed. Community wells operating under water right permits are distinct from domestic wells presently exempt from the permitting process.

43. DOMESTIC WELL QUANTITY PUMPED. **Amend the statutes** to allow the daily pumping limit of 1,800 gpd for domestic wells to be averaged over a calendar year for the purpose of determining compliance with pumping limits. (Ray Preston for Nevada Well Owners Association, Las Vegas, May 2006)

COMMENTS: Under Item No. 37, the State Engineer has proposed amending the statutes to allow 2 acre-feet per year to be pumped from a domestic well; therefore, this recommendation may be unnecessary.

44. OVER PUMPING BY DOMESTIC WELL OWNERS. **Amend the statutes** to enable domestic or quasi-municipal well owners to “purchase” additional water (over the 1,800 gpd)

from the local water purveyor to address overuse through an offset mechanism whereby the water purveyor would reduce its pumping by an equivalent amount. (Ray Preston for Nevada Well Owners Association, Las Vegas, May 2006)

COMMENTS: The State Engineer opposes this recommendation.

If a domestic well owner is going to use more water than allotted for a domestic purpose, the well owner should obtain a water right. This proposal conflicts with the fundamental application of Nevada water law.

45. TRADING ALLOCATION POOL. **Amend the statutes** to enable domestic or quasi-municipal well owners to form a “Trading Allocation Pool (TAP)” consisting of credits from owners of wells using less than 1,800 gpd that are sold to the TAP for purchase by well owners desiring to exceed the 1,800 gpd limit. The TAP could be a non-profit organization or implemented by a willing water purveyor. (Ray Preston for Nevada Well Owners Association, Las Vegas, May 2006)

COMMENTS: The State Engineer opposes this recommendation.

There has been continual confusion by domestic well owners between the rights of use under a domestic well and the rights of use under community well permit holders. If the domestic well owner is going to use more water than allotted for a domestic purpose, the well owner should obtain a water right and file a change application under Nevada’s water law. This provision would require meters to be placed on all domestic wells resulting in a need for additional monitoring of those wells.

46. DOMESTIC WELL USE. **Adopt a resolution** urging the State Engineer and local governments, water districts and authorities, water purveyors, and others, to work together to predict and quantify domestic well use to facilitate planning and mitigation. (Central Nevada Regional Water Authority, Ely, March 2006)

COMMENTS: The State Engineer believes this recommendation may be unnecessary as the number of domestic wells are already qualified.

47. MITIGATION POLICY. **Send a letter** to the Division of Water Resources, SDCNR, requesting the development of policies for mitigation for over-appropriation of groundwater and asking the Division to report its findings to the 2009 Legislature. (Central Nevada Regional Water Authority, Ely, March 2006)

COMMENTS: The State Engineer believes this recommendation is unnecessary and that the activities it contemplates with such a broad directive would be extremely time consuming and a waste of valuable staff time that is being demanded in other places. Nevada water law provides a policy for over-appropriation and it is found in the concept of basin regulation by priority of right. See NRS § 534.110 and 534.120. Additionally, the State Engineer has the



authority to order cessation of pumping if impacts are demonstrated to existing rights. The State Engineer believes mitigation should be considered on a case-by-case basis and often is a matter of resolution between parties with conflicting rights. The State Engineer does not agree that specific written policies are useful or warranted, and as such would have to oppose this recommendation at this time.

48. **SUBSURFACE IRRIGATED LANDS. Include a statement in the final report** urging the State Engineer to look at impacts on subsurface irrigated lands when approving groundwater permits. (Connie Simkin, Caliente, February 2006)

COMMENTS: The State Engineer believes this recommendation is unnecessary. The State Engineer addresses impacts to existing rights during the application review process and would assess whether a water right had been alleged as to irrigated lands.

## MISCELLANEOUS

49. **INTERIM STANDING COMMITTEE. Amend the statutes** to create an interim standing committee on water resources with a sunset date of June 30, 2015. (Water Resources Committee)

COMMENTS: Over the last 46 years numerous interim committees have been created and committee reports exist from 1959, 1981, 1985, 1991 and 1994 with another going to be presented by this Committee. These committees have performed comprehensive reviews of Nevada water law and policy and all have reached similar basic conclusions, that Nevada's water law works well and the policy should be to maintain and preserve the water resources of the state and to promote, participate in and fund basic studies. These committees have also spent considerable amounts of time discussing speculation, conservation, interbasin and intercounty transfers of water and development of resources from the carbonate-rock aquifer(s), staffing and water planning. These reports have provided valuable and productive information and have adequately addressed the policy matters that will face us in the future. While the work of these committees have resulted in important legislation, the State Engineer does not believe a standing committee is warranted, but rather the committees appointed every decade or so are sufficient to address the issues important to Nevada's citizens. In addition, while appreciating the work of the committees, the State Engineer notes that significant amounts of time are spent by the State Engineer and his staff in preparation for and attendance at the committee meetings, while at the same time the Legislature has directed the State Engineer to handle the backlog of pending applications. This conflict of tasks reduces the efficiency of the Office of the State Engineer and results in delays in decisions on specific water right matters at a time the public is requesting things be handled more expeditiously. Unless there is a truly valid purpose in continuing the committee, the State Engineer believes his time is better spent working on increasing the output of all matters pending in the Office of the State Engineer and questions whether the creation of another interim committee is warranted at this time.

50. **LINCOLN COUNTY WATER DISTRICT. Amend the Lincoln County Water District Act** (S.B. 336–2003 Session) to require election of the Water District Board so that the Lincoln

County Commission would no longer function as the Water District Board. (Warren and Ruby Lister, Elko, April 2006)

COMMENTS: The State Engineer has no comments as to this recommendation.

51. HUGH RICCI. **Adopt a proclamation** from the Committee commending Hugh Ricci for his years of state service and retirement as State Engineer. (Water Resources Committee)

COMMENTS: The State Engineer would support the recommendation.

## APPENDIX C

Letter dated June 2, 2006, from State Engineer on Bill Draft Proposals



## APPENDIX C

KENNY C. GUINN  
*Governor*

### STATE OF NEVADA



ALLEN BIAGGI  
*Director*

HUGH RICCI, P.E.  
*State Engineer*

### DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89706

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<http://water.nv.gov>

## MEMORANDUM

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Date: June 2, 2006

To: Members of the Legislative Commission's Committee to Study the Use, Management and Allocation of Water Resources  
(S.C.R. 26, File No. 100, *Statutes of Nevada 2005*)

Through: Susan Scholley, Chief Principal Research Analyst, Research Division

From: Hugh Ricci, P.E., State Engineer

Subject: Bill Draft Proposals

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The following are three (3) bill draft suggestions for your consideration. They address the issue with mother-in-law quarters, priorities for domestic wells and request authority to fine for violations of the water law. The first two bill drafts provide specific statutory amendment language however the third bill draft simply requests authority for penalties. Our office is working on specific language for penalties based on recently adopted language in other states. We hope we will have the opportunity to provide this language to you in the very near future.

In addition to the bill draft language, two of the three drafts would have fiscal impacts to our office. These costs will not be included in our budget for '08-'09.

We look forward to working through any and all language you will be considering for bill drafts. As always, thank you for all your help during this interim-study period.



## APPENDIX C

### BDR – Mother-In-Law Quarters

#### **Issue:**

There are areas in the state where there is more than one residence connected to a domestic well illegally, OR there is a desire to hook-up an additional residence to a domestic well. In areas where the State Engineer has issued an order denying any new quasi-municipal (community well) permits, a person wanting to hook-up an auxiliary dwelling to his domestic well is forced to purchase an existing water right and move it to the domestic well which can be cost prohibitive.

#### **Concept:**

The following language are amendments to NRS 534.013 and 534.180 which provides auxiliary dwellings on a domestic well in those areas where local ordinances allow for it and with the condition that a meter be installed on the well to measure usage to ensure the total water pumped does not exceed 2 acre feet.

In addition, domestic use is quantified as 2 acre-feet per year instead of 1,800 gallons per day. This amendment will clear up the issue of allowing only 1,800 gallons of usage per day regardless of the time of year. Obviously, more water is needed in the summer months than in the winter months and ultimately, the total annual use from a domestic well is what is used for planning purposes.

#### **Fiscal Impact:**

Yes. One additional staff engineer will be needed to review and monitor these new uses at an annual cost of approximately \$70,000 and an initial expenditure of \$25,000 to cover a vehicle, computer and office furniture.

**NRS 534.013 “Domestic use” defined.** “Domestic use” or “domestic purposes” extends to culinary and household purposes directly related to a single-family dwelling, *unless local planning agency ordinances extends such use to buildings accessory to said single family dwelling*, including, without limitation, the watering of a family garden and lawn and the watering of livestock and any other domestic animals or household pets, if the amount of water drawn does not exceed the ~~threshold daily~~ maximum amount set in NRS 534.180.

**NRS 534.180 Applicability of chapter to wells used for domestic purposes; registration and plugging of wells used for domestic purposes.**

1. Except as otherwise provided in subsection 2 and as to the furnishing of any information required by the State Engineer, this chapter does not apply in the matter of obtaining permits for the development and use of underground water from a well for domestic purposes where the draught does not exceed *two (2) acre feet per year*. ~~daily maximum of 1,800 gallons.~~
2. The State Engineer may designate any groundwater basin or portion thereof as a basin in which the registration of a well is required if the well is drilled for the development and use of underground water for domestic purposes. A driller who drills such a well shall register the information required by the State Engineer

within 10 days after the completion of the well. The State Engineer shall make available forms for the registration of such wells and shall maintain a register of those wells.

3. The State Engineer may require the plugging of such a well which is drilled on or after July 1, 1981, at any time not sooner than 1 year after water can be furnished to the site by:

- (a) A political subdivision of this State; or
  - (b) A public utility whose rates and service are regulated by the Public Utilities Commission of Nevada,
- ↳ but only if the charge for making the connection to the service is less than \$200.

**4. For those domestic wells supplying water to an accessory dwelling as defined by the local planning agency and pursuant to NRS 534.013, the following conditions apply:**

**a) Any such approval by a local planning agency shall require a meter that shall measure the total amount of water use from the well and that use shall not exceed two (2) acre feet per year. The local planning agency shall inform the state engineer of the use of a domestic well in this manner on a form supplied by the state engineer. The state engineer will be responsible for monitoring water use from the well and taking any enforcement action for violations of this chapter.**

**b) No other manner of use will be allowed from a domestic well. The priority for any new use from a well under this section will be the date of the approval by the local planning agency. The priority date for the previous use will be the date in which the well was completed as evidenced by the well log required under NRS 534.170.**

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## **BDR - Domestic Well Priority**

### **Issue:**

The statutes are silent regarding the priority of domestic wells. The priority of permitted wells is the date that the original application is filed in the office of the State Engineer. Because domestic use does not require the filing of a water rights application, there is no coinciding priority date. The foundation of Nevada's water law is first-in-time, first-in-right, therefore it is critical to have a priority for domestic wells.

### **Concept:**

The following language is an amendment to NRS 534.080 and provides for assigning a priority to domestic wells.

### **Fiscal Impact:**

No.

**NRS 534.080 Appropriation of underground water for beneficial use from artesian or definable aquifer: Acquisition of rights under chapter 533 of NRS; orders to desist; dates of priority.**

1. A legal right to appropriate underground water for beneficial use from an artesian or definable aquifer subsequent to March 22, 1913, or from percolating water, the course and boundaries of which are incapable of determination, subsequent to March 25, 1939, can only be acquired by complying with the provisions of chapter 533 of NRS pertaining to the appropriation of water.



2. The State Engineer may, upon written notice sent by registered or certified mail, return receipt requested, advise the owner of a well who is using water therefrom without a permit to appropriate such water to cease using such water until he has complied with the laws pertaining to the appropriation of water. If the owner fails to initiate proceedings to secure such permit within 30 days from the date of such notice he shall be guilty of a misdemeanor.

**3. The date of priority:**

- a. of all appropriations of water from an underground source, pursuant to this section, is the date when application is made in proper form and filed in the office of the State Engineer pursuant to the provisions of chapter 533 of NRS.
- b. for domestic wells as defined under NRS 534.013, is the completion date of the well as stated on the well log submitted to the division by the responsible driller.

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## **BDR - Penalties**

### **Issue:**

The existing process for addressing violations of the water law is slow and cumbersome without any meaningful consequence or accountability for violations. Therefore, additional penalty authority is needed to ensure the proper and appropriate use of Nevada's water resources.

### **Concept:**

Provide the state engineer authority to order any person in violation of the provisions under Nevada Revised Statutes (NRS) chapters 533, 534, 535, 536 and Nevada Administrative Code (NAC) chapters 534 and 535 to:

1. Pay an administrative fine not to exceed \$10,000 per day for each violation; and
2. Be liable for any expense incurred by the Division of Water Resources in investigating and stopping the violation.

Any appeal of a violation should be done through the courts pursuant to NRS 533.450.

It is envisioned that the details for addressing violations, assessing fines or penalties, etc., would be done through the promulgation of rules and regulations. We welcome the opportunity to provide you with language we have drafted based on recently adopted codes from other states.

## **Fiscal Impact:**

Yes. Two additional staff engineers and one additional Deputy Attorney General will be needed to enforce the new regulations at an annual cost of approximately \$250,000 and an initial expenditure of \$30,000 to cover a vehicle, computer and office furniture.

## **What violations should be subject to a fines/penalties?**

The following sections within the water law provide for misdemeanors against any violators. The State Engineer is seeking penalty authority within those statutes:

### **NRS Chapter 533**

- Willful waste of water, illegal uses (533.460)
- Interference with headgates (533.465)
- Violations of any of the provisions of 533.010 to 533.475 (533.480)
- Illegal livestock watering (533.505)
- Unlawful diversion and waste of water (533.530)

### **NRS Chapter 534**

- Any person using water after a permit has been withdrawn, denied, cancelled, revoked or forfeited (534.050)
- Waste of water from an artesian well (534.070)
- Owner of a well who is using water without a permit to appropriate such water (534.080)
- Violating any of the provisions of 534.010 to 534.180 shall be guilty of a misdemeanor.

### **NRS Chapter 535**

- Any person beginning the construction of a dam before approval of plans and specs (535.010)
- Whenever any appropriator of water has the lawful right-of-way for the storage, diversion or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of his works or prevent convenient access thereto (535.090)
- Unlawful removal, damage or destruction of piling, dike, dock or lock; unlawful structures. (535.110)

### **NRS Chapter 536**

- Every person who shall willfully and maliciously remove, damage or destroy a ditch or flume lawfully erected for carrying water or draining land. (536.120)

### **NAC 535**

- A person who violates any provision of this chapter.

**Additional areas where fines and penalties should apply:**

**NAC 534**

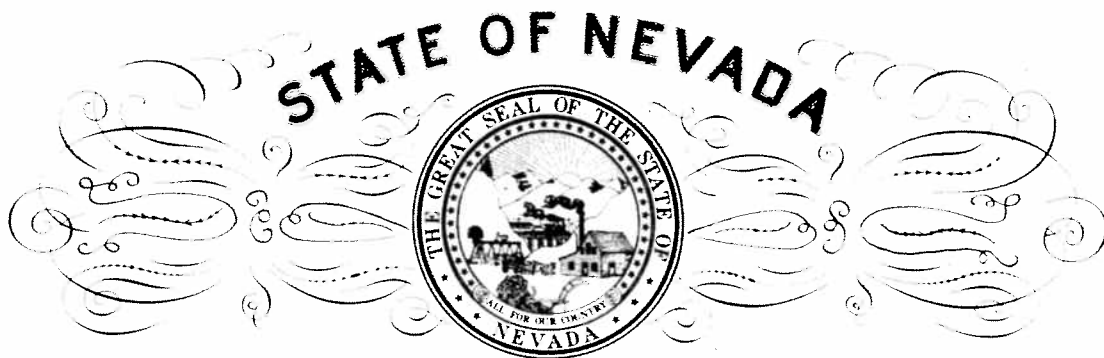
- Well Drilling Infractions
  - Well Plugging
  - Well Construction
  - Licensing/Non-licensing issue
  - Failure to file required paperwork
  - Fraudulent paperwork



## APPENDIX D

### Proclamation for Hugh Ricci





### PROCLAMATION

WHEREAS, Hugh Ricci was born in east Ely in 1944 to proud Italian-American parents; and

WHEREAS, Hugh enjoyed all that eastern Nevada had to offer while growing up and acquired a lifelong appreciation of all things Italian; and

WHEREAS, Hugh attended the University of Nevada Reno, graduated with a B.S. in Civil Engineering in 1967, and then served his country in the U.S. Army; and

WHEREAS, Hugh began his employment with the State of Nevada in 1970 as a Civil Engineer with the Nevada Department of Highways and, in 1974, transferred to the Nevada Division of Environmental Protection as an Environmental Engineer in the Air Quality Section; and

WHEREAS, In 1981, Hugh went to work for the Division of Water Resources and served in a variety of positions, ultimately becoming a Deputy State Engineer; and

WHEREAS, In 2000, Hugh was appointed State Engineer and served as State Engineer for six years—surviving three legislative sessions—until his retirement in June 2006; now, therefore, be it

PROCLAIMED, That the Legislative Commission's Committee on the Use, Management, and Allocation of Water Resources extends its gratitude to Hugh Ricci for his lifelong service to the people of Nevada and for his assistance to the Committee during the 2005-2006 interim; and be it further

PROCLAIMED, That the Committee on the Use, Management, and Allocation of Water Resources recognizes Hugh Ricci's service as State Engineer—a difficult job in the driest state in the U.S.—and extends its best wishes to him and his wife Pam, and to his enjoyment of a well-earned retirement of rock hunting and remodeling.

DATED this 1<sup>st</sup> day of December, 2006.

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Nevada State Senator Dean Rhoads,  
Chairman, Committee on Water Resources





## APPENDIX E

### Suggested Legislation

**The following Bill Draft Requests will be available during the 2007 Legislative Session, or can be accessed after “Introduction” at the following Web site: <http://www.leg.state.nv.us/74th/BDRList/>.**

- |            |   |
|------------|---|
| BDR R-204  | Urges Various Actions Concerning Water Resources.   |
| BDR 17-205 | Establishes a Statutory Legislative Committee on Water Resources.                         |
| BDR 48-206 | Authorizes the State Engineer to Impose Administrative Fines for Certain Violations.      |
| BDR 48-207 | Makes Various Changes Relating to Funding for Water Resource Planning and Implementation. |
| BDR 48-208 | Makes Various Changes Relating to Water Resources.  |

