Overview of Nevada Water Law

Legislative Commission's Subcommittee to Study Water

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Mission Statement

The mission of the Nevada Division of Water Resources is to conserve, protect, manage and enhance the State's water resources for Nevada's citizens through the appropriation and reallocation of the public waters.

Nevada Facts

- Driest state in the nation averaging approximately 9” precipitation annually
- 7th largest state geographically
- Population is ~2.9 million
  - > 2 million live in Las Vegas Metropolitan Area (7 out of 10 Nevadans)
  - ~ ½ million live in Reno-Sparks Metropolitan Area (1.5 out of 10 Nevadans)
  - ~ 50 million visitors annually
- 3rd most urbanized state in the nation
  - (>94% of population lives in population clusters of 50,000 people or more)

Water Law in Nevada

Basic Tenets

- Prior Appropriation Doctrine
  - First in time, first in right
- Beneficial use shall be the basis, the measure and the limit of the right to the use of water,
- Use it or lose it

1 Acre-Foot of Water

- 325,851 gallons; or
- An acre of ground (~one football field) covered with 1’ of water; or
- Enough water to supply two families of 4 (depending on outside irrigation) for one year.

Who Owns the Water?

All sources of water within the boundaries of the State, whether above or beneath the surface of the ground, belong to the public.

(533.025 and 534.020)

The Appropriation Process

- Application
- Permit
- Certificate

} Appropriation Process

- Vested Claim – Pre-Statutory subject to Adjudication Process

The Appropriation Process

All use of water requires a permit from the State Engineer **except** for domestic wells. **(534.180)**

Domestic Water Wells

- A water right application and permit are **not** required in order to drill a domestic well
  - Extends to culinary and household purposes, in a single family dwelling, the watering of a family garden, lawn and the watering of domestic animals **(534.013)**
- The maximum amount of water that may be pumped from domestic wells is limited to 2.0 acre-feet per year
- Priority

Application Process
Reader's Digest Version

- File Application, supporting map & fee
- 'Map Table' Review
- Send for publication
- Protest Period
- RFA – Ready for Action
- Hearing if required
- Determination of Action

Appropriation of Water Rights

The application can either be:

- approved as requested
- approved with conditions
  - monitoring plan
  - pumpage reporting
  - depth of well
  - reduced in rate of flow and volume
- Denied

Criteria Used When Deciding Whether to Approve or Deny an Application

Criteria

Approval or denial of water rights based on four (4) primary criteria (533.370):

- Is there unappropriated water?
- Will it conflict with existing rights?
- Does the use of the water prove detrimental to public interest?
- Does the use conflict with existing domestic wells?

Criteria

Additional anti-speculation criteria added in the 1993 and 1995 legislatures (533.370):

- Applicant must show good faith to construct the works necessary to put the water to the intended beneficial use with reasonable diligence.
- Have financial ability to construct the project and apply the water to beneficial use with reasonable diligence.

Approval Criteria When Dealing with Interbasin Transfers

Additional Criteria When Considering Interbasin Transfers

Adopted in the 1999 legislation session (533.370)

- Whether the applicant has justified the need to import the water from another basin;
- If the S.E. determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;

Interbasin Transfers

- Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;
- 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;
- Any other factor determined to be relevant

Maintaining a Water Right

If a permit is issued, conditions are imposed in order for that water right to be perfected.

- Time frames for
  - proof of completion of diversion works
  - placing the water to beneficial use

Maintaining a Water Right

A water right can be perfected only if

– the completion of the diversion works is made

– and the water is placed to the beneficial use for which the permit was granted, e.g. Municipal, Irrigation, Commercial, etc.

Maintaining a Water Right

By law **(533.380)**, the State Engineer is limited on the amount of time he can give the applicant to file the two proofs:

- A maximum time limitation wherein work must be completed within 5 years and
- The beneficial use completed within 10 years after the date of approval of the permit.

Failure to submit these proofs by the time specified results in the cancellation of the water right.

Maintaining a Water Right

Certificate of Appropriation

Once the proofs have all been filed and the other terms of the permit complied with, the State Engineer prepares a Certificate of Appropriation describing the use that was made of the water as shown on the Proof of Beneficial Use. The State Engineer records the Certificate in his office, with a copy going to the permit holder. **(533.425)**

Beneficial use - shall be the basis, the measure and the limit of the right to the use of water. **(533.035)**

Maintaining a Water Right

What if the permittee can't meet these deadlines?

- Extensions of time can be filed **(533.380)**
- The extension must be filed within thirty (30) days from the date of final notice for filing of the proof
- The extension, if accepted, is good for a maximum of 1 year (5 years for municipal use)
- Filing fee

Maintaining a Water Right

Extensions

When reviewing any extension, the State Engineer shall consider whether the permittee has been proceeding in good faith and reasonable diligence to complete the work or put all of the water to beneficial use. **(533.395 and 533.410)**

Failure to file this extension of time shall result in the cancellation of the permit.

Losing a Water Right

Cancellations

Chapter 533.395 was amended in 1981

- To provide an administrative procedure for the review of a cancellation of a permit.
- Opportunity for the permit holder to file a written petition with the State Engineer requesting a hearing to review the cancellation within sixty (60) days of the cancellation. Prior to this administrative review being available, the only remedy a person had when a permit was cancelled was to file an appeal with the court for review.
- Penalty – loss of priority

Losing a Water Right

Forfeiture and Abandonment

Two (2) ways to lose a certificated water right **(533.060 and 534.090)**

– forfeiture

– abandonment

Until 1999, a surface water right could be forfeited. An amendment to NRS 533.060 removed this provision, which removed any possible forfeiture of a surface water right.

Losing a Water Right

Abandonment (533.060)

- In Nevada, abandonment of a water right is the voluntary "relinquishment of the right by the owner with the intention to forsake and desert it." *Manse Spring*
- Abandonment requires both action and intent, and under Nevada law is "a question of fact to be determined from all the surrounding circumstances." *Revert v. Ray*
- At a minimum, proof of continuous use of the water right should be required to support a finding of lack of intent to abandon. *U.S. v. Alpine Land & Reservoir Company*

Losing a Water Right

Forfeiture (534.090)

- Forfeiture of a groundwater right occurs if there is a failure to use the water right, **all or a portion**, for 5 consecutive years.
- Can file an extension of time to prevent forfeiture. Extension must be submitted prior to the 5 consecutive years of nonuse.
- The State Engineer is required to give a notice to the owner of record in the State Engineer's office after 4 years of nonuse in basins where inventories are conducted.
- The State Engineer may grant any number of extensions of time, but a single extension must not exceed one year.

Losing a Water Right

Forfeiture

NRS 534.090 (2) states in determining whether to grant or deny an extension, the State Engineer must consider among other reasons;

1. Is good cause shown as to why the water could not be put to the beneficial use for which the permit was granted;
2. The unavailability of water beyond the control of the holder;
3. Any economic condition or natural disaster, which would prevent the water being used;
4. If the holder has demonstrated efficient ways of using water for agricultural purposes such as center pivot irrigation; and
5. If any prolonged period in which precipitation in the basin in which the water right is located is below average for that basin (this was added as a condition in 2003). **DROUGHT!**

Water Right Ownership

The State Engineer doesn't "quiet" title, he only confirms the Report of Conveyance (ROC).

The State Engineer, in all notifications, is required to notify the owner of record in the State Engineer's office only. If ROC's are not filed with the office, we have no way of knowing if there has been a change in ownership.

Water Right Ownership

- A water right is considered real property and can be owned separate from the property
- Water rights are an appurtenance to the property and are passed from seller to buyer unless the rights are specifically excluded or reserved on the deed

Ground water and Surface Water

Water Law Separated the Sources

Ground Water

- Very little development until the late 1950's
- State divided into hydrographic basins
  - Each basin is considered a separate source of water
- Designated and non-designated basins

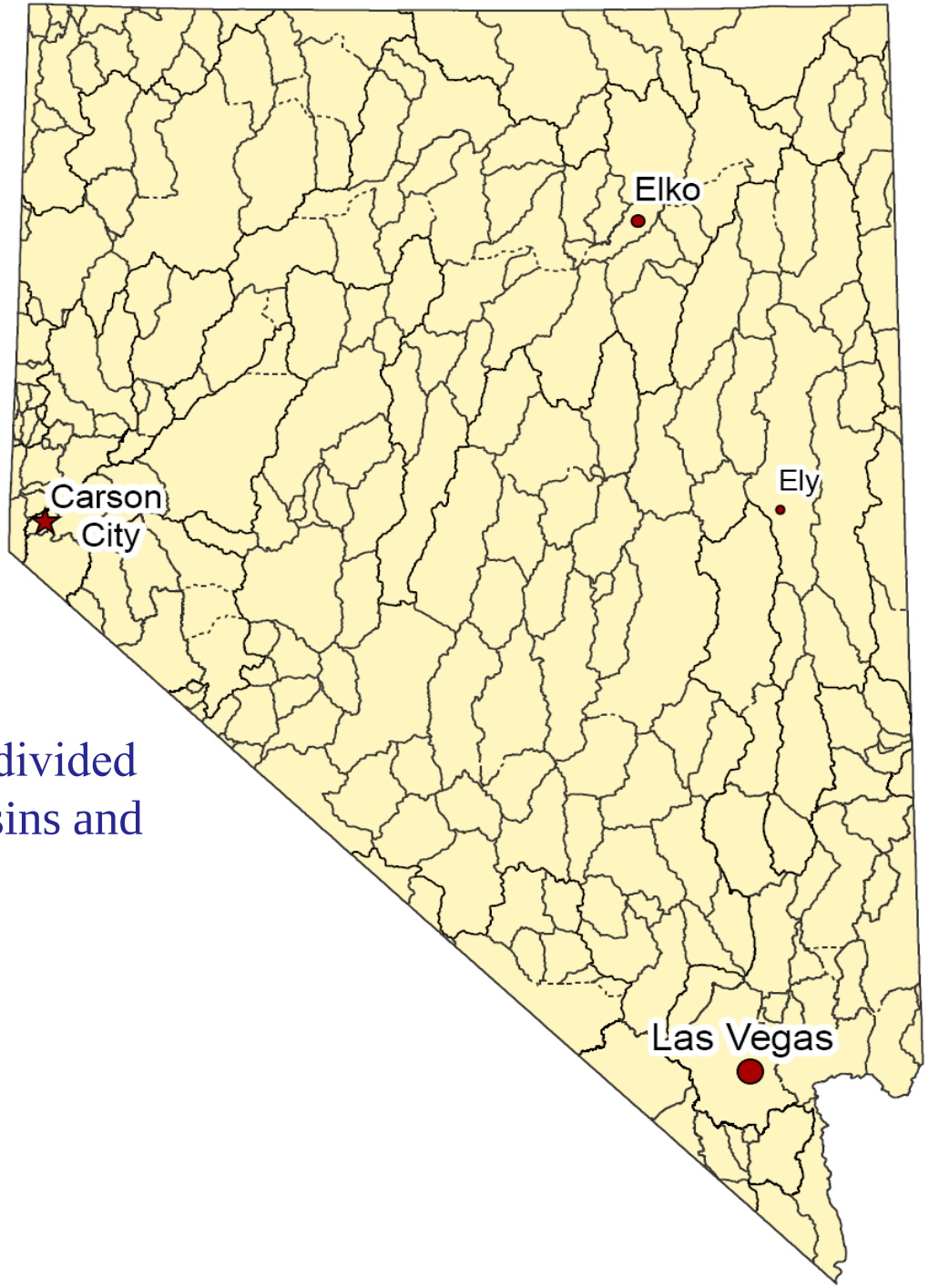
Groundwater

Amount of groundwater available based on the **Perennial Yield Concept**

- The maximum amount of ground water that can be salvaged each year over the long term without depleting the ground water reservoir.
- The perennial yield cannot be more than the natural recharge and is usually limited to the natural discharge.
- The goal is to not allow the consumptive use of groundwater rights and domestic wells to exceed the basin's perennial yield.

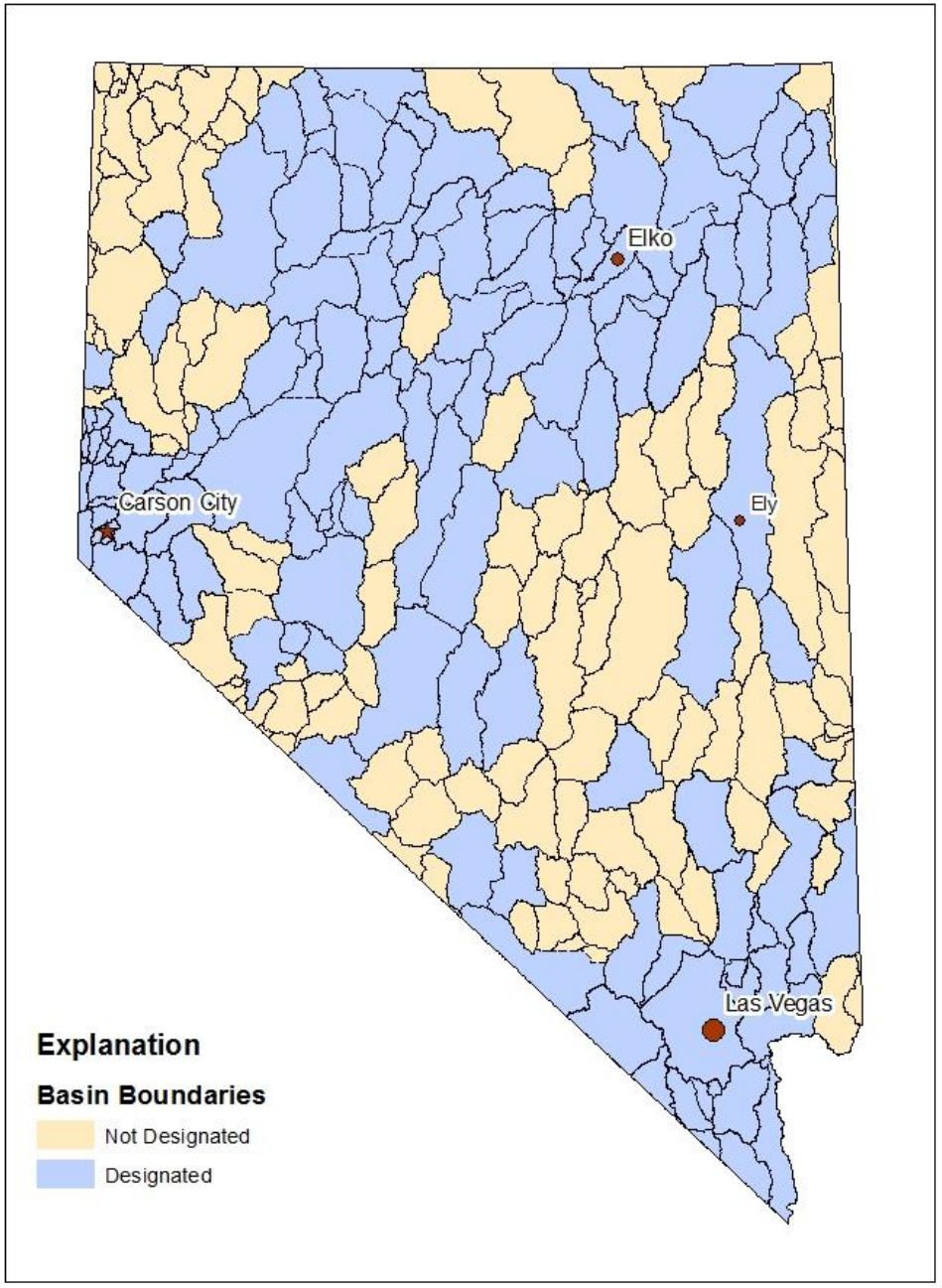
Groundwater Management In Nevada

Nevada's groundwater is divided into 256 hydrographic basins and sub-areas.



Groundwater Management In Nevada

132 are Designated or Partially Designated



Perennial Yield Values

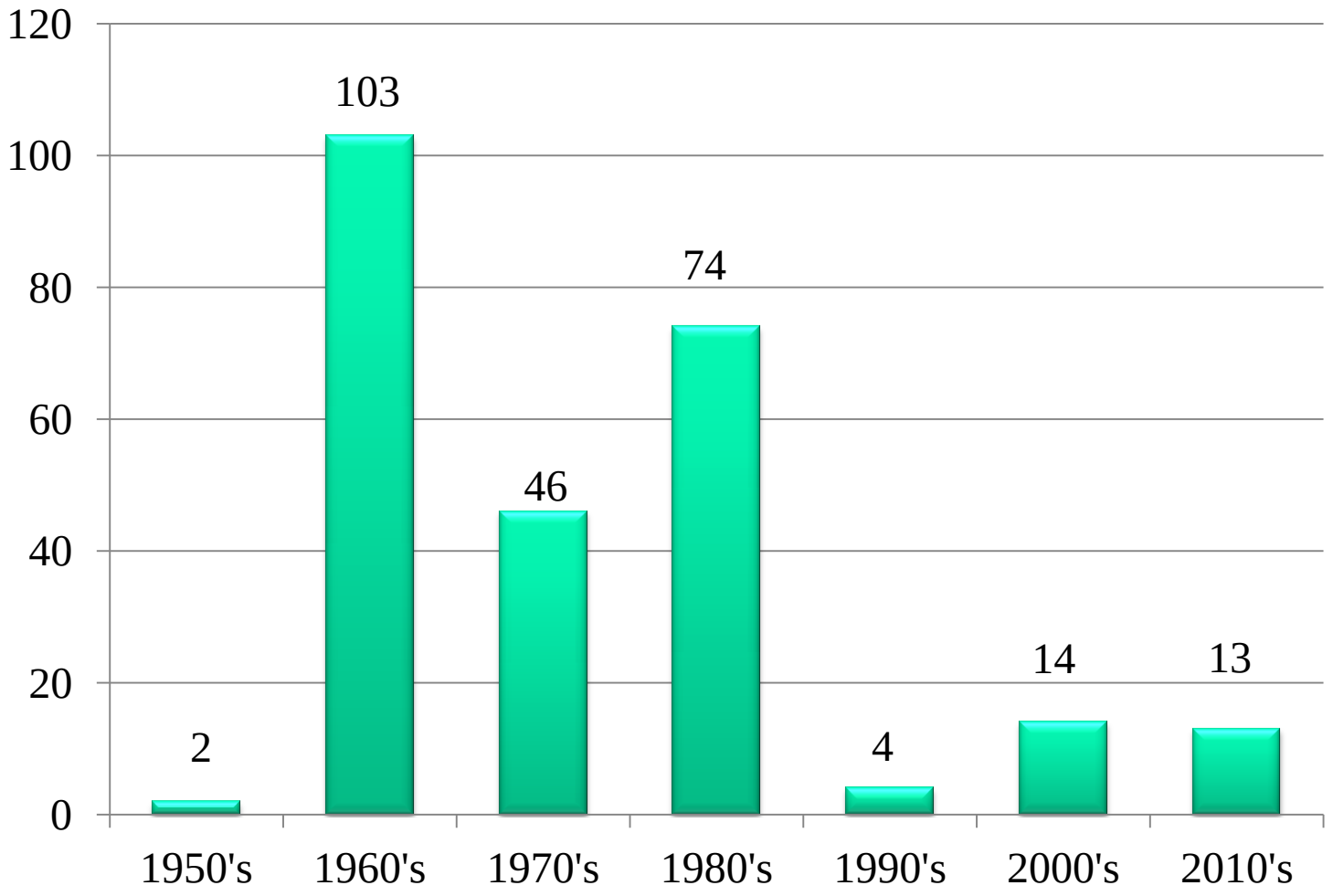
Highest: 84,000 AF – Spring Valley

Lowest: 10 AF - Emigrant Valley-Papoose Lake Valley

Approximately 25% of basins have a PY $\leq$ 1,000 AF

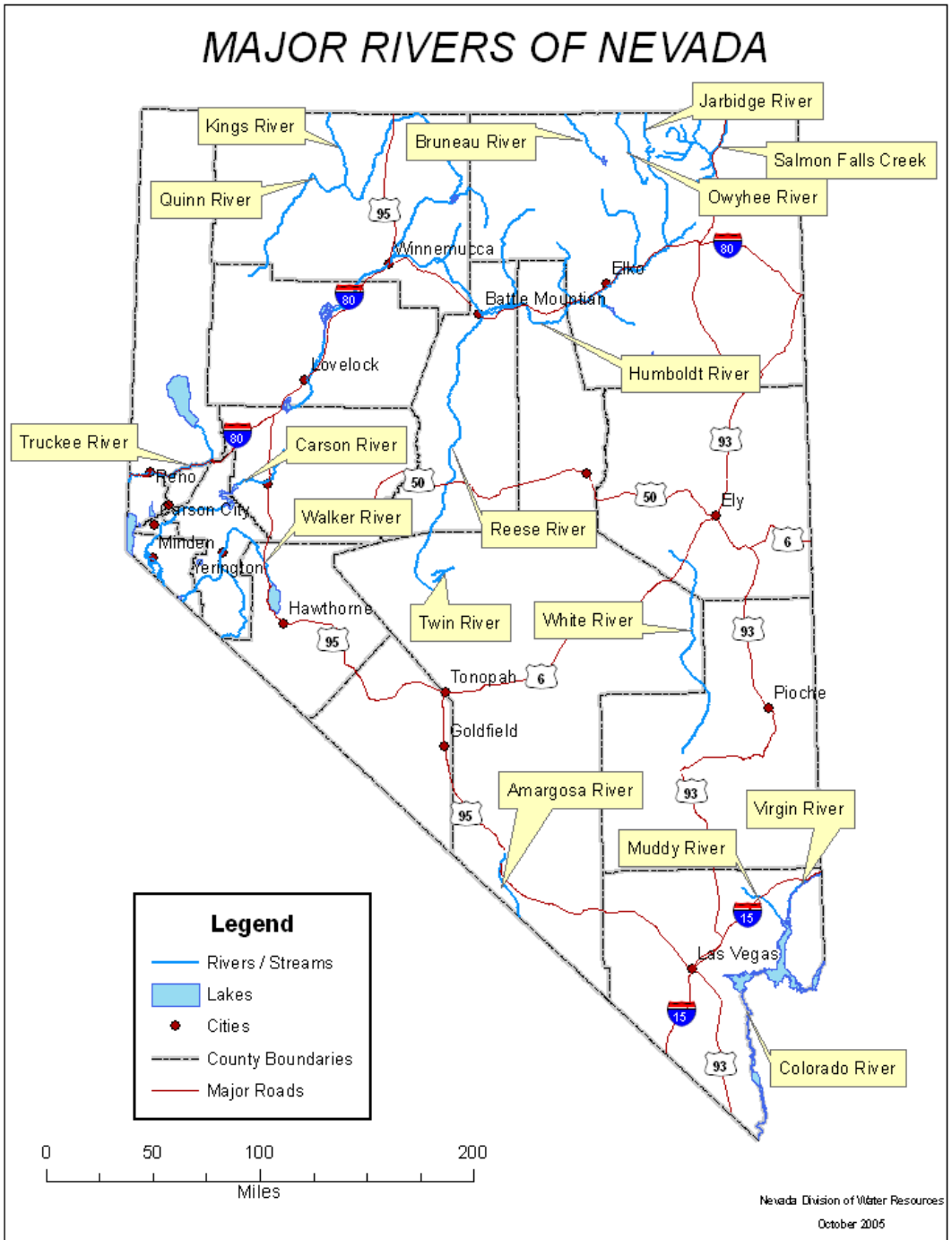
Sum of perennial yields equals ~2 million acre-feet

Perennial Yield Estimates



Surface Water

- Most of the surface water in Nevada (by volume), was used pre-water law and therefore has been adjudicated and is decreed, e.g. **Truckee, Carson, Walker and Humboldt Rivers**
- Since 1905, the use of all surface water has been permitted through the appropriative process outlined in the water law
- ~4.7 million acre-feet in surface water supply

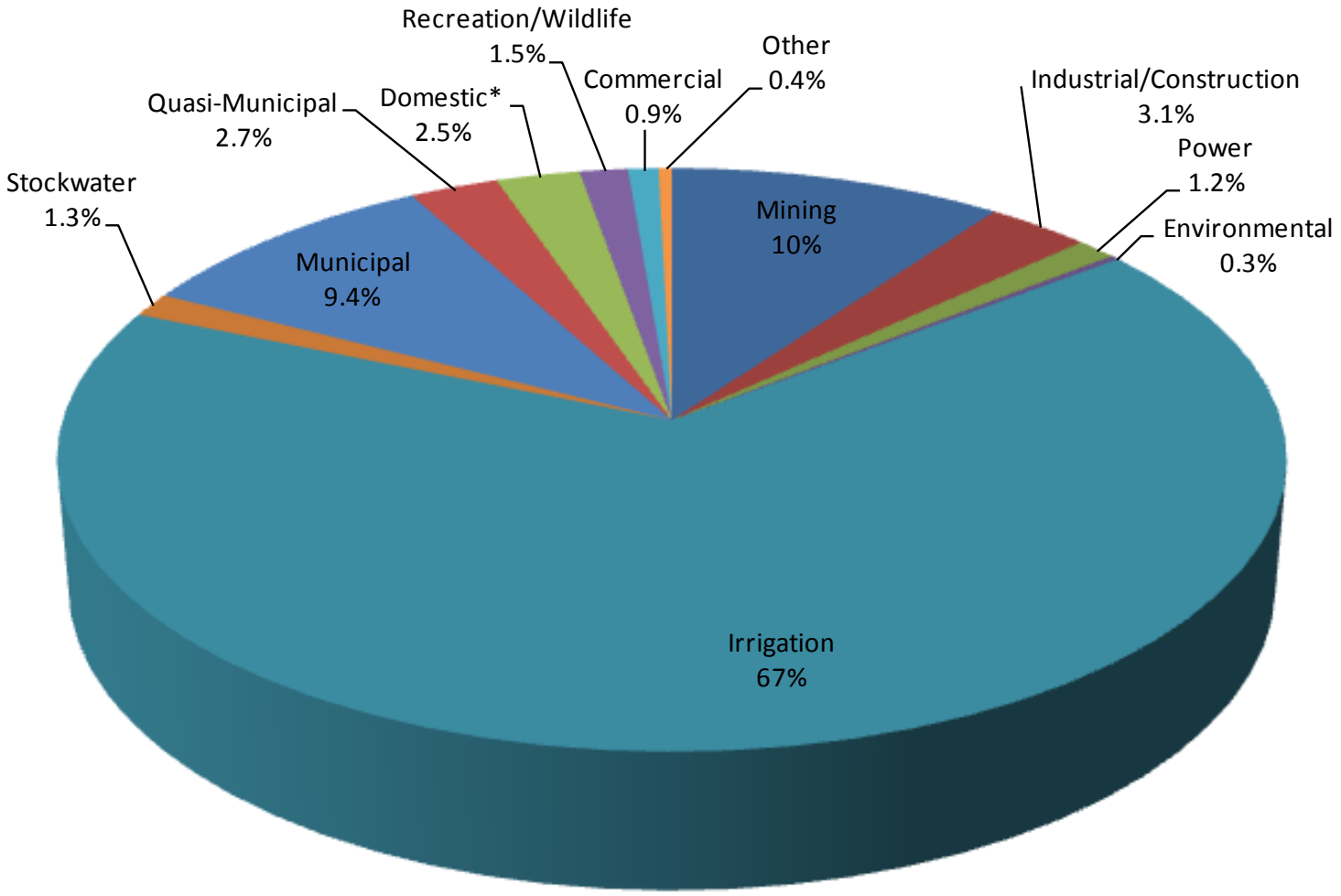

MAJOR RIVERS OF NEVADA
Jarbidge River
Kings River
Bruneau River
Salmon Falls Creek
Quinn River
Owyhee River
Winnemucca
Elko
Battle Mountain
Humboldt River
Lovelock
Truckee River
Carson River
Reno
Carson City
Walker River
Reese River
Minden
Yerington
Ely
Hawthorne
Twin River
White River
Tonopah
Pioche
Goldfield
Amargosa River
Virgin River
Muddy River
Las Vegas
Colorado River
Legend
Rivers / Streams
Lakes
Cities
County Boundaries
Major Roads
0
50
100
200
Miles
Nevada Division of Water Resources
October 2005

Columbia River at The Dalles

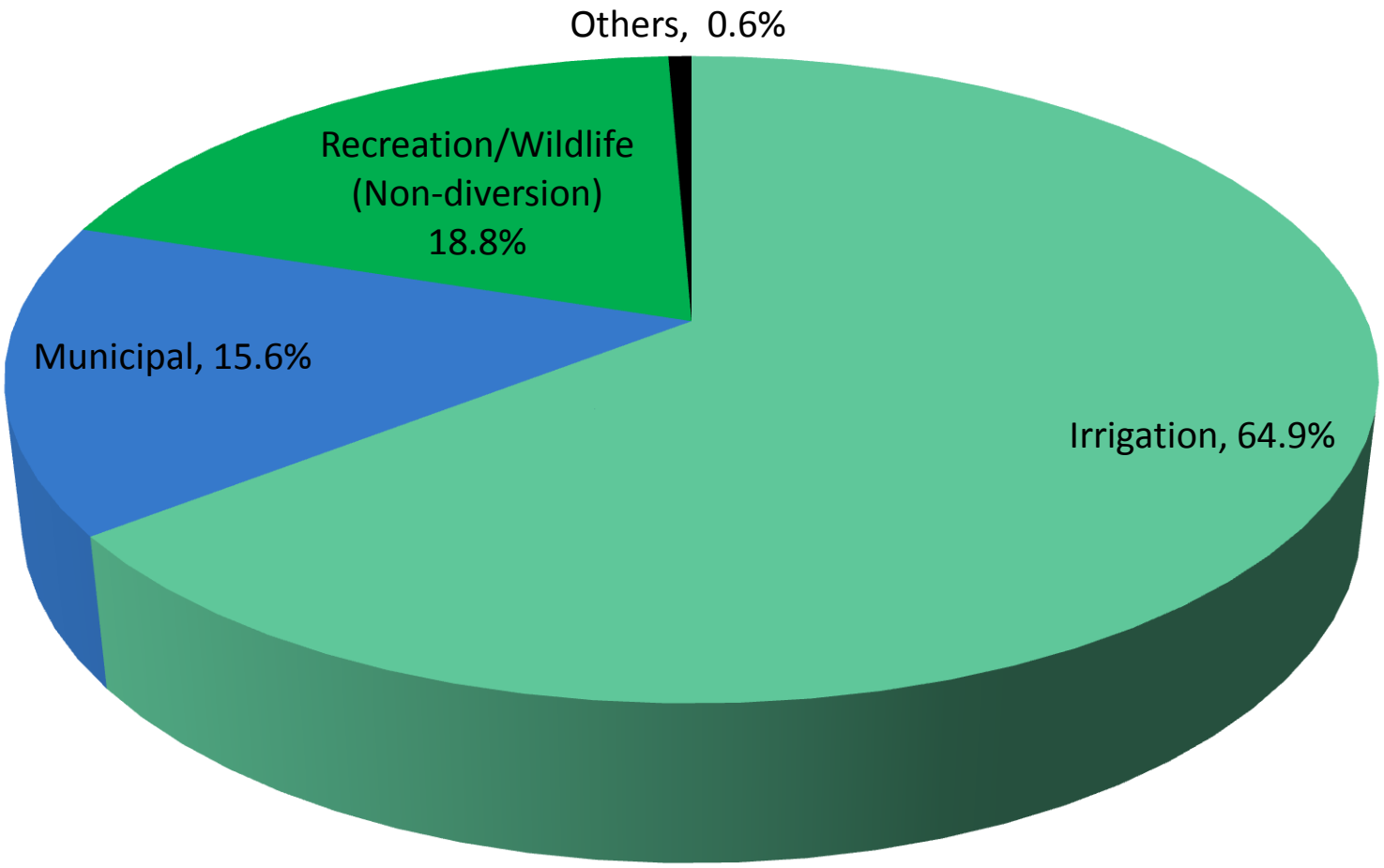
- Averages ~ 200,000 cfs
- Enough water passes that gauging station in ~ 19 days to equal the annual surface and groundwater supply in Nevada.

Statewide Water Use

Statewide Groundwater Use



Statewide Surface Water Use



Questions?