MINUTES OF THE MEETING OF THE LEGISLATIVE COMMITTEE ON PUBLIC LANDS' SUBCOMMITTEE TO DEVELOP A BILL DRAFT REQUEST REGARDING ISSUANCE OF STOCKWATER PERMITS BY THE STATE ENGINEER (*Nevada Revised Statutes* 218.5363)

May 7, 2002
Las Vegas, Nevada

The first meeting of the Legislative Committee on Public Lands' Subcommittee to Develop a Bill Draft Request Regarding Issuance of Stockwater Permits by the State Engineer (*Nevada Revised Statutes* [NRS] 218.5363) during the 2001-2002 interim was held on Tuesday, May 7, 2002, in the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, and videoconferenced to the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada. Page 2 contains the "Meeting Notice and Agenda" for this meeting.

SUBCOMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Dean A. Rhoads, Chairman
Senator Terry Care

SUBCOMMITTEE MEMBER EXCUSED:

Senator Mark A. James

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT IN LAS VEGAS:

R. René Yeckley, Principal Deputy Legislative Counsel, Legal Division
Christine Kuhl, Senior Research Secretary, Research Division

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT IN CARSON CITY:

Linda Eissmann, Senior Research Analyst, Research Division

All place names mentioned in these minutes are in Nevada unless otherwise noted.

MEETING NOTICE AND AGENDA

Name of Organization:	Nevada's Legislative Committee on Public Lands' Subcommittee to Develop a Bill Draft Request Regarding Issuance of Stockwater Permits by the State Engineer (*Nevada Revised Statutes* 218.5363)
Date and Time of Meeting:	Tuesday, May 7, 2002 9:30 a.m.
Place of Meeting:	Grant Sawyer State Office Building Room 4406 555 East Washington Avenue

Las Vegas, Nevada

Note: Some members of the Subcommittee may be attending the meeting and other persons may observe the meeting and provide testimony, through a simultaneous videoconference conducted at the following location:

Legislative Building
Room 3137
401 South Carson Street
Carson City, Nevada

If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative Web site is http://www.leg.state.nv.us. For audio broadcasts, click on the link "Listen to Meetings Live on the Internet."

A G E N D A

I. Opening Remarks by the Chairman

*II. Report to the Subcommittee Concerning Possible Language for a Bill Draft Regarding Issuance of Stockwater Permits by the State Engineer
R. René Yeckley, Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau

III. Public Comment

*IV. Possible Work Session on Preceding Agenda Items

*Denotes items on which the Subcommittee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Christine Kuhl at (775) 684-6825 as soon as possible.
Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature's Web site at: www.leg.state.nv.us.

OPENING REMARKS BY THE CHAIRMAN

Chairman Rhoads explained that the purpose of the Subcommittee meeting was to develop language for a bill draft regarding the issuance of stockwater permits that would not be deemed unconstitutional.

REPORT TO THE SUBCOMMITTEE CONCERNING POSSIBLE LANGUAGE FOR A BILL DRAFT REGARDING ISSUANCE OF STOCKWATER PERMITS BY THE STATE ENGINEER

R. René Yeckley

R. René Yeckley, Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau (LCB), Carson City, explained that before she would begin her discussion of the draft amendment to *Nevada Revised Statutes* (NRS) 533.503 (commonly known as the "stockwater statute"), she would provide a review of the events that lead to the Subcommittee meeting, including a brief history of the stockwater statute and a discussion focusing on Justice Becker's dissenting and concurring opinion in the "stockwater case" (*United States v. State Engineer*, 117 Nev. Adv. Op. No. 49 [2001]). Ms. Yeckley noted that Justice Becker's opinion is central to the draft amendment.

Ms. Yeckley explained that for a number of years before the mid 1990s, stockwater permits on federal public lands were issued by the State Engineer in one of the following three ways: (1) solely in the name of the range user; (2)

solely in the name of the Federal Government; or (3) jointly in the names of the range user and the Federal Government.

In the early 1990s, the United States Department of the Interior (DOI), as part of its "Rangeland Reform," proposed a federal regulation, which caused serious concern. The concern was that unless the state of Nevada enacted legislation governing the issuance of stockwater permits, the state would lose considerable control over its water because the Federal Government would no longer operate under the previous three-way system, but rather seek to obtain only stockwater permits issued solely in the name of the United States. To address this concern, the 1995 Nevada Legislature enacted Senate Bill 96, now codified as the stockwater statute. Specifically, the statute provides in relevant part that, "1. The state engineer shall not issue [a stockwater permit] unless the applicant for the permit 'is legally entitled to place the livestock on the public lands for which the permit is sought.'"

In July 2001, in *United States v. State Engineer*, 117 Nev. Adv. Op. No. 49 (2001), the Supreme Court of Nevada interpreted the stockwater statute, specifically the provision quoted in the preceding paragraph. In that case, the Bureau of Land Management (BLM), DOI, had filed nine applications with the State Engineer for stockwater permits on federally managed public lands. The State Engineer denied the applications on the grounds that "the BLM is not a person who is entitled to graze livestock on public lands." Specifically, the State Engineer argued that because the statute was ambiguous, the Supreme Court must rely on the legislative intent regarding the statute and the legislative intent would not support granting the BLM a stockwater permit.

On appeal, the Supreme Court of Nevada rejected the State Engineer's arguments and held that the statute is not ambiguous and it "simply requires an applicant for a stockwater permit to have a legal right to graze livestock on the public land." Further, the Supreme Court reasoned that the U.S. has such a legal right because the U.S. owns the public BLM land and Congress has authorized the grazing of livestock on such land. Thus, the Court concluded, "the BLM is a qualified applicant under [the statute]" and the statute does not prohibit the BLM from receiving stockwater permits in the name of the United States.

Turning to a discussion of Justice Becker's dissenting and concurring opinion in the case, Ms. Yeckley explained that although Justice Becker's opinion is not binding authority, it is instructive in preparing amendments to the stockwater statute. Ms. Yeckley noted that Justice Becker first disagreed with the majority regarding the clarity of the statute and found the statute was ambiguous, and thus, required an examination of the legislative intent of the statute. Further, Justice Becker concluded that the legislative intent was "to create a new system that would prohibit the BLM from obtaining a stockwater permit in its own name, unless it had some legal or proprietary interest in the livestock to be watered under the permit," and that "the Legislature wanted to preserve state primacy over water rights without unconstitutionally discriminating against the Federal Government." Next, Justice Becker conducted a constitutional analysis to determine whether, considering this intent, the statute could be held constitutional. The U.S. had argued that such an interpretation would discriminate against the Federal Government or frustrate federal policy, in violation of the Supremacy Clause of the *United States Constitution*. To address this argument, Justice Becker relied on the constitutional principles set forth in the U.S. Supreme Court case of *North Dakota v. United States*, 495 U.S. 423, 1990.

According to *North Dakota*, "[s]tate law may run afoul of the Supremacy Clause in two distinct ways: The law may regulate the Government directly or discriminate against it, or it may conflict with an affirmative command of Congress." Further, "the state does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them." "When analyzing whether a state law discriminates against the Federal Government, the state law should not be viewed in isolation and the entire regulatory system should be analyzed to determine whether it is discriminatory." Finally, "[A] state law may violate the Supremacy Clause if it "substantially interferes with the activities [of the Federal Government]."

In applying these constitutional principles to the Federal Government as a landowner, Justice Becker found that the statute was facially neutral and thus did not directly regulate the U.S. in a manner to constitute a prima facie violation of the Supremacy Clause. Further, she found that when the statute was considered in the context of Nevada's entire water appropriation scheme, any distinction in the statute between the Federal Government as a landowner and other landowners was not significant enough to constitute a violation of the Supremacy Clause.

Next, Justice Becker applied the constitutional principles to claims raised by the Federal Government that the statute

violated the Supremacy Clause because it actually and substantially interfered with a federal policy or program. First, Justice Becker rejected this argument. She reasoned that because Congress has not authorized the BLM to raise livestock, the BLM cannot have a legal or proprietary interest in livestock to be watered, and thus, if the statute were interpreted as intended by the Legislature, the BLM effectively could not obtain a stockwater permit in its own name. Further, she concluded that, in her opinion, "the statute is not discriminatory simply because the definition of public lands applies only to BLM managed lands" and not to other federally managed lands. While admitting that it is a close issue as to whether it is constitutional to essentially preclude the BLM from obtaining a stockwater permit solely in its own name, Justice Becker concluded that this interpretation of the statute alone would not violate the Supremacy Clause.

However, with respect to joint permits, Justice Becker concluded that if the statute were interpreted to prohibit the BLM from applying for a stockwater permit jointly with a person who is legally "entitled to place the livestock on the public lands," then the statute would violate the Supremacy Clause because it would prevent the BLM from obtaining a stockwater permit under any circumstances, and thus "would be a significant interference with the BLM's control and management of its rangelands."

Continuing her analysis, Justice Becker opined that the statute could be construed to allow the BLM to obtain stockwater permits jointly with another person, even if the BLM could not obtain stockwater permits solely in its own name. She then determined that, if the statute were so construed, any interference with the BLM's activities would not rise to the level of unconstitutionality.

In short, Justice Becker concluded that by requiring at least one, but not both, of two joint applicants for a stockwater permit to have a legal or proprietary interest in the livestock to be watered, NRS 533.503 could partially achieve the applicable legislative intent while avoiding conflict with the Supremacy Clause. She also acknowledged that the Supreme Court of the United States could reach a different conclusion on the issues presented by the statute and she intimated that the statute might be more constitutionally defensible if it applied to more than just federal lands managed by the BLM.

Commenting further, Ms. Yeckley noted that in response to the Supreme Court of Nevada's decision that allows the BLM to obtain stockwater permits solely in the name of the United States, the Chairman of the Legislative Committee on Public Lands requested the LCB's Legal Division draft language for a possible bill draft which would amend NRS 533.503 to achieve the original legislative intent concerning the issuance of stockwater permits. At the Chairman's request, a draft was prepared with the following objectives in mind:

1. Draft the amendment in such a manner as to tie the ability to acquire a stockwater permit or certificate to the requirement that an applicant for such a permit or certificate would have a proprietary interest in the livestock.

2. Draft the amendment in a manner that addresses, to the extent possible, concerns raised by: (1) the State Engineer; (2) the Administrator of the Division of State Lands, State Department of Conservation and Natural Resources (SDCNR), and (3) representatives of the Nevada Cattlemen's Association.

3. Draft the amendment in a manner that the Legal Division believes is constitutionally defensible and consistent with the guidelines discussed in Justice Becker's dissenting and concurring opinion.

Next, Ms. Yeckley referred to a document titled "Legal Draft" (Exhibit A) and explained it was meant to serve as a starting point for the Subcommittee to develop a possible bill draft. She noted that the draft amendment includes language to convey general concepts for the Subcommittee's consideration and does not include all of the statutes that may need to be amended in an actual bill.

Continuing, Ms. Yeckley provided a detailed summary of the draft amendment (Exhibit A), as follows:

- Subsection 1 of Section 1:

Generally, this subsection prohibits the State Engineer from issuing stockwater permits on the public range, unless the applicant for such a permit, or in the case of a joint permit, at least one of the applicants: (1) is entitled to place the livestock on the public range for which the permit is sought AND either: (1) owns, leases or otherwise possesses a proprietary interest in the livestock for which the permit is sought; OR (2) has received from such a person who owns

a proprietary interest in the livestock, authorization to possess physical custody of the livestock and authorization to care for, control, and maintain the livestock.

- Rationale for (a):

The language in paragraph (a) was drafted to tie the ability to obtain a stockwater permit to the requirement that the permittee have a proprietary interest in the livestock.

- Rationale for (b):

The language in paragraph (b) was included to address applicants such as grazing associations, which do not actually have a proprietary interest in the livestock. This particular language was drafted in consultation with C. Joseph Guild, III, Past President, Nevada Cattlemen's Association, Reno. Mr. Guild reviewed the draft amendment and expressed to the Legal Division that he approves of the language in paragraph (b).

- Rationale for (a) and (b):

Subsection 1 as a whole would preclude applicants, such as the BLM, who do not satisfy the criteria of paragraph (a) or (b) from obtaining stockwater permits solely in their own names. However, until those applicants meet the requirements of paragraph (a) or (b), the applicants still have the opportunity to obtain joint permits. Further, the BLM has indicated to Chairman Rhoads that the bureau is supportive of a proposal to "provide for the BLM and livestock operators to jointly file with the State Engineer for permits for water development on public lands."

- Rationale for the term "public range":

Subsection 1 was amended to apply to the public range instead of public lands. This was done to expand the scope of the statute from only public lands managed by the BLM to all lands owned by the United States or the state of Nevada on which livestock are permitted to graze. This issue is addressed in subsection 4 of the draft amendment.

➢ Subsection 2 of Section 1:

Subsection 2 of section 1 generally mirrors subsection 1. The only difference is that subsection 1 addresses stockwater permits and subsection 2 applies to certificates of appropriation based on stockwater permits.

➢ Subsection 4 of Section 1:

As noted earlier, subsection 4 defines the term "public range" to include the state and federal lands that are used for grazing. This definition was taken from NRS 533.485 and was included in the bill to help the reader understand the scope of the amendment.

- Rationale:

The rationale for including this definition and applying the statute to state managed lands as well as federally managed lands is that, in the opinion of the Legal Division, the broader the class of persons or land subject to the statute, the stronger the argument is that the statute is not discriminatory of the Federal Government, but is rather a neutral law. Ms. Yeckley noted Justice Becker believed that applying the statute only to BLM lands would pass constitutional muster if the BLM was able to obtain joint permits. However, Justice Becker also acknowledged that, "the United States Supreme Court, if presented with the issue, might conclude that defining 'public lands' so as to target the BLM managed lands is direct discrimination or regulation of the United States in violation of the Supremacy Clause."

Continuing discussion of the rationale for this section, Ms. Yeckley noted it would appear that there is a spectrum for how this statute may be applied. It ranges from applying the statute only to BLM lands all the way to applying it across the board to all landowners, public and private. She could not say with certainty where along this spectrum a court would find it constitutional to apply the statute to a limited class of property and noted it may be enough to just apply the statute to BLM lands. Or, it may be enough to apply the statute to all federal lands owned by the United

States. Additionally, it may be necessary to apply it to state lands as well. Finally, a court may find that it may pass constitutional muster only if the statue applied to all types of lands, public and private. Ms. Yeckley noted the amendment was drafted to apply to both federal and state lands in order to raise the issue for the Subcommittee's consideration.

- Section 2:

This section provides that the bill would not apply retroactively to permits and certificates that the State Engineer had issued before the effective date of the bill. Rather, the bill would apply prospectively. October 1 was used for the draft simply because October 1 is the default effective date for all Nevada bills. She noted that the Subcommittee might desire to choose a different effective date for the bill. She further noted the provision was drafted to apply prospectively only to address the issue of how the Subcommittee desired to have the draft amendment apply. If the Subcommittee desired to apply the statute retroactively, additional research would be necessary to ensure there are no takings issues with regard to a person's property right in his already issued stockwater permit or certificate.

In conclusion, Ms. Yeckley offered to address questions and reminded the Subcommittee that several representatives of the BLM, the Office of the Attorney General, and the SDCNR, were present to provide input and answer questions.

Chairman Rhoads

Chairman Rhoads noted he received a letter from Robert V. Abbey, State Director, Nevada, BLM, in support of the bill draft, and entered it into the record. Please refer to Exhibit B for additional information.

Continuing, Chairman Rhoads requested those present provide input on the bill draft.

PUBLIC COMMENT

R. Michael Turnipseed

R. Michael Turnipseed, P.E., Director, SDCNR, Carson City, expressed belief that the bill is "a step in the right direction." He recognized that in order to be constitutional, the bill must not allow for disparity in the treatment of water permits on federally or state managed lands. Mr. Turnipseed noted that although he would prefer to have all water rights on state lands be held in the state's name due to the frequency of changes to grazing leaseholders, he recognized it would probably not be constitutional. Instead, he explained that the state would develop a lease that severs a lessee's rights upon termination.

Mr. Turnipseed informed the Subcommittee that Gene Kolkman, Field Manager, Ely District, BLM, Ely, has expressed an interest in acquiring the Robison Ranch, currently owned by Vidler Water Company, for use as a "grass bank." The land would not be provided to users through a permit, but rather leased to users for forage and water in situations where BLM permittees have been burned-out of their allotments or have otherwise received allotment reductions. He suggested that Mr. Kolkman could provide additional information on the proposal but noted he was unsure if Vidler would fall under the provisions provided in the bill draft.

Concluding, Mr. Turnipseed noted that representatives from the SDCNR were in attendance and desired to address the Subcommittee.

Chairman Rhoads noted that in Exhibit B, Mr. Abbey wrote "Sole ownership by individuals of water rights on the public domain creates numerous problems that prevent the BLM from carrying out our mission and regulations." Chairman Rhoads noted that many BLM grazing permit holders are reluctant to file for joint water permits. He questioned if there is a fear that the BLM might not provide grazing permits to users who apply for individual water permits.

In response to Chairman Rhoads' inquiry, Mr. Turnipseed noted that it would be a challenge to develop language to satisfy both livestock operators and the Federal Government. However, he noted that joint holdings provide a

safeguard for the operator because the use cannot change without approval of the other interested party.

Continuing his questioning, Chairman Rhoads questioned how many joint filing permits are pending. In response, Christine Thiel, P.E., Deputy State Engineer, Division of Water Resources, SDCNR, Carson City, explained that no action has been taken on 24 joint filings, pending the outcome of the issue at hand. She informed the Subcommittee that prior to the stockwater statute, 150 joint filing were issued (121 certificated and 29 permitted).

Susan Joseph-Taylor

Susan Joseph-Taylor, Chief Hearings Officer, Division of Water Resources, Hearings, SDCNR, Carson City, expressed concern regarding the term "proprietary interest" contained in the bill. She noted that according to *Black's Law Dictionary*, "proprietary interest" is defined as "exclusive ownership," and suggested changing the language to "propriety or legal interest" for each occurrence in the bill. Ms. Joseph-Taylor noted that Justice Becker utilized this term in her dissent.

Continuing, Ms. Joseph-Taylor addressed language in Section 1 of the bill draft, which addresses section 1(a) of NRS 533.503, which reads "Has received from a person described in paragraph (a)." For the sake of clarification, she suggested replacing the language with "Has received from the applicant."

Turning to Section 2 of the bill draft, Ms. Joseph-Taylor opined that the application of the legislation is unclear and if it is going to be retroactive it should be "very specific in that way."

In response to Chairman Rhoads, Ms. Yeckley indicated she could add language to address Ms. Joseph-Taylor's concern. However, she noted that Section 2 indicates the provisions apply to permits or certificates issued on October 1, 2003, or thereafter; consequently, pending applications not acted upon before this date would be subject to the new legislation.

Commenting further, Ms. Yeckley expressed she was unclear as to Ms. Joseph-Taylor's concern regarding the reference to the language which reads "Has received from a person described in paragraph (a)" and her suggestion it be replaced with "Has received from the applicant." Ms Yeckley explained that the language "a person described in paragraph (a)" was used because if the provisions of paragraph (b) were applicable in a particular situation, then the applicant for the permit in that situation would not be "a person described in paragraph (a)," but rather a person who received certain authorizations from a person described in paragraph (a). Ms. Joseph-Taylor responded that her concern was more of a "grammatical concern" because "when you can make something more clear it's more understandable."

Gene Kolkman

Gene Kolkman, previously identified, informed those present that the BLM desires to work with the Committee to develop legislation that will allow permittees to feel secure on public lands. Additionally, the BLM supports flexibility to work with permittees and still protect the public interest.

Chairman Rhoads questioned if the BLM would file a protest if a BLM grazing leaseholder applied for individual water rights. In response, Mr. Kolkman explained that protests are sometimes filed to "work through" the adjudication process with the State Engineer, but the BLM is not "looking" for opportunities to protest.

In response to an inquiry posed by Senator Care, Mr. Kolklman noted that if a situation arose in which the BLM desired to develop a water resource for range management purposes and the grazing permittee would not agree to file a joint application, BLM would be denied resources to effectively manage the land. He was of the opinion that eventually this action would affect the permittee because range management actions are taken to mitigate detrimental effects on the public range and, if left unaddressed, would likely affect the permittee in the future. Mr. Kolkman opined that the State Engineer be given the authority to adjudicate these situations, not individuals.

Senator Care noted that there is a possibility that "joint application" could be interpreted to mean two private parties and questioned if this is a concern to BLM. In response, Mr. Kolkman noted he was speaking from his personal perspective and not necessarily the perspective of the BLM. He explained that flexibility to negotiate the best arrangement for all parties is necessary and in some cases a joint application between two private parties would be the

best arrangement. Additionally, Mr. Kolkman spoke in support of the draft.

At the approval of Chairman Rhoads, Mr. Kolkman addressed an additional topic —grass banks in Nevada. He explained that many Nevada ranches are being sold to parties who do not intend to utilize the land for ranching operations; rather they will be converted to other uses. Mr. Kolkman expressed the need to develop grass banks in some of these areas in an effort to preserve ranching and provide a "safety net" for its future. He was of the opinion that either individually or jointly, the BLM, state of Nevada, Cattlemen's Association, or other organizations must acquire and manage these areas for utilization by displaced grazing permittees, who would be lessees on the land. He explained that in some cases, permittees are displaced for one to three years due to destruction by range fires or for rangeland restoration projects and grass banks provide an area for ranchers to utilize during this period.

Mr. Kolkman informed the Subcommittee that a community-based effort to manage grass banks is currently being developed in eastern Nevada. The grass banks would be managed by White Pine County, the N-4 Grazing Board, and the Eastern Nevada Landscape Coalition. However, Mr. Kolkman indicated that if stockwater legislation was too restrictive, it could complicate grass bank projects. He noted that Mr. Turnipseed, previously identified, suggested developing procedural agreements and leases to address these concerns.

Chairman Rhoads noted it might be necessary to add a provision in the bill to address the needs of grass banks. Mr. Turnipseed further noted that, as drafted, the bill would require the livestock operator (lessee) on a grass bank apply for stockwater rights either individually or jointly with the BLM. As a result, each time a new grass bank lessee operated on the land, it would be necessary for him to file for stockwater rights. This would result in water rights being granted to new operators (either individually or jointly) every one to three years, versus establishing a permanent stockwater right for the grass bank allotment to be utilized by the lessee.

John Singlaub

John Singlaub, Carson City District Field Manager, BLM, Carson City, informed the Subcommittee that grass banks are not the only situation in which the bill would present difficulty. He explained that the BLM offers temporary non-renewable permits, often limited to one grazing season. Mr. Singlaub noted that the BLM would like to have water available on these lands for the operator in these situations. Additionally, he noted that it is difficult to imagine all the scenarios that would require having available water attached to land.

C. Wayne Howle

C. Wayne Howle, Supervising Senior Deputy Attorney General, Office of the Attorney General, Carson City, commended Ms. Yeckley for her work on the draft, noting she addressed the two key points of interest. In addition, Mr. Howle raised the following questions:

- Does the definition of public range include tribal lands in Nevada? If so, what consequence would this have?

- The BLM has expressed approval of the bill draft, but the U.S. Forest Service, U.S. Department of Agriculture has not. Does this pose a possibility for future litigation?

In addition, he expressed concern that if a range user released his interest in a permit jointly held with the BLM, the BLM would then gain sole ownership and control of that permit, which would ultimately mean that the Federal Government would obtain the rights.

Senator Rhoads thanked Mr. Howle for his comments and posed the following question: If a BLM-permitted range user filed for a individual stockwater permit, and the BLM protested, would this bill allow for the State Engineer to grant the permit?

In response to the scenario, Mr. Turnipseed explained that the permit would be granted because the applicant does hold grazing rights and can demonstrate beneficial use; however, he noted there is a possibility that the BLM may deny a special use permit to develop the water right.

Ms. Joseph-Taylor informed the Subcommittee that the possibility described by Mr. Turnipseed has occurred.

Further, she expressed belief it may be in violation of the Supremacy Clause of the *United States Constitution* because it may interfere with land management programs.

Pamela B. Wilcox

Pamela B. Wilcox, Administrator, Division of State Lands, SDCNR, Carson City, addressed the impacts that the bill would have on state lands. She noted that the state lands are "limited" to 250,000 acres, with nine grazing leases. There are four leases on State Parks and five on lands managed by the Division of Wildlife. Ms. Wilcox explained that the water on these lands is held by the state of Nevada and the bill would be a "major departure" from the way lands have been managed. She informed the Subcommittee that no lessee has an expectation of tenure to use the lands and generally leases are one to five years. If the bill passes, the state would be unable to develop water resources on these lands and would be forced to provide the lessee with an interest in the water rights. Ms. Wilcox was of the opinion that the situation would be "awkward and complex."

In response to Senator Rhoads, Ms. Wilcox explained that she has discussed the issue with Ms. Yeckley and they have attempted to find a solution.

Continuing, Ms. Wilcox, explained that all other Western states allow federal agencies to acquire water for livestock on federally managed lands. She suggested that perhaps the question should not be "who can hold stockwater rights" but "how can we protect our ranchers and provide them the right to always file for the water they need."

Chairman Rhoads quoted the following language from the "rangeland reform" regulations and questioned if modifying the language would help the State Engineer in allocating stockwater: "To the extent allowed by the law of the State in which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States." Mr. Turnipseed expressed his opinion that a change would definitely help and noted the necessity to move forward on the issue in order to satisfy the water needs for users of short-term leases on grass banks and state lands.

In conclusion, Chairman Rhoads noted the need to develop language to address tribal interests in the state of Nevada.

> SENATOR CARE MOVED TO RECOMMEND A DISCUSSION OF THE BILL DRAFT AND THE CHANGES SUGGESTED AT THIS MEETING BE CONDUCTED AT THE MAY 17, 2002, MEETING OF THE LEGISLATIVE COMMITTEE ON PUBLIC LANDS. THE MOTION WAS SECONDED BY SENATOR RHOADS AND PASSED UNANIMOUSLY BY ALL MEMBERS PRESENT.

There being no further business to come before the Subcommittee, Chairman Rhoads thanked the speakers and adjourned the meeting at 10:50 a.m.

Exhibit C is the "Attendance Record" for this meeting.

Respectfully submitted,

Christine Kuhl
Senior Research Secretary

Linda Eissmann
Senior Research Analyst

APPROVED BY:

_____
Chairman Dean A. Rhoads

Date: _____

LIST OF EXHIBITS

Exhibit A, provided by R. René Yeckley, Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau, Carson City, is a document titled "Legal Draft" (bill draft regarding the issuance of stockwater permits by the State Engineer).

Exhibit B, provided by Chairman Rhoads, is a letter to The Honorable Dean A. Rhoads, dated May 2, 2002, from Robert V. Abbey, State Director, Nevada, Bureau of Land Management, United States Department of the Interior, expressing support for the bill draft for issuance of stockwater permits by the State Engineer.

Exhibit C is the "Attendance Record" for this meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the library at (775) 684-6827.

LIST OF ACRONYMS

BLM	Bureau of Land Management, United States Department of Interior
DOI	United States Department of the Interior
LCB	Legislative Counsel Bureau
NRS	*Nevada Revised Statutes*
Stockwater Case	*United States v. State Engineer*, 117 Nev. Adv. Op. No. 49 (2001)
Stockwater Statute	*Nevada Revised Statutes* 533.503
SDCNR	State Department of Conservation and Natural Resources