

*Study of the
Use, Allocation and Management of Water*



*Legislative Counsel
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**STUDY OF THE USE, ALLOCATION
AND MANAGEMENT OF WATER**

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**LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA**

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SUMMARY OF RECOMMENDATIONS

The following is a summary of the recommendations adopted by the Legislative Committee to Study the Use, Allocation and Management of Water.

I. STATE ENGINEER'S OFFICE AND PROCEDURES

A. Water Rights Titling

- 1. Adopt legislation to amend subsection 2 of NRS 533.385 to delete the language that requires the assignment of an application or permit to appropriate water to be filed for record in the office of the state engineer for such an assignment to be binding. The legislation is not to change the first portion of subsection 2 of NRS 533.385 that allows any application or permit to be assigned subject to the conditions of the permit. (BDR 48-982)**
- 2. Require by statute that all transfers of water rights must be recorded at the County Recorder's Office in the county or counties of the place of use of the water, as well as the county wherein the point of diversion lies, regardless of the number of counties affected. (Note: The same "race-notice" system which applies to real property transactions would apply to this recording notice procedure for water rights transfers.) (BDR 48-982)**
- 3. Adopt a new provision in the statutes that would require all persons transferring or changing water rights to submit to the Office of the State Engineer abstracts of title and copies of conveyance documents for the State Engineer's purposes on a form to be established by that office, to facilitate action on and notice of change applications and transfers of water rights and to provide adequate assurance that the State Engineer is dealing with the true owner of the applicable water rights. (Note: In conjunction with recommendation #2, require that an abstract of the transaction be submitted to the Office of the State Engineer on a form to include all pertinent information together with a filing fee.) (BDR 48-982)**
- 4. In reference to the ownership and conveyance of water rights, clarify that:**
 - a. Water right applications, permits and certificates go with the land if the deed is silent on the subject.**

- b. Within thirty days after the final judgment is rendered in a case involving adjudicated water rights, the clerk of the court is required to deliver a certified copy of the judgment to the State Engineer and file it with the county recorder in the counties where the water is diverted and used.
 - c. An exception is made for stock ownership in ditch companies, so it would not be included in provisions that require water rights to be conveyed or reserved by deed in substantially the same manner as an estate or interest in lands.
 - d. The real property transfer tax applies to conveyances of water rights that are recorded at the county recorders' offices.
 - e. Certified copies of documents from the county recorder are not to be required by the State Engineer.
 - f. The new provisions relating to conveyances and reservations of water rights are not retroactive. (BDR 48-982)
5. Adopt a requirement for the county recorder to promptly transmit a certified copy of a water rights deed to the irrigation district if the place of use of the water is wholly or partly within the boundaries of an irrigation district. (BDR 48-983)
6. Provide for the establishment of a geographic information system (GIS) applicable to abstracts of title to complete the mapping work on the Truckee River decreed rights; and place other water systems statewide on such a GIS in an expedited fashion. (BDR 48-987)

B. Staffing and Funding

- 7. Recommend that the Senate Committee on Finance and the Assembly Committee on Ways and Means consider for approval the funding of seven additional positions and certain one-shot appropriations for the Division of Water Resources to help deal with the backlog of water rights applications and improve the service capabilities of the Office of the State Engineer.**

C. Definition of Subsisting Right

8. For purposes of NRS 533.492, define in statute a "subsisting right" to water livestock as an "existing right." (BDR 48-988)

D. Speculation

9. Adopt statutory language to require that the State Engineer find, before granting a water rights permit, that the person has the financial means and the reasonable expectation of applying the water to beneficial use with reasonable diligence. (BDR 48-989)

E. "Mother-In-Law Quarters"

10. Amend the applicable provisions in Chapter 534 of NRS to allow for the use of water from domestic wells in "mother-in-law quarters" or other similarly restricted types of additional units to a single-family dwelling. For example, change the definition of "domestic use" in NRS 534.013 to "domestic purposes" and expand the definition to include uses, buildings or facilities that are incidental and secondary to and which do not operate independent of the single-family dwelling use, or language to that effect. Allow the State Engineer to determine other uses, buildings or facilities that may be incidental and secondary to a single-family dwelling use. (BDR 48-990)

F. Technical Changes

11. Amend the law in NRS 533.285, 533.290 and 534.040 to change the term "tax" to "assessment" so that the language more accurately reflects the nature of these charges. (BDR 48-991)
12. Amend NRS 533.010 and NRS 534.014 to broaden the definition of person and make them consistent. Define "person" in these chapters to include "the State of Nevada, any political subdivision of this State or another state, any agency of this State, of another state or of the United States, or any Indian tribe, group of tribes or organized segment of a tribe," or language to that effect. (BDR 48-991)

II. GROUNDWATER REPLENISHMENT DISTRICT

13. Adopt legislation to allow for the establishment of a groundwater replenishment district (GRD) in Clark County to provide a funding and administrative mechanism for the protection and recharge of the depleted groundwater basin in the Las Vegas Valley. Include citizen representation on the governing board of the GRD, or include provision for an advisory or citizens committee of members who have domestic wells. Amend Chapter 534 of NRS to permit in-lieu groundwater banking in areas that have established a GRD. (See outline entitled "Legislation For Establishing A Groundwater Replenishment District.") (BDR S-984)

III. WATER PLANNING

14. Recommend that the Senate Committee on Finance and Assembly Committee on Ways and Means consider, for approval, funding for a sufficient number of positions in the Division of Water Planning to allow the Division to adequately put together a state water plan; and adopt statutory language to require the Division to coordinate with all local governments on watershed planning to develop a statewide, coordinated water plan and to ensure that local governments coordinate with the State on the development of the plan. (BDR 48-992)

15. Establish requirements in State law to protect identified water needs for current and future development in the rural areas, within the State water plan, to preclude interbasin transfers from adversely affecting local communities and their related economies and lifestyles. (BDR 48-992)

IV. CONSERVATION AND CONSERVATION CREDIT SYSTEMS

16. Add requirements to the water conservation laws in Chapter 540 of NRS for suppliers of water, who were required to adopt a water conservation plan by July 1992, to report their progress and update the plan on a 4-year basis. Allow 90 days for review of the update report by the Division of Water Planning and require the next revision to be adopted by July 1996. (BDR 48-993)

17. Establish in statute a conservation credit system to encourage users to conserve or store water. Allow a person to apply to the State Engineer for a conservation credit, place the burden on the applicant to prove that he has implemented some recognized method of water salvaging or

conservation technology and that actual water usage has been reduced based upon past usage to qualify for a credit, and provide discretion to the State Engineer to decide if an application qualifies for a conservation credit. (BDR 48-985)

V. PUBLIC INTEREST CRITERIA

18. The committee makes no specific recommendation on public interest criteria because other recommendations adopted by the committee, such as those relating to speculation, conservation and water transfers, effectively deal with the primary public interest concerns identified in the State's water laws through the committee's study.

VI. WATER TRANSFER ISSUES

19. Include in the policy statement for the state water plan, to be adopted by the Legislature, general criteria for the approval of water transfer applications and related determinations that pertain to the movement of water from one basin to another. The general criteria should include evidence that (1) the project is fair and equitable to the area of origin; (2) the project is environmentally sound; and (3) the project is an appropriate, long-term solution which will not unduly limit future development and growth of the area of origin.

20. Amend Subsection 1 of NRS 533.438 to provide for an annual inflation adjustment to the tax rate on the transfer of water by the county of origin. (BDR 48-994)

VII. FEDERAL ACTIONS

21. Submit a comment letter from the committee to the Bureau of Land Management before July 28, 1994, to express the committee's concerns about the water rights provision in the Rangeland Reform '94 proposal, and include a draft federal regulation that would incorporate Nevada's three-way system.

22. Draft a bill for the 1995 Session to amend the State's water law to provide for use of the "three-way system" in reference to the acquisition of water rights on public lands for purposes of livestock watering. (BDR 48-986)

23. Adopt a joint resolution that urges the Federal Government to recognize and respect the primacy of State water laws. (BDR R-995)

VIII. IRRIGATION LAWS

24. Amend the State's irrigation district law in NRS 539.705 to eliminate the 40 acre and single ownership rules in reference to the procedure for transferring to other lands the storage rights and benefits of the irrigation district on lands that previously were stripped of such rights due to the failure to pay taxes and assessments. Add language to this provision to establish criteria for the board of directors of an irrigation district to consider when it exercises its discretion to grant or refuse a petition on such a transfer. The criteria is to include the effect of the proposed change on the cost of water in the district, the district's efficiency, existing water rights and the public interest. (BDR 48-996)

IX. SAFE DRINKING WATER PROGRAM

25. Recommend that the Senate Committee on Finance and Assembly Committee on Ways and Means consider, for approval, three additional staff positions in the Bureau of Health Protection Services of the State Health Division to allow the State to maintain primacy and furnish technical assistance to water suppliers under the Safe Drinking Water Program. [Positions would be for (1) lead and copper rule implementation; (2) implementation of new, anticipated regulations on arsenic, radon, sulphate and groundwater disinfection; and (3) provision of technical assistance and issuance of monitoring waivers.]

26. Recommend that the Senate Committee on Finance and Assembly Committee on Ways and Means consider, for approval, funding for two staff positions (a chemist and a laboratory assistant) and additional analytical laboratory equipment (approximately \$913,000) for the Bureau of Laboratory Services of the State Health Division to conduct and efficiently report the analyses required for water systems under the Safe Drinking Water Program.

27. Provide incentives for existing non-viable water systems to consolidate or otherwise restructure, including satellite operations (in which a large, well managed utility agrees to manage or operate a small utility). Amend NRS 349.980 *et seq.*, pertaining to grants for capital improvements to publicly owned water systems, to allow the use of this

program in providing a financial incentive for a private water system to consolidate. (BDR 30-997)

28. Amend NRS 445.397 to authorize the State Board of Health to grant to the Nevada Training Coalition the proceeds of any administrative penalty imposed on a willful violator of a drinking water statute or regulation. (BDR 40-998)

29. Urge the Senate and Assembly Committees on Natural Resources and LCB staff to monitor Congressional action on the reauthorization bill for the Safe Drinking Water Act to determine if amendments may be necessary to Nevada's laws in the 1995 Session. For example, amendments could be required under the grant program of NRS 349.980 to allow for matching funds from that source for federal money which may be authorized from state revolving loan funds under the reauthorization bill.

X. WALKER RIVER BASIN

30. Adopt a resolution to Nevada's congressional delegation urging action by the Congress to approve the Nevada/California interstate compact relating to the Walker River. (BDR R-999)

31. Adopt a resolution to Nevada's congressional delegation urging action by the Congress to investigate the importation of water from outside the State to help save the lakes in Western Nevada, such as Pyramid Lake and Walker Lake. (BDR R-1000)

**REPORT TO THE 68TH SESSION OF THE NEVADA LEGISLATURE
BY THE LEGISLATIVE COMMITTEE TO STUDY THE USE,
ALLOCATION AND MANAGEMENT OF WATER**

I. INTRODUCTION

The following report is submitted in compliance with Senate Bill 327 (Chapter 655, *Statutes of Nevada 1993*, pages 2862 and 2863). The bill created the Legislative Committee to Study Water and directed the committee to study the use, allocation and management of water in Nevada (see Appendix A).

Senate Bill 327 specified that the committee consist of six members, to include three senators appointed by the Majority Leader of the Senate and three members of the Assembly appointed by the Speaker of the Assembly. Legislative leadership appointed the following legislators to the committee:

Senator Mark A. James, Chairman
Assemblyman Joseph E. Dini, Jr., Vice Chairman
Senator Ernest E. Adler
Senator Dean A. Rhoads
Assemblyman Val Z. Garner
Assemblyman Joan A. Lambert

Legislative Counsel Bureau (LCB) staff services for the study committee were provided by Brian L. Davie (principal staff) and Fred W. Welden of the Research Division, Scott G. Wasserman and Jane Juve of the Legal Division (legal counsel), and Linda Chandler Law of the Research Division (committee secretary).

The water study committee held six meetings around the State to evaluate both regional and statewide water issues in Nevada. The committee's first meeting in Las Vegas focused on southern Nevada issues, and the second meeting held in the Reno/Sparks area dealt with issues relating to the northwestern area of the State. The third hearing in Yerington focused on the Walker River Basin, while the fourth meeting in Elko dealt with rural water issues to include mine dewatering and the Federal acquisition of water rights in the State. The fifth meeting in Las Vegas covered a variety of issues, including water importation projects and a groundwater replenishment district. The final, work session meeting was held in Carson City.

All of the meetings were well-attended, the committee heard extensive testimony, and dozens of recommendations on water issues throughout the State were presented to the committee. Two subcommittees were created to deal with particularly complex issues relating to (1) water rights titling and (2) staffing and funding the Office of the State Engineer.

The committee adopted 31 recommendations pertaining to the State Engineer's Office and procedures, the creation of a groundwater replenishment district in the Las Vegas Valley, water planning and conservation, water transfer issues, federal actions affecting the State's water law, changes to Nevada's irrigation law, and the State's safe drinking water program.

This report contains background information on water issues in the West and how those issues are reflected in Nevada. It also contains a discussion and explanation of the committee's findings and recommendations. A significant amount of information was gathered during the course of the study, and much of it was provided in exhibits that became part of the minutes of the committee's meetings. All minutes and supporting documents are on file with the Research Library of the LCB.

II. OVERVIEW OF WESTERN WATER ISSUES AND THEIR REFLECTION IN NEVADA

The study of the use, allocation and management of water in Nevada by the legislative committee took place in the context of the continuing development and evolution of water policies and issues in the West. Nevada's water law, like that of the other Western States, is based on the prior appropriation doctrine. (See the previous legislative study in LCB Bulletin No. 91-8 for a brief history of water law in Nevada and the West.)

Most sources agree that the prior appropriation doctrine has served the region well throughout the formative period when individual miners and irrigators were diverting the resource and through most of this century during the era of large dam building and other massive water projects. The major building era for water projects in the West ended by the late 1970's as most of the primary dam sites were developed, financial resources became more limited, and environmental and other considerations took greater precedence. The flexibility of the doctrine has been demonstrated as the states have made adjustments to their laws in response to the changing dynamics of water in the West.

Nevada could be considered a microcosm of the West in reference to some of the major water issues facing the region. The West as a region is changing and being affected by high rates of population growth, increased urbanization and the finite nature of its water supplies.

Nevada is the driest and fastest growing state in the nation. Although Nevada is often thought of as a rural state, 85 percent of its population live in urban centers. According to *Nevada Water Facts*, in 1990, irrigation/livestock uses were estimated to account for 83.2 percent of all the water used in the State. Public supply water for municipal and industrial uses accounted for 10.9 percent. These conditions are similar in other Western states, so many of the key Western water issues are reflected in Nevada.

The following list provides a brief explanation of some of the major water issues in the Western States, and furnishes examples of how or where they apply in Nevada.

A. Reallocation of Water Supplies

Perhaps the most dominant trend in recent years is the reallocation of water supplies from rural, agricultural uses to rapidly growing urban, municipal uses. One of the easiest ways for an expanding urban center to obtain additional water resources is to purchase or otherwise acquire agricultural water rights.

Both major urban areas in Nevada have initiated and seriously examined proposals to transfer water from the rural areas of the State--the Cooperative Water Project for the Las Vegas area and the Truckee Meadows Project for the Reno area. The Reno project effectively was stopped by action of the Federal Government, and the Las Vegas project essentially is not being pursued as other, less costly options are being explored.

The Las Vegas area is different from many other Western urban centers in that it has no substantial, nearby agricultural base from which to acquire water rights. Nevada's Colorado River Commission and the Southern Nevada Water Authority have conducted a Nevada Water Summit within the past two years to examine more than 30 alternative proposals for providing additional water to Southern Nevada. These cooperating agencies are following up on some of the more promising alternatives.

B. Overallocation of Water Supplies

Additional pressures result, particularly in drought years, from the overallocation of water supplies. Surface water sources are overappropriated--downstream users depend on return flows to satisfy their water rights--and many groundwater basins are severely overdrafted.

The most critical overdraft situation in Nevada is in the Las Vegas Valley groundwater basin. All surface water systems in the State have been fully appropriated for most of this century and junior appropriators rely heavily on return flows to meet their rights. For example, approximately 700,000 acre-feet of water rights exist on the Humboldt River in Northern Nevada, but the river only supplies about 265,000 acre-feet of water annually.

C. Environmental Concerns

Environmental concerns have gained prominence through enforcement of the federal Endangered Species Act (ESA) and increased emphasis on maintaining and protecting in-stream flows for wildlife and recreational purposes.

The ESA has had a major impact in Nevada, particularly in the negotiations involving the Truckee River and Pyramid Lake in Northern Nevada, as well as other areas of the State. Protection for instream rights was established in 1988 in the case of *Nevada v. Morros* when the State Supreme Court upheld the State Engineer's issuance of appropriative water rights to two federal agencies for recreation, fishery, and stock and wildlife watering purposes, including instream rights.

D. Tribal Claims

Indian tribal claims for federal reserved water rights under the *Winters* doctrine are ripening in many areas of the West through the quantification of water rights in adjudication proceedings. Indian tribes in Nevada have been active in asserting their claims and rights to water throughout the State, including the Pyramid Lake area, Walker River Basin and the Las Vegas Valley.

E. Federal Role

The federal role in state water issues is uncertain because it appears to vacillate between dictatorial and facilitator approaches. The role of the Bureau of Reclamation has been changing from an agency that builds water control

structures to one that manages water resources; and the Western States are becoming increasingly wary about retention of their traditional control over water issues as federal and congressional actions and proposals appear to impinge on state control.

In Nevada, top officials in the U.S. Department of the Interior in the past year have publicly pledged to help solve water allocation problems in Southern Nevada. Draft regulations proposed by the Bureau of Reclamation for administering entitlements to Colorado River water in the Lower Colorado River Basin are intended to provide maximum flexibility for the negotiation of voluntary water transfers to help resolve local water resource problems and demands. On the other hand, proposals like the water rights provision of Rangeland Reform '94 have generated distrust and skepticism in Nevada about the Federal Government's respect for the primacy of state water law.

F. Viability of Existing Institutions

The viability of existing institutions is being questioned as changing conditions in the West force new perspectives on existing methods for dealing with water issues. Changes in the Law of the River--once considered to be almost sacrosanct and immutable in reference to the allocation of water in the Colorado River--are being considered to allow for water marketing and increased flexibility within the system. Unused water is available within the system and legal impediments are being examined to allow for fair and beneficial allocations.

Nevada's legislative water committee began its study in the context of these issues with a view toward ensuring that Nevada's law remains flexible enough to accommodate these changing conditions.

III. RECOMMENDATIONS

The Legislative Committee to Study Water had a broad mandate from its enabling legislation to study a wide variety of water issues including public interest laws, water conservation laws, the operations and organization of the State's water agencies, and ". . . any other issues related to the use, conservation, allocation and management of water resources that may affect the economy or the environment of this State." The committee began its study with a list of at least 15 issues to be addressed, and others emerged as the study progressed. Some issues were amenable to legislative action, while others were not. Throughout the study, the members of the committee actively sought

suggestions and recommendations on ways to change and improve the State's water laws to better manage this scarce and vital resource.

The committee adopted 31 recommendations covering 10 general issue areas. These recommendations are contained in 19 bill draft requests, 4 recommendations to the "money" committees on staffing and funding levels, and a comment letter to the Federal Government. The following discussion provides background information and an explanation on each recommendation.

A. State Engineer's Office and Procedures

As might be expected, several recommendations relate to the operations and procedures of the Division of Water Resources which is the State's primary water management agency. Most of these recommendations, ranging from technical amendments to major operational changes, were originally suggested by the State Engineer and further refined by the committee.

1. Water Rights Titling

The processing of water rights titles is one of the major problems in the administration of the Office of the State Engineer. The number of title transfer applications requested through the office has grown dramatically to over 3,000 annually in 1992 and 1993. Since 1989, progressively larger numbers of employees have been assigned to title-related tasks. The office is severely behind in its titling work with a five-year backlog, even though almost 20 percent of the agency's staff--nine of 51 positions--are dedicated primarily to titling functions. As a result, fewer staff are available to handle other functions such as adjudications, dam safety, permitting and the backlog of change applications.

The State Engineer indicated that over 5,000 titling documents are in the office and cases are worked as time allows. The situation is so critical that the agency can no longer provide title search work to persons who are buying and selling properties. The only ownership changes being completed at this time are those relating to pending change applications. In March 1994, there were 4,100 applications ready for action and about 60 percent of them were change applications that required some title work before approval.

A Subcommittee on Water Rights Titling was created with an initial goal of investigating the possibility of privatizing the titling process. The subcommittee consisted of Assemblyman Lambert as chairman, along with Senator James, Assemblyman Garner and Assemblyman Dini. The subcommittee held one

meeting and further testimony was provided to the full committee at its work session meeting.

The subcommittee realized that privatization was not a viable alternative at this time, but it was a goal toward which significant steps could be taken. The first priority is to clarify the law about where water right titles are to be recorded and get the State Engineer out of the recording business. A large part of the problem now is that opinions differ on what the law requires in reference to recording due to the conflict within Chapters 533 and 111 of NRS. A provision in NRS 533.385 indicates that the assignment of a water right application or permit is not binding unless it is filed for record in the Office of the State Engineer. Many people today file with the county recorder, and many believe that certificated rights must be filed with the county recorder and that applications and permits must be filed with the State Engineer. Anyone now who is researching water rights titles must go to both the county recorder and State Engineer offices.

The intent of this change is to clarify the law so that from the effective date of the change, everyone will know that a water right must be recorded at the county recorder's office. The new requirement for persons transferring or changing water rights to submit the information on a form established by the State Engineer is intended to allow the State Engineer to receive the necessary information in a format that can be worked with more quickly.

The committee realizes that these recommendations will not solve the State's titling problems overnight. It is believed and intended, however, that these steps will help move the agency toward privatization of this function and assist it in gradually resolving the backlog.

Certain additional provisions are included (in recommendation #4) to further clarify this revised recording procedure for water right titles. It is intended that the same filing fee would be paid as for other documents recorded in the county recorder's office. The provision on the appurtenance of applications, permits and certificates with the land would conform with the current practice of the State Engineer and the existing common law principle.

An exception is necessary for stock ownership because some water rights are evidenced by stock certificates in ditch companies which actually own the water right. Individual land owners acquire portions of the water right through the ownership of stock. The exception provides for the continuation of this traditional method through the conveyance of stock and not recording.

The application of the real property transfer tax to the recording of water rights titles would provide for consistency when such rights are conveyed separately or with the deed as appurtenant to the land. To help limit the administrative burden on county recorder's offices, the State Engineer is not to require certified copies of recorded documents. Finally, it needs to be clear that these changes would not be retroactive but would only apply after the effective date of the new law so that it would not affect current disputes as to the time of filing.

Therefore, the committee recommends that the Legislature:

- 1. Adopt legislation to amend subsection 2 of NRS 533.385 to delete the language that requires the assignment of an application or permit to appropriate water to be filed for record in the office of the state engineer for such an assignment to be binding. The legislation is not to change the first portion of subsection 2 of NRS 533.385 that allows any application or permit to be assigned subject to the conditions of the permit. (BDR 48-982)**
- 2. Require by statute that all transfers of water rights must be recorded at the County Recorder's Office in the county or counties of the place of use of the water, as well as the county wherein the point of diversion lies, regardless of the number of counties affected. (Note: The same "race-notice" system which applies to real property transactions would apply to this recording notice procedure for water rights transfers.) (BDR 48-982)**
- 3. Adopt a new provision in the statutes that would require all persons transferring or changing water rights to submit to the Office of the State Engineer abstracts of title and copies of conveyance documents for the State Engineer's purposes on a form to be established by that office, to facilitate action on and notice of change applications and transfers of water rights and to provide adequate assurance that the State Engineer is dealing with the true owner of the applicable water rights. (Note: In conjunction with recommendation #2, require that an abstract of the transaction be submitted to the Office of the State Engineer on a form to include all pertinent information together with a filing fee.) (BDR 48-982)**
- 4. In reference to the ownership and conveyance of water rights, clarify that:**
 - a. Water right applications, permits and certificates go with the land if the deed is silent on the subject.**

- b. Within thirty days after the final judgment is rendered in a case involving adjudicated water rights, the clerk of the court is required to deliver a certified copy of the judgment to the State Engineer and file it with the county recorder in the counties where the water is diverted and used.**
- c. An exception is made for stock ownership in ditch companies, so it would not be included in provisions that require water rights to be conveyed or reserved by deed in substantially the same manner as an estate or interest in lands.**
- d. The real property transfer tax applies to conveyances of water rights that are recorded at the county recorders' offices.**
- e. Certified copies of documents from the county recorder are not to be required by the State Engineer.**
- f. The new provisions relating to conveyances and reservations of water rights are not retroactive. (BDR 48-982)**

In some areas, such as Lyon County with the Walker River Irrigation District, the county recorder sends a copy of the water rights deed to the irrigation district so that the district is apprised of all changes. The following recommendation is intended to formalize this procedure and make it applicable statewide.

Therefore, the committee recommends that the Legislature:

5. Adopt a requirement for the county recorder to promptly transmit a certified copy of a water rights deed to the irrigation district if the place of use of the water is wholly or partly within the boundaries of an irrigation district. (BDR 48-983)

One of the most time consuming aspects of the titling process relates to decreed rights, such as the rights established by the Orr Ditch Decree for the Truckee River. Researching a chain of title on decreed rights is complicated because a great deal of interpretation is required on old maps--some of which were drafted 100 years ago--that are not accurate by today's standards.

The State Engineer demonstrated to the committee a computer generated water rights map showing a Truckee River claim as an example of the office's capabilities with a geographic information system (GIS). Such a map provides

a physical illustration of the area and location of claims, along with legal descriptions, assessor's parcel numbers and water rights. Only three of an estimated 800 claim maps are completed on the Truckee River decree. It was projected that two full-time employees working with Washoe County could complete the mapping work on the Truckee River in about two years at a cost of around \$220,000.

This mapping work would greatly simplify titling problems in the Division of Water Resources in that baseline data would be established on the decree, and an entire history would not have to be re-researched each time that a parcel within a claim is investigated. The current priority for the State Engineer is the Truckee River due to the extensive backlog that exists. He indicated, however, that the same equipment and procedures would also apply to decreed rights on other systems in the State like the Carson, Humboldt and Walker Rivers.

Therefore, the committee recommends that the Legislature assist the State Engineer to:

6. Provide for the establishment of a geographic information system (GIS) applicable to abstracts of title to complete the mapping work on the Truckee River decreed rights; and place other water systems statewide on such a GIS in an expedited fashion. (BDR 48-987)

2. Staffing and Funding

In conjunction with the Subcommittee on Water Rights Titling, a Subcommittee on Staffing and Funding the Office of the State Engineer (Division of Water Resources) was created to evaluate the agency's workload and its proposals for dealing with the backlog of applications and other actions within the office. The subcommittee consisted of Assemblyman Dini as chairman, along with Senator James and Assemblyman Lambert. The subcommittee held two meetings and the State Engineer's proposals were reviewed by the Fiscal Analysis Division of the LCB.

In the 1993 Session, the Legislature found that the workload of the Division of Water Resources had increased substantially but its workforce had been reduced due to the interim budget reductions in State Government. The *Executive Budget* recommended the elimination of additional positions which would have represented a one-third reduction in the agency's staff, despite an increasing backlog of work. To assist the division with its workload, the Legislature restored all 17 positions slated for elimination by the Governor's

budget and raised water permit fees to cover the cost of the positions. This action restored the agency to its 1991 staffing levels, but its workload continues to increase as competition for Nevada's limited water resources intensifies due to more than six years of drought and a rapidly growing population.

Appendix B contains documentation submitted to the subcommittee by the State Engineer, along with the subcommittee recommendations which were adopted by the full committee. An increase in staff and additional funding were requested by the State Engineer primarily to enable the office to address new water rights applications while attempting to reduce the existing number of pending files. Two organizational charts are included in Appendix B--the first provides the current structure and staffing, while the second shows the organization with the proposed additional staff. Following the charts are four tables that demonstrate the increased workload of the agency over the years to include water right applications filed, total subdivisions (final) received, changes of title received, and total extensions received.

The agency's budget is supported almost entirely by General Fund appropriations, and the fees collected by the division are deposited in the State General Fund. The State Engineer indicated that the fees collected equaled approximately 15 percent of the agency's overall budget in 1988. In 1994, the fees are expected to generate almost 63 percent of the budget. Following the tables in Appendix B is a chart entitled "Summary Of Revenues" which shows the fees collected and the total amount along with the authorized budget in recent years.

The last three pages in Appendix B provide more detailed information (prepared by the Fiscal Analysis Division) on the subcommittee's recommendations for additional staffing and funding of the Office of the State Engineer. Various changes by the subcommittee maintained the substance but reduced the cost of the agency's request from almost \$1.17 million to about \$867,000.

The State Engineer indicated that the seven new proposed positions could potentially increase revenues. The activities of the new hearings officer particularly could possibly bring in a substantial amount of money and free up other staff to continue investigations and to help reduce the backlog. In addition, the GIS equipment used on the cooperative map processing project with Washoe County on the Truckee River Decree rights, when completed, would be available for similar mapping work in Southern Nevada and other areas of the State.

Therefore, the committee agreed to:

7. Recommend that the Senate Committee on Finance and the Assembly Committee on Ways and Means consider for approval the funding of seven additional positions and certain one-shot appropriations for the Division of Water Resources to help deal with the backlog of water rights applications and improve the service capabilities of the Office of the State Engineer.

3. Definition of Subsisting Right

The Nevada Legislature in 1993 adopted Senate Bill 512 (Chapter 473, *Statutes of Nevada 1993*, page 1944) to provide an alternative method of showing a subsisting right to water livestock and to require the State Engineer to recognize such rights. This act was codified in NRS 533.492.

The State Engineer indicated to the committee that, since the law was adopted, there has been some confusion about the definition of a subsisting right. He submitted a memorandum dated February 28, 1994, by Susan Joseph-Taylor from the Office of the Attorney General entitled "Subsisting Rights Under The Stock-Watering Act." This document concluded:

that the definition of subsisting right is nothing more than existing right and that the 1993 statutory amendments were only for the purpose of making it easier to quantify prestatutory stock water rights.

The State Engineer recommended that the law be clarified to indicate directly that a subsisting right is an existing right for the purpose of watering livestock. The committee agreed and adopted the following recommendation:

8. For purposes of NRS 533.492, define in statute a "subsisting right" to water livestock as an "existing right." (BDR 48-988)

4. Speculation

As the State's population continues to grow rapidly, and the supply of water does not increase, the State Engineer and other officials are becoming more concerned about speculation--the purchase of water rights simply for the purpose of selling them to others at an increased price and without putting the water to beneficial use.

Legislation was adopted in 1993 to address some of these concerns. Assembly Bill 624 (Chapter 572, *Statutes of Nevada 1993*) amended the statutes in NRS 533.370 and 533.380 governing applications for water rights to require proof of reasonable diligence in perfecting an application. "Reasonable diligence" is defined as the steady application of effort to perfect the application in a reasonably expedient and efficient manner under the circumstances.

The law requires an applicant for a water permit to provide satisfactory proof to the State Engineer of the applicant's good faith intention to construct, with reasonable diligence, any necessary work to apply the water to the intended beneficial use. An applicant proposing to divert at least one second foot of water must show the financial ability to construct the work. The legislation further prohibits the State Engineer from granting an extension of time within which construction must be completed or water must be applied to a beneficial use unless the State Engineer determines, from submitted evidence, that the applicant is proceeding in good faith and with reasonable diligence to perfect the application.

The State Engineer advised the committee that speculation is difficult to define or interpret, and that speculation could not entirely be stopped under current provisions in the law. The committee sought to provide the State Engineer with an additional tool to fight speculation attempts by incorporating financial ability into the assessment criteria used to approve applications. The 1993 legislation appears to focus much of the preventive effort on the process of perfecting a water right, while the committee's recommendation is intended to provide the State Engineer with the capability to stop a speculative attempt earlier in the application and permitting process.

Therefore, the committee recommends that the Legislature:

9. Adopt statutory language to require that the State Engineer find, before granting a water rights permit, that the person has the financial means and the reasonable expectation of applying the water to beneficial use with reasonable diligence. (BDR 48-989)

5. "Mother-In-Law Quarters"

Current law in NRS 534.013 defines "domestic use"[and "domestic well" in NRS 534.350(7)(a)] for purposes of underground water and wells in terms of a single-family dwelling. Other provisions in NRS 534.180 and 534.185 limit the use of underground water for domestic purposes to not exceed a maximum of

1,800 gallons per day. The State Engineer raised concerns about the application of these provisions in reference to extending the use of a domestic well to serve additional family members in an attached or detached configuration to a single-family dwelling, also known as "mother-in-law quarters."

The State Engineer had no objection to granting a waiver for such a use of a domestic well, but he indicated that certain criteria were necessary to avoid abuses. One criteria would be a requirement to install a metering system to ensure that water consumption does not exceed the limit of 1,800 gallons per day. Another requirement for such a use would prohibit further subdivision of the parcel so that a single domestic well could not be used ultimately to serve two separately owned lots.

The State Engineer requested technical changes in the law to provide the authority and flexibility to adequately deal with such situations involving the use of domestic wells. Therefore, the committee recommended that the Legislature:

10. Amend the applicable provisions in Chapter 534 of NRS to allow for the use of water from domestic wells in "mother-in-law quarters" or other similarly restricted types of additional units to a single-family dwelling. For example, change the definition of "domestic use" in NRS 534.013 to "domestic purposes" and expand the definition to include uses, buildings or facilities that are incidental and secondary to and which do not operate independent of the single-family dwelling use, or language to that effect. Allow the State Engineer to determine other uses, buildings or facilities that may be incidental and secondary to a single-family dwelling use. (BDR 48-990)

6. Technical Changes

The State Engineer requested committee approval of other "technical changes" in the statutes.

One such change involves provisions in the State's water law that authorize the collection of charges for certain purposes. For example, NRS 533.285 and 533.290 provide for the collection, from water users, of charges necessary to pay the expenses of certain stream systems or water districts. Similarly, NRS 534.040 provides authority for the collection of a special tax to pay for the salaries and expenses of a well supervisor and other necessary assistants in certain designated groundwater basins.

In these cases, use of the term "tax" is not technically correct to describe these charges in the statutes. According to *Black's Law Dictionary* (6th edition, p. 1457):

In a broad sense, *taxes* undoubtedly include *assessments*, and the right to impose assessments has its foundation in the taxing power of the government; and yet, in practice and as generally understood, there is a broad distinction between the two terms. "Taxes," as the term is generally used, are public burdens imposed generally upon the inhabitants of the whole state, or upon some civil division thereof, for governmental purposes, without reference to peculiar benefits to particular individuals or property. "Assessments" have reference to impositions for improvements which are specially beneficial to particular individuals or property, and which are imposed in proportion to the particular benefit supposed to be conferred. They are justified only because the improvements confer special benefits, and are just only when they are divided in proportion to such benefits.

Therefore, the committee recommended that the Legislature:

11. Amend the law in NRS 533.285, 533.290 and 534.040 to change the term "tax" to "assessment" so that the language more accurately reflects the nature of these charges. (BDR 48-991)

The other "technical change" relates to the definition of "person" in the State's water law. General law in NRS 0.039 defines "person" as follows:

Except as otherwise expressly provided in a particular statute or required by the context, "person" means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government.

Under current Nevada water law, the definitions are different between Chapter 533 of NRS which generally relates to surface water and Chapter 534 which deals with underground water. In NRS 533.010, "person" is defined to include ". . . the United States and this state." In NRS 534.014, the definition includes ". . . any municipal corporation, power district, political subdivision of this or any state, or an agency of the United States Government."

The State Engineer suggested that it would be helpful to have the same definition apply to both types of public water in the State. The committee agreed and recommended that the Legislature:

12. Amend NRS 533.010 and NRS 534.014 to broaden the definition of person and make them consistent. Define "person" in these chapters to include "the State of Nevada, any political subdivision of this State or another state, any agency of this State, of another state or of the United States, or any Indian tribe, group of tribes or organized segment of a tribe," or language to that effect. (BDR 48-991)

7. Mine Dewatering

A major issue in the rural areas of the State, particularly in the Humboldt River Basin in northern Nevada, relates to mine dewatering which involves pumping that is designed to lower the water table around a mine so that the mining activity can be completed. According to the State Engineer, mine dewatering began in 1987 when companies requested permission to develop mineral resources below the water table. As of March 1994, about 10 mines were participating in some form of dewatering plan.

Concerns have been raised about the long-term effects of mine dewatering on the Humboldt River Basin including possible effects caused by changes in stream flow, the impacts on agriculture, the unexpectedly large volume of groundwater extraction in certain cases, the quality and fill rates of resulting pit lakes when mining is completed, and other concerns.

When applications for dewatering permits are submitted to the State Engineer, he evaluates them on the basis of administrative criteria which establish an order of priority for the disposition of the water. These priorities are:

- a. Reinjection of the water in the same groundwater basin or the submission of proof that it cannot be reinjected;
- b. Substitution for other groundwater permits in the same basin; and
- c. Placing the water to some other approved beneficial use.

The State Engineer has requested, and the mining companies have cooperated with requests for, further studies and modeling, additional monitoring wells, and quarterly or semi-annual reports on monitoring information. The mining

companies have collected a large amount of mineral and hydrologic data on the local areas around their specific mining sites. Concerns remain, however, about the long-term effects of mine dewatering on the entire Humboldt River Basin. The major mining companies apparently have agreed to finance a cumulative impact study of the basin to be conducted cooperatively with the United States Geological Survey, the Bureau of Land Management and the State Engineer. The study is to include public meetings and is projected to take about five years or so to complete.

The committee considered a recommendation to place in statute the administrative criteria used by the State Engineer for the order of priority of the three alternatives for the use of water from mine dewatering activities. The State Engineer argued, however, that placing such strict criteria in statute could limit his discretion in the future. For example, if a mine was located adjacent to a depleted groundwater basin, such as Diamond Valley or the Las Vegas Valley, such criteria could limit his options and prevent him from ordering water from the mine to be injected into the adjacent groundwater basin. The recommendation was not approved because the committee did not want to unnecessarily handicap the State Engineer in his management of the resources.

Nevertheless, the committee supports completion of the cumulative impact study and encourages continued cooperation between the mining companies, the State Engineer's office and other State and local agencies in monitoring and mitigating, as necessary, the effects of mine dewatering.

B. Groundwater Replenishment District

One of the major issues brought before the committee related to the need for management of the critically overappropriated and overdrafted groundwater basin in the Las Vegas Valley. The Southern Nevada Water Authority (SNWA) made several presentations to explain the situation.

According to the SNWA, water tables in areas of the Valley are dropping at a rate of 3 to 5 feet per year. Wells can be expected to fail if the decline continues. Substantial land subsidence has occurred as a result of the decline of groundwater levels and the subsequent shrinkage of the underlying soils. Land subsidence causes well casings to shear off which results in increased costs for replacement drilling.

Appendix C contains various charts and information provided by the SNWA to illustrate the situation in the Las Vegas Valley. The first table shows the historic

use of groundwater and Colorado River water in the basin since 1956. While groundwater use appears to be fairly level over the past four decades, it has consistently exceeded the perennial yield of the basin. Perennial yield refers to the natural recharge that accrues to a groundwater basin from rainfall and snowmelt. In the Las Vegas Valley groundwater basin, the perennial yield is approximately 30,000 to 35,000 acre-feet of water per year. The next two tables in Appendix C show how the water table has declined.

The Las Vegas Valley Water District began an artificial recharge program in the late-1980's to mitigate subsidence, bank water for future use, and control water supplies to cover drought contingencies. The next three charts and tables in Appendix C show the amounts artificially recharged since 1989, a comparison of groundwater pumpage and artificial recharge in 1992, and the amount of water rights allocated and pumped in 1992 in the Las Vegas Valley. Although the artificial recharge program has expanded considerably in recent years, withdrawals continue to exceed the amounts naturally and artificially recharged, so the basin remains in a critically overdrafted condition due to increasing demands for water. As indicated in the table on water rights, the overdraft situation could be even more serious except that all domestic wells are not being pumped to the maximum allowable amount and all existing water rights are not being fully used.

The committee and the SNWA agreed that a major water management effort was necessary in the Las Vegas Valley. A review of similar efforts in other states indicated that a groundwater replenishment district (GRD) would be an appropriate mechanism. Two states (Arizona and California) have legislation pertaining to a GRD. While Arizona's law initially was perceived as a model, it became apparent that GRD legislation had to be tailored for the needs of the specific area. The committee worked closely with the SNWA in developing this concept which is reflected in the documents in Appendix C entitled "Legislation For Establishing A Groundwater Replenishment District" and "Las Vegas Valley Replenishment District."

The GRD essentially would provide for overall management of the overdrafted groundwater basin in the Las Vegas Valley. The GRD would be under the jurisdiction of the SNWA with citizen representation and reporting requirements to the State Engineer to ensure that the district does not fall behind in the amount of established water credits. Water to be recharged would come from artificial recharge, the purchase or acquisition of certificated or permitted water rights, credits for not pumping certificated or permitted rights (also known as in-lieu recharge), and credits for domestic wells connecting with a water purveyor.

Membership would consist of the water purveyors and new domestic well owners who would be required to join the replenishment district before drilling a domestic well. Fees collected by the district would be used to implement recharge projects and manage the basin. The GRD would allow new domestic wells but provide for the management of the basin to ensure an adequate supply.

The GRD concept is an attempt to proactively address the issue of the declining water table in the Las Vegas Valley. The effect of all actions taken by the GRD should be to raise the water table. The alternative is to let wells go dry or cause users to deepen wells at a significant cost. The intent of the GRD would be to replace overdrafted water, as well as provide storage for future needs, prevent further subsidence situations, and abate groundwater quality and shearing problems.

The committee, therefore, recommended that the Legislature:

13. Adopt legislation to allow for the establishment of a groundwater replenishment district (GRD) in Clark County to provide a funding and administrative mechanism for the protection and recharge of the depleted groundwater basin in the Las Vegas Valley. Include citizen representation on the governing board of the GRD, or include provision for an advisory or citizens committee of members who have domestic wells. Amend Chapter 534 of NRS to permit in-lieu groundwater banking in areas that have established a GRD. (See outline entitled "Legislation For Establishing A Groundwater Replenishment District" in Appendix C) (BDR S-984)

Note: The BDR for this recommendation is not included in this report since the specific legislation will be subject to further discussion, change and development during the 1995 Legislative Session.

The recommendation only applies to a GRD for the Las Vegas Valley, but the committee recognizes that the concept also may be applicable in Washoe County and other areas of the State that face declining water levels in overdrafted groundwater basins. Since GRD legislation generally needs to be tailored to a specific area, the committee did not have sufficient time to examine its possible application in Washoe County and other locations around the State. The committee encourages the State and local governments to consider this concept in other areas and to submit legislation, as needed, in the 1995 or future sessions.

C. Water Planning

Much of the discussion at each location around the State related to the need for better water planning and for the protection of local water resources for future development in the rural areas. The committee determined that the best approach to avoid intrastate water disputes would be to establish better water planning. Such planning would help ensure that the management of the State's scarce water supplies results from a coordinated effort based on sufficient knowledge of the needs and sources of water throughout Nevada.

The State Water Planner requires the assistance of local governments to identify current and future needs for water in the various areas and regions. The State can help local officials identify sources and allocations of water that are available and the amounts being used, but it would not be appropriate for the State to define the needs of local governments and their communities. The State Water Planner needs additional staff to assist in the development of local plans because most local governments in Nevada do not have the financial resources or the ability to raise the resources to devote to water planning.

The committee, therefore, agreed to:

14. Recommend that the Senate Committee on Finance and Assembly Committee on Ways and Means consider, for approval, funding for a sufficient number of positions in the Division of Water Planning to allow the Division to adequately put together a state water plan; and adopt statutory language to require the Division to coordinate with all local governments on watershed planning to develop a statewide, coordinated water plan and to ensure that local governments coordinate with the State on the development of the plan. (BDR 48-992)

Committee members also agreed that a major objective of the state water plan is to provide for consideration of the water needs of Nevada's cities and counties. The committee, therefore, recommended that the State Water Planner:

15. Establish requirements in State law to protect identified water needs for current and future development in the rural areas, within the State water plan, to preclude interbasin transfers from adversely affecting local communities and their related economies and lifestyles. (BDR 48-992)

D. Conservation and Conservation Credit Systems

Water conservation is receiving increased emphasis throughout the State as Nevada's population growth continues to strain its limited water supplies. The committee heard expert testimony from Craig Bell, Executive Director of the Western States Water Council, on water conservation laws and programs in the Western states (see Appendix D). The study committee also reviewed the conservation programs in the major urban areas of Nevada.

Legislation in 1991 (Senate Bill 360, Chapter 236, *Statutes of Nevada 1991*, at page 520) required suppliers of water for municipal, industrial and domestic purposes to adopt a plan of water conservation by July 1, 1992. The law--found in NRS 540.121 *et seq.*--required most plans to be reviewed and approved by the Division of Water Planning. The plans were submitted and are on file with the division. The statutes, however, contain no followup provisions to determine how the plans were implemented or changes that may be needed to make them more effective.

The committee, therefore, recommended that the Legislature:

16. Add requirements to the water conservation laws in Chapter 540 of NRS for suppliers of water, who were required to adopt a water conservation plan by July 1992, to report their progress and update the plan on a 4-year basis. Allow 90 days for review of the update report by the Division of Water Planning and require the next revision to be adopted by July 1996. (BDR 48-993)

The prior appropriation doctrine, in effect in Nevada and the other western states, is often cited as antithetical to the concept of water conservation. The permit holder of a water right has no incentive to conserve water because any amount that is not beneficially used is subject to the abandonment or forfeiture provisions. Under current law, the portion of a water right that is not used due to conservation may be lost and made available for appropriation by others.

In recent years, many western states have adopted provisions that recognize rights to conserved water (see pages 7 and 8 of Mr. Bell's testimony in Appendix D). The committee indicated that incentives are needed in Nevada's water law to encourage conservation so that a permit holder would not lose his water rights due to careful use and efficiencies.

The State Engineer agreed with the concept of conservation incentives, but pointed out that historical groundwater data only exists for about 10 percent of the pumping areas in the State. It could be difficult, therefore, to determine the amount of credit that should be given through the use of new technology and improved water management. Due to this lack of data, the State Engineer would need to exercise discretion and the burden of proof would have to be placed on the water user to quantify an application for a conservation credit.

The committee, therefore, recommended that the Legislature:

17. Establish in statute a conservation credit system to encourage users to conserve or store water. Allow a person to apply to the State Engineer for a conservation credit, place the burden on the applicant to prove that he has implemented some recognized method of water salvaging or conservation technology and that actual water usage has been reduced based upon past usage to qualify for a credit, and provide discretion to the State Engineer to decide if an application qualifies for a conservation credit. (BDR 48-985)

E. Public Interest Criteria

Senate Bill 327--the measure that established the Legislative Committee to Study Water--originally was introduced in the 1993 Session as legislation to establish guidelines for determinations by the State Engineer of the public interest under Nevada's water law. This issue, however, proved to be too complex for adequate resolution during the legislative session, so the bill was amended to create the interim water study. This measure directed that the study include ". . . the laws of this State related to the method by which the public's interest in the allocation and management of water resources is carried out and protected."

Subsection 3 of NRS 533.370 requires the State Engineer to reject an application to appropriate water and refuse to issue a requested water rights permit if:

- 1) There is no unappropriated water in the proposed source of supply;
- 2) The proposed use or change conflicts with existing rights; or
- 3) It threatens to prove detrimental to the public interest.

This statute does not define the public interest, so that determination essentially is at the discretion of the State Engineer.

The committee discussed this issue on several occasions and received expert testimony from Craig Bell, Executive Director of the Western States Water Council. Appendix D contains a copy of Mr. Bell's testimony which includes an explanation of Western State laws pertaining to the protection of the public interest, along with an overview of state water conservation laws and programs.

This testimony verifies that the criteria for determining the public interest vary from state to state. A few states comprehensively define the public interest and include public values. Some state statutes give significant guidance and expressly include some public values in the determination. The laws in other states, like Nevada, give little or no specific guidance about public interest review. Following a discussion of various examples of the important effects of these public interest statutes, Mr. Bell concluded that ". . . regardless of the specificity of the statutes, much discretion is left to the administrator in weighing the public interest."

In response to a court ruling, the State Engineer in 1992 described various provisions and guidelines used in his determinations of what constitutes the public interest. He listed 14 public interest considerations that are found throughout the water law in NRS which indicate that the Nevada Legislature has provided substantial guidance on the public interest. He also listed 13 principles from his review of Nevada's water law that should serve as guidelines in his determination of the public interest. Appendix E contains the lists of these considerations and principles from the Supplemental Ruling on Remand #3787A in the Office of the State Engineer dated October 9, 1992.

Based on these considerations and other actions on proposed legislation that would address specific public interest concerns, the committee did not see the need to establish strict and comprehensive public interest criteria in Nevada's statutes. Therefore,

18. The committee makes no specific recommendation on public interest criteria because other recommendations adopted by the committee, such as those relating to speculation, conservation and water transfers, effectively deal with the primary public interest concerns identified in the State's water laws through the committee's study.

F. Water Transfer Issues

The transfer of water from one groundwater basin to another has historic precedence in Nevada. According to the Division of Water Resources, the following are examples of historic transbasin diversions in the State:

1. Tahoe Basin to Carson City and Virginia City
2. Effluent exported to Carson Valley
3. Goshute Valley to Wendover
4. Pilot Creek Valley to Wendover
5. Ralston Valley to Tonopah
6. Oreana Basin to Lovelock
7. Truckee Canal to Lahontan
8. And many additional examples.

Concerns about the economic, environmental and other effects of the interbasin transfer of water were raised significantly in 1989 when large-scale applications were filed for transbasin diversions from rural areas of the State to the urban centers in both Northern and Southern Nevada. The committee found that these concerns remain strong in the rural areas of the State, even though most of the applications and proposals for large-scale interbasin transfers have been canceled, stopped or otherwise abandoned or delayed.

The committee determined that the State's water law contains sufficient safeguards and flexibility to deal adequately with water transfer issues. Rather than change the law, which could have unintended consequences, the committee concluded that it would be more beneficial to include some general criteria on water transfers within the State's water plan. These criteria should address the basic issues of fairness, environmental protection, and further development within the area of origin. Such criteria would express the Legislature's intent in this area since the state water plan must be adopted by the Legislature before it can become effective.

The committee, therefore, recommends that the State Water Planner:

19. Include in the policy statement for the state water plan, to be adopted by the Legislature, general criteria for the approval of water transfer applications and related determinations that pertain to the movement of water from one basin to another. The general criteria should include evidence that (1) the project is fair and equitable to the area of origin; (2) the project is environmentally sound; and (3) the project is an

appropriate, long-term solution which will not unduly limit future development and growth of the area of origin.

Legislation adopted in 1991 [Senate Bill 526 (Chapter 469)] included a provision for an annual tax of \$6 per acre-foot per year which may be imposed by the county of origin for the transfer of water to a county in this or another state (NRS 533.438). The revenue from this tax must be placed in a trust fund, and the principal and interest may be used only for purposes of economic development, health care and education. If the county of origin does not impose such a tax, the bill allows an applicant and the county of origin to execute a plan to mitigate adverse economic effects caused by the transferring of water to another county.

The tax rate authorized in statute for a water transfer is set at a fixed, flat rate, so its value will erode over time. The committee, therefore, recommended that the Legislature:

20. Amend Subsection 1 of NRS 533.438 to provide for an annual inflation adjustment to the tax rate on the transfer of water by the county of origin. (BDR 48-994)

G. Federal Actions

Throughout the interim period, the water study committee monitored and sought clarification for the water rights provisions of the Rangeland Reform '94 proposals under development by Secretary of the Interior Bruce Babbitt. Other committees of the Legislature dealt with the grazing reform proposals, so the water committee focused solely on the water rights provisions.

Nevada has a history of cooperation with the Federal Government, while preserving the primacy of state law, on water issues. For many years, and particularly since the Nevada Supreme Court decision in the case of *Nevada v. Morros*, 104 Nev. 709 (December 1988), the United States has been treated like any other "person" in Nevada who can properly apply for and hold water rights on its lands. Apparently at the insistence of the BLM, an informal policy was developed with the State Engineer to deal with the allocation of water rights on federal land, known as the "three-way system." Under this system, water rights for watering livestock on public lands could be acquired and perfected by the range user, the Federal Government or jointly depending on who developed the water right.

As Secretary Babbitt further developed his rangeland reform proposals, he held a series of range roundtable meetings throughout the Western states, including Nevada. Two members of the water study committee--Speaker Dini and Senator Rhoads--attended the meetings in Nevada at which the "three-way system" was explained to Secretary Babbitt. The perception and consensus was that the system is working well in this State. At these meetings, the Secretary clearly stated more than once that this system could continue under the new regulations.

On March 25, 1994, the proposed rule on Rangeland Reform '94 was published in the *Federal Register* and opened for public comment. The water rights provision--Section 4120.3-9 entitled "Water Rights for the Purpose of Livestock Grazing on Public Lands"--read as follows:

Any right acquired on or after [the effective date of the rule] to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.

The first sentence of this proposed language was acceptable in Nevada because it would acknowledge the primacy of the State's water law. The second sentence, however, caused great concern because it would require all such water rights to be held by the Federal Government, thus effectively eliminating the "three-way system." Committee members, State officials and others were strongly disappointed that the Secretary did not honor his pledge to maintain this system.

The comment period on the proposal originally was set to run until July 28, 1994. At Federal public hearings on the Rangeland Reform '94 proposals, committee members testified against the water rights provision. The committee then combined the testimony of its members and developed alternative language for the federal regulations that would preserve the three-way system.

Therefore, the committee agreed to:

21. Submit a comment letter from the committee to the Bureau of Land Management before July 28, 1994, to express the committee's concerns about the water rights provision in the Rangeland Reform '94 proposal,

and include a draft federal regulation that would incorporate Nevada's three-way system. (A copy of the letter and proposed language submitted by the committee is in Appendix F.)

Note: The comment period on the Rangeland Reform '94 proposal subsequently was extended until September 9, 1994. It is expected that the final rule would be promulgated by the end of the year or early in 1995.

The committee was concerned about the ability of the State to continue the three-way system if the water rights provision would be adopted substantially as proposed. A legal opinion was requested from the Legislative Counsel on this issue (see Appendix F), and the opinion concluded that:

... although the "three-way system" may be the customary practice and unwritten policy of the State Engineer's Office, it cannot be conclusively stated that the current law of this state sufficiently incorporates this system so as to have the force and effect of "law" under the proposed federal regulation set forth in the Rangeland Reform '94 proposal. Therefore, to ensure that the "three-way system" is considered to be the "law of this state" pursuant to the most narrow definition of that term under the proposed regulation of the Bureau of Land Management, it is necessary to adopt the system statutorily.

The committee wanted to ensure that a bill would be available, if necessary, to accomplish this purpose. Therefore, the committee agreed to:

22. Draft a bill for the 1995 Session to amend the State's water law to provide for use of the "three-way system" in reference to the acquisition of water rights on public lands for purposes of livestock watering. (BDR 48-986)

The Federal Government has had a long-standing policy of deference to the states in the area of water law, but this policy appears to be constantly threatened. Aside from the water rights provision in the Rangeland Reform '94 proposal, concerns also were raised at times during the last session of Congress about the possible undermining of state water law by various proposals for amendments to other legislation such as the Clean Water Act and the Safe Drinking Water Act.

The Utah Legislature in 1994 adopted House Concurrent Resolution No. 3 to urge the Federal Government to recognize the primacy of the Western States in

managing their water resources and to support federal legislation or policy that recognizes that primacy. The committee agreed with the purpose of this resolution and thought it might be helpful for other Western States to send the same message to the Congress and Federal Government.

The committee, therefore, recommended that the Legislature:

23. Adopt a joint resolution that urges the Federal Government to recognize and respect the primacy of State water laws. (BDR R-995)

The committee emphasized that the help and cooperation of the Federal Government is essential on various water issues, such as interstate allocations and rules affecting the Colorado River, so the purpose of these actions was not to take a confrontational position with the Federal Government. Instead, this action is intended to indicate that Nevada is serious about the issue of the Federal Government respecting state water rights.

H. Irrigation Laws

A provision in NRS 539.705 of the Irrigation District Act deals with the ability to move storage water and the benefits of an irrigation district to land that, at some point in time, had those benefits stripped due to delinquent taxes or assessments. The statute currently contains a procedure whereby the owner may petition the board of directors of an irrigation district to transfer storage rights and benefits from other land to the stripped land. This law includes a restriction, however, that limits such a transaction to two parcels of land at least 40 acres in size that are owned by the same person.

The Walker River Irrigation District (WRID) indicated to the committee that it has had difficulties with this provision in cases where the parcels did not meet the 40-acre and same ownership limitations. The District testified that, at this time, these requirements do not need to be continued. The 40-acre requirement originally was intended to maintain efficiencies so that the district would not get involved in delivering water to very small parcels of property. The changes proposed by the WRID, however, would cover that situation and make it possible to move water rights around within the district under the appropriate circumstances.

The WRID proposal was to delete the 40-acre and same ownership requirements. In addition, the irrigation board should have the authority to look at these requests on an individual basis and be able to assess the effect of the

proposed change on the cost of water to other holders of water rights in the district, and to assess the effect of the change on the efficiency, existing water rights and public interest within the district.

The committee agreed and, therefore, recommended that the Legislature:

24. Amend the State's irrigation district law in NRS 539.705 to eliminate the 40-acre and single ownership rules in reference to the procedure for transferring to other lands the storage rights and benefits of the irrigation district on lands that previously were stripped of such rights due to the failure to pay taxes and assessments. Add language to this provision to establish criteria for the board of directors of an irrigation district to consider when it exercises its discretion to grant or refuse a petition on such a transfer. The criteria is to include the effect of the proposed change on the cost of water in the district, the district's efficiency, existing water rights and the public interest. (BDR 48-996)

I. Safe Drinking Water Program

Nevada's Safe Drinking Water Program is administered by the Bureau of Health Protection Services (BHPS) in the Health Division of the Department of Human Resources under the authority of the Federal Safe Drinking Water Act (SDWA). Nevada has conducted an effective program with primary enforcement authority, known as primacy, since 1978. Primacy is important in this area because it keeps the Federal Government from making compliance decisions on Nevada's water suppliers and allows the Health Division certain flexibility in implementing federal rules. Documentation shows that a state primacy program results in increased public health protection and cost savings to water suppliers in contrast to a program administered by the U.S. Environmental Protection Agency (EPA).

According to the BHPS, federal funding has not kept pace with the proliferation of new federal regulations required under the 1986 amendments to the SDWA. To maintain primacy, Nevada is required to adopt and implement the new federal regulations. But these requirements are diminishing the agency's ability to exercise flexibility and to continue to provide the technical assistance that is essentially needed by the 700 public water systems that are regulated by the BHPS in this State. For example, federal regulations allow a state primacy agency to waive or reduce the requirements that public water systems test for certain contaminants. Some of these tests are costly, must be performed by commercial laboratories, and may not be necessary. The Health Division estimates that, with the addition of staff to fully implement such a waiver

program, Nevada's water suppliers and the public could save about \$6.3 million over the next 9 years.

The BHPS indicated that operators of small water systems need technical assistance and training to understand and implement the new federal requirements. Some operators, particularly in the rural areas, have difficulty in providing a basic level of service, getting samples to a laboratory in time to have them analyzed for bacteriological contaminants, and maintaining the expertise and resources to conduct routine maintenance. In addition, the State's Health Division laboratory does not have the capability to conduct many of the new testing requirements, so water suppliers must use more expensive, State certified laboratories for these services.

For these reasons, the BHPS asked for the committee's support in its requests for additional staff and laboratory resources to maintain primacy and enhance activities that would provide cost savings to Nevada's water suppliers and the public. Certain changes in the statutes also were requested. One change would provide an additional incentive for the consolidation of small water systems. Another change would provide a source of State funding to assist in maintaining the Nevada Drinking Water Education and Training Network which initially was established by the Rural Community Assistance Corporation and Nevada Rural Water Association under an EPA grant. The goal of this network, also known as the Nevada Training Coalition, is to ensure that adequate training opportunities are provided for public water system operators, managers and public officials.

The committee, therefore, adopted the following recommendations in reference to the State's Safe Drinking Water Program:

25. Recommend that the Senate Committee on Finance and Assembly Committee on Ways and Means consider, for approval, three additional staff positions in the Bureau of Health Protection Services of the State Health Division to allow the State to maintain primacy and furnish technical assistance to water suppliers under the Safe Drinking Water Program. [Positions would be for (1) lead and copper rule implementation; (2) implementation of new, anticipated regulations on arsenic, radon, sulphate and groundwater disinfection; and (3) provision of technical assistance and issuance of monitoring waivers.]

26. Recommend that the Senate Committee on Finance and Assembly Committee on Ways and Means consider, for approval, funding for two

staff positions (a chemist and a laboratory assistant) and additional analytical laboratory equipment (approximately \$913,000) for the Bureau of Laboratory Services of the State Health Division to conduct and efficiently report the analyses required for water systems under the Safe Drinking Water Program.

27. Provide incentives for existing non-viable water systems to consolidate or otherwise restructure, including satellite operations (in which a large, well managed utility agrees to manage or operate a small utility). Amend NRS 349.980 *et seq.*, pertaining to grants for capital improvements to publicly owned water systems, to allow the use of this program in providing a financial incentive for a private water system to consolidate. (BDR 30-997)

28. Amend NRS 445.397 to authorize the State Board of Health to grant to the Nevada Training Coalition the proceeds of any administrative penalty imposed on a willful violator of a drinking water statute or regulation. (BDR 40-998)

29. Urge the Senate and Assembly Committees on Natural Resources and LCB staff to monitor Congressional action on the reauthorization bill for the Safe Drinking Water Act to determine if amendments may be necessary to Nevada's laws in the 1995 Session. For example, amendments could be required under the grant program of NRS 349.980 to allow for matching funds from that source for federal money which may be authorized from state revolving loan funds under the reauthorization bill.

Note: Congress adjourned in October 1994 without passing a reauthorization bill for the Safe Drinking Water Act, but further action on this issue is anticipated in the next session of Congress.

J. Walker River Basin

The water study committee devoted one of its meetings to issues relating to the Walker River Basin, and provided an opportunity for all interests--agricultural, environmental, scientific, tribal and wildlife--to participate.

Concerns have increased in recent years about the continued decline in the water level of Walker Lake. The level of the lake has fallen more than 120 feet since the early 1900s. Since 1930, Walker Lake has experienced an average

annual decline of 1.43 feet in elevation due to climate changes and the upstream use of water resources. As the lake level declines, the concentration of total dissolved solids increases to threaten the fish species living in the lake. Estimates from Nevada's Department of Wildlife indicate that all fish species in the lake could be lost within the next 2 to 11 years depending on the levels of decline of the lake.

Testimony to the committee indicated that few options are available for direct state action to deal with this situation. The Walker River is an interstate water system between California and Nevada which is administered under a federal court decree. United States Senator Harry Reid has initiated discussions among the affected interests within the basin.

Since 1971, California and Nevada have complied with the terms of an interstate compact dealing with the Carson, Truckee and Walker Rivers and Lake Tahoe. This compact was adopted by both states but it has never been ratified by the U.S. Congress. The Negotiated Settlement Act, Public Law 101-618, provides for an allocation between Nevada and California of the waters of Lake Tahoe and the Carson and Truckee Rivers. It does not provide for a similar allocation on the Walker River. The committee indicated that it might be the appropriate time to negotiate such an allocation.

Therefore, the committee recommended that the Legislature:

30. Adopt a resolution to Nevada's congressional delegation urging action by the Congress to approve the Nevada/California interstate compact relating to the Walker River. (BDR R-999)

Water importation plans have been repeatedly proposed since 1929 on the Walker River. As the current drought cycle continues, the future of Walker Lake and other western Nevada lakes becomes more uncertain. Since 1986, Walker Lake has received no significant flows of water and a significant amount is lost each year from evaporation. Between 1986 and 1993, 30 percent of the volume of Walker Lake has been lost.

The committee indicated that it might be helpful to inquire again at the federal level into the possibility of importing water from outside the area, and that such possibilities should be investigated. The committee, therefore, recommended that the Legislature:

31. Adopt a resolution to Nevada's congressional delegation urging action by the Congress to investigate the importation of water from outside the State to help save the lakes in Western Nevada, such as Pyramid Lake and Walker Lake. (BDR R-1000)

IV. SELECTED REFERENCES

- American Bar Association. Section of Natural Resources, Energy, and Environmental Law. (1994, February 10-11) "The 12th Annual Water Law Conference, Course Materials." San Diego, California.
- Bell, D. Craig and Norman K. Johnson. (1991) "State Water Laws and Federal Water Uses: The History of Conflict, the Prospects for Accommodation" in *Environmental Law*, Volume 21:1, Northwestern School of Law of Lewis and Clark College.
- Bingham, James L. and George A. Gould. (1992) "Opportunities to Protect Instream Flows and Wetland Uses of Water in Nevada." Resource Publication 189, Fish and Wildlife Service, U.S. Department of the Interior. Washington, D.C.
- Bunch, Robin L. (1994) *Bibliography of Selected Water-Resources Publications on Nevada by the U.S. Geological Survey, 1885 through 1993*. Open-File Report 94-53. Carson City, Nevada: U.S. Geological Survey.
- Cambridge Institute, The. (1993) "Understanding & Protecting Your Water Rights In Nevada." Materials for September 23, 1993, seminar. Vienna, Virginia.
- Colorado River Commission and Southern Nevada Water Authority. (1994, February 8) "Southern Nevada Water Summit, Water Category Analysis." Las Vegas, Nevada.
- Division of Water Planning. (1992) *Nevada Water Facts*. Carson City, Nevada: Department of Conservation and Natural Resources.
- James, Mark A. (1992) "Water Reallocation And Conservation In Nevada: The Need For Reform Of Nevada's Water Laws." Las Vegas, Nevada.

- Legislative Commission. (1990, November) *Study Of The Laws, Regulations And Policies Relating To Water And Waste Water Resources In Nevada*. Bulletin No. 91-8. Carson City, Nevada: Legislative Counsel Bureau.
- Morandi, Larry. (1991, June) *Moving Western Water - At Whose Cost?* Denver, Colorado: National Conference of State Legislatures.
- Morandi, Larry. (1994, July) *Rethinking Western Water Policy, Assessing the Limits of Legislation*. Denver, Colorado: National Conference of State Legislatures.
- National/Nevada Issues Forum. (1992-1993) *Nevada's Water Future: Making Tough Choices*, consisting of two publications--"A Guide for Public Policy Dialogue" (December 1992) and "A Report on Nevada Water Forums 1992-1993" (May 1993). Reno, Nevada: University of Nevada, Reno.
- Pacific Law Journal*. (1994, April) Volume 25, Number 3. "Symposium: Environmental Restraints on Water Law." Sacramento, California: University of the Pacific, McGeorge School of Law.
- Reisner, Marc. (1993) *Cadillac Desert, The American West and Its Disappearing Water*. (revised and updated edition) New York, New York: Penguin Books.
- Reisner, Marc and Sarah Bates. (1990) *Overtapped Oasis, Reform or Revolution for Western Water*. Washington, D.C.: Island Press.
- Sevon, Mike. (1993, July 1) Letter from Nevada's Department of Wildlife to the state office of Bureau of Land Management on the expected life of the fishery at Walker Lake. Reno, Nevada.
- U.S. Office of Technology Assessment. (1993) "Water For Walker Lake." Paper prepared for U.S. Senator Harry Reid. Washington, D.C.
- Western States Water Council. (1993-1994) "Western States Water." Weekly Newsletters. Midvale, Utah.

V. APPENDICES

Appendix A

Senate Bill 327 of the 1993 Legislative Session (Chapter 655, *Statutes of Nevada 1993*)

Appendix B

Documentation on Staffing and Funding the Office of the State Engineer

Appendix C

Tables and Information Submitted by the Southern Nevada Water Authority on the status of the Las Vegas Valley Groundwater Basin and the Proposal for a Groundwater Replenishment District

Appendix D

Testimony of Craig Bell, Executive Director of the Western States Water Council, on State Laws to Protect the Public Interest and State Water Conservation Laws

Appendix E

Public Interest Considerations In Nevada's Water Law

Appendix F

Comment Letter and Legal Opinion on the Water Rights Provision of the Proposed Rules for Rangeland Reform '94

Appendix G

Suggested Legislation

APPENDIX A

Senate Bill 327 of the 1993 Legislative Session (Chapter 655, Statutes of Nevada 1993)

Senate Bill No. 327—Senators James, Smith, O'Connell, Adler, Brown, Callister, Coffin, Glomb, Hickey, Jacobsen, Lowden, McGinness, Neal, Nevin, O'Donnell, Raggio, Rawson, Rhoads, Shaffer, Titus and Townsend

CHAPTER...**655**

AN ACT relating to water; creating a legislative committee to study the use, allocation and management of water in this state; providing for its organization, powers and duties; and providing other matters properly relating thereto.

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 20 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 allocation of Nevada's scarce water resources; and

WHEREAS, The growing need for new water supplies has made it imperative that the State of Nevada effectively seek additional allocations of water from the Colorado River and other potential sources of water outside of the state in the western United States; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. 1. The legislative committee to study water, consisting of six members, is hereby created.

2. The following persons shall serve as members of the committee:

(a) Three members of the senate of the 67th session of the Nevada legislature, appointed by the majority leader of the senate; and

(b) Three members of the assembly of the 67th session of the Nevada legislature, appointed by the speaker of the assembly.

3. The members of the committee shall select the chairman and vice chairman of the committee from among their members.

4. Any member of the committee who does not return to the legislature may continue to serve until the completion of the committee's report.

5. Any vacancy on the committee must be filled by the authority entitled to appoint the member whose position is vacant.

6. Except during a special session of the legislature, members of the committee are entitled to receive the compensation provided for a majority of the members of the legislature during the first 60 days of the preceding regular session for each day or portion of a day during which he attends a meeting of the committee or is otherwise engaged in the business of the committee plus the per diem allowance provided for state officers and employees generally and the travel expenses provided pursuant to NRS 218.2207.

7. The director of the legislative counsel bureau shall provide the necessary professional staff and a secretary for the committee.

Sec. 2. The legislative committee to study water shall study the use, allocation and management of water in this state, including, but not limited to:

1. The laws of this state related to the method by which the public's interest in the allocation and management of water resources is carried out and protected;

2. The laws of this state governing conservation in the use, allocation and management of water resources;

3. An examination of the fees charged by the state engineer and of the method used to determine the amount of money necessary to support the activities of the division of water resources of the state department of conservation and natural resources;

4. An examination of the structure, authorities, relationships, funding and activities of the state and local agencies that are required to allocate and protect existing water resources, secure new water supplies, distribute water and adopt long-term plans to meet the present and probable future demands for water in this state;

5. The advisability of creating a state commission on water resources for the purpose of combining the division of water planning of the state department of conservation and natural resources, the division of water resources of the state department of conservation and natural resources, including the state engineer, and the Colorado River commission into an integrated state agency with appropriate regional representation; and

6. An examination of any other issues related to the use, conservation, allocation and management of water resources that may affect the economy or the environment of this state.

Sec. 3. All agencies of the state and the political subdivisions of the state involved in the use, allocation and management of water shall cooperate with the legislative committee to study water and furnish to the committee all information and material which the committee requests to conduct its study and prepare its report.

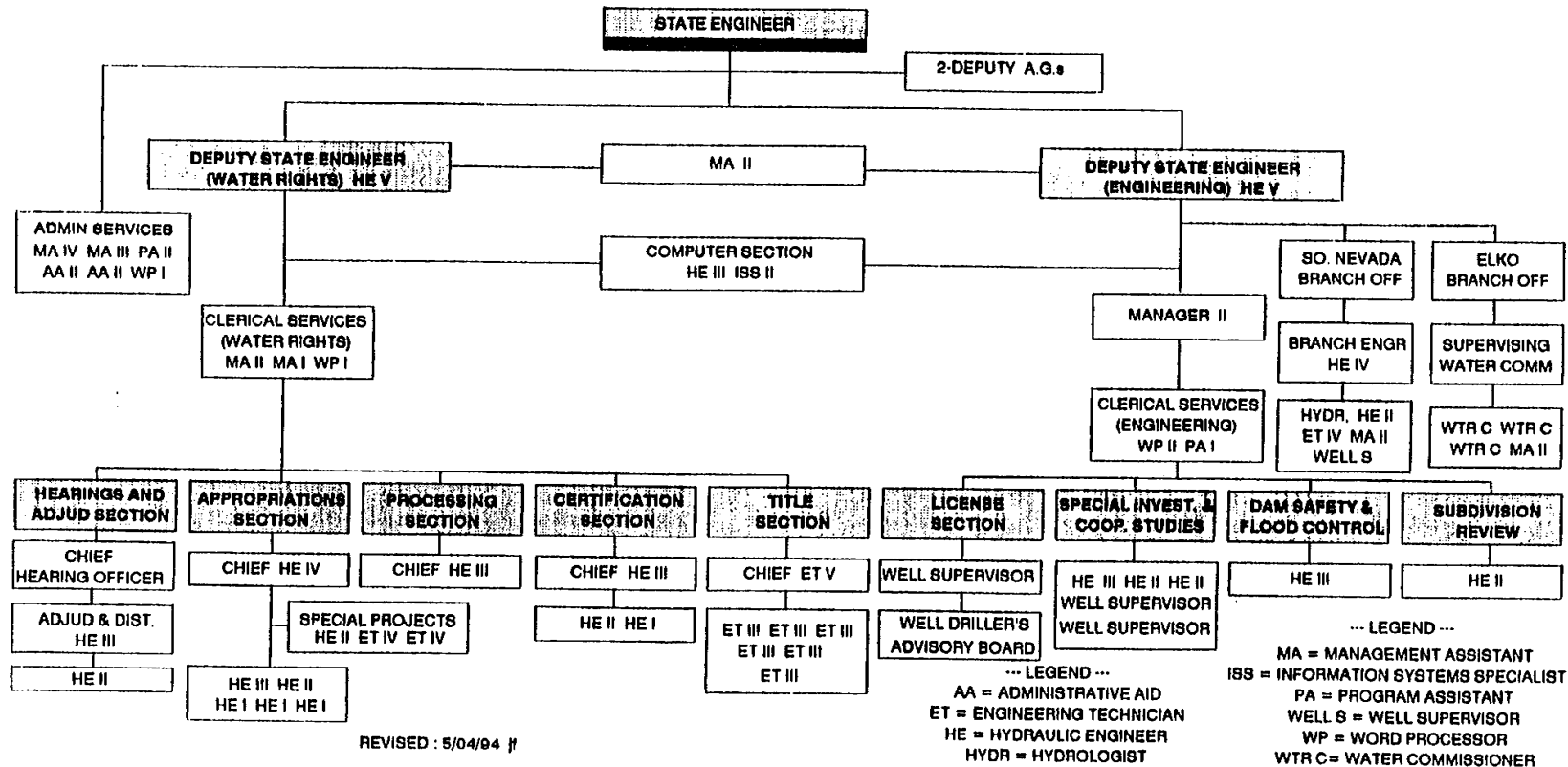
Sec. 4. The legislative committee to study water shall submit to the legislative commission a report of its findings and recommendation for legislation before the commencement of the 68th session of the Nevada legislature.

Sec. 5. This act expires by limitation on January 1, 1995.

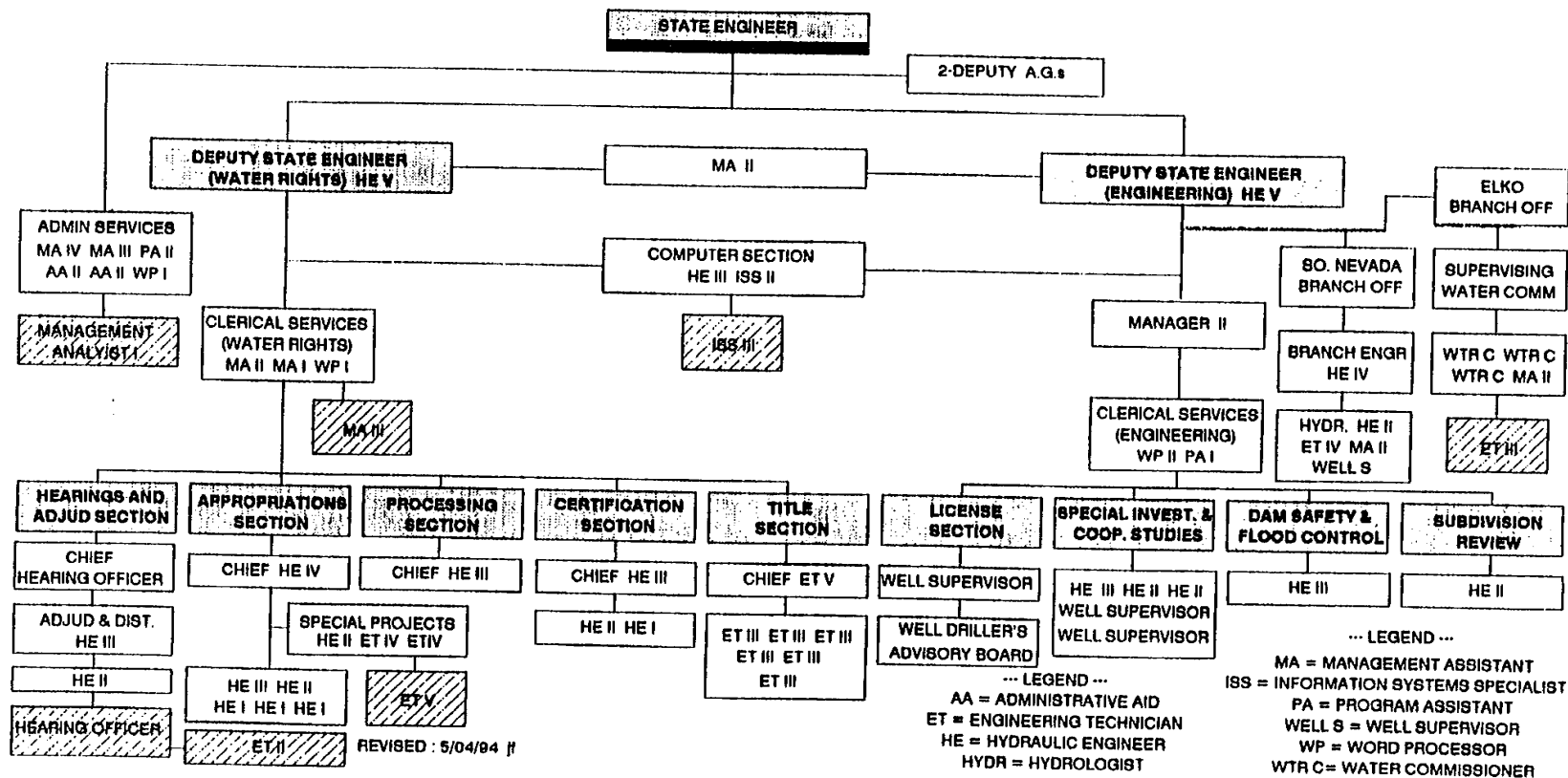
APPENDIX B

Documentation on Staffing and Funding the Office of the State Engineer

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

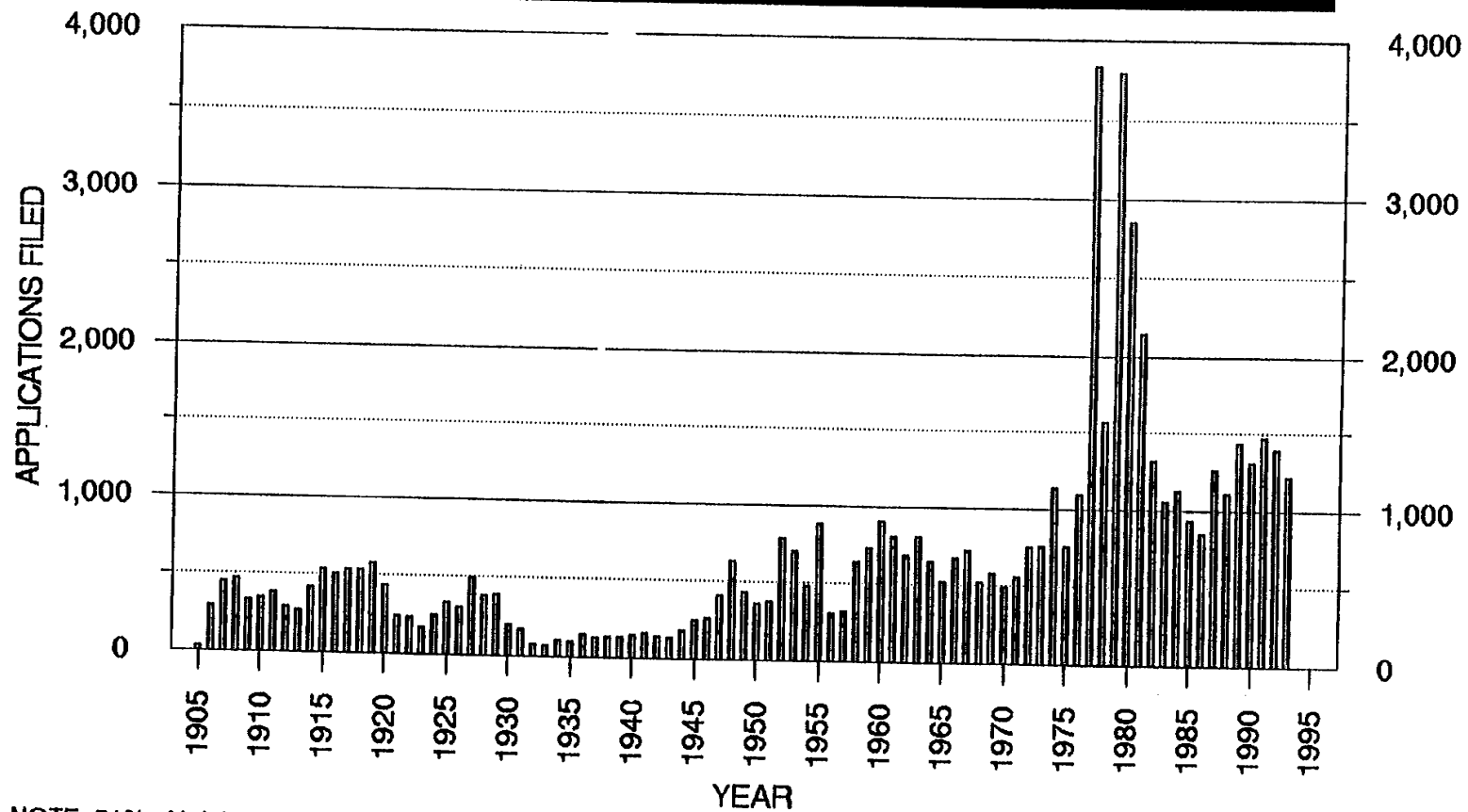


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NEVADA WATER RIGHT APPLICATIONS FILED

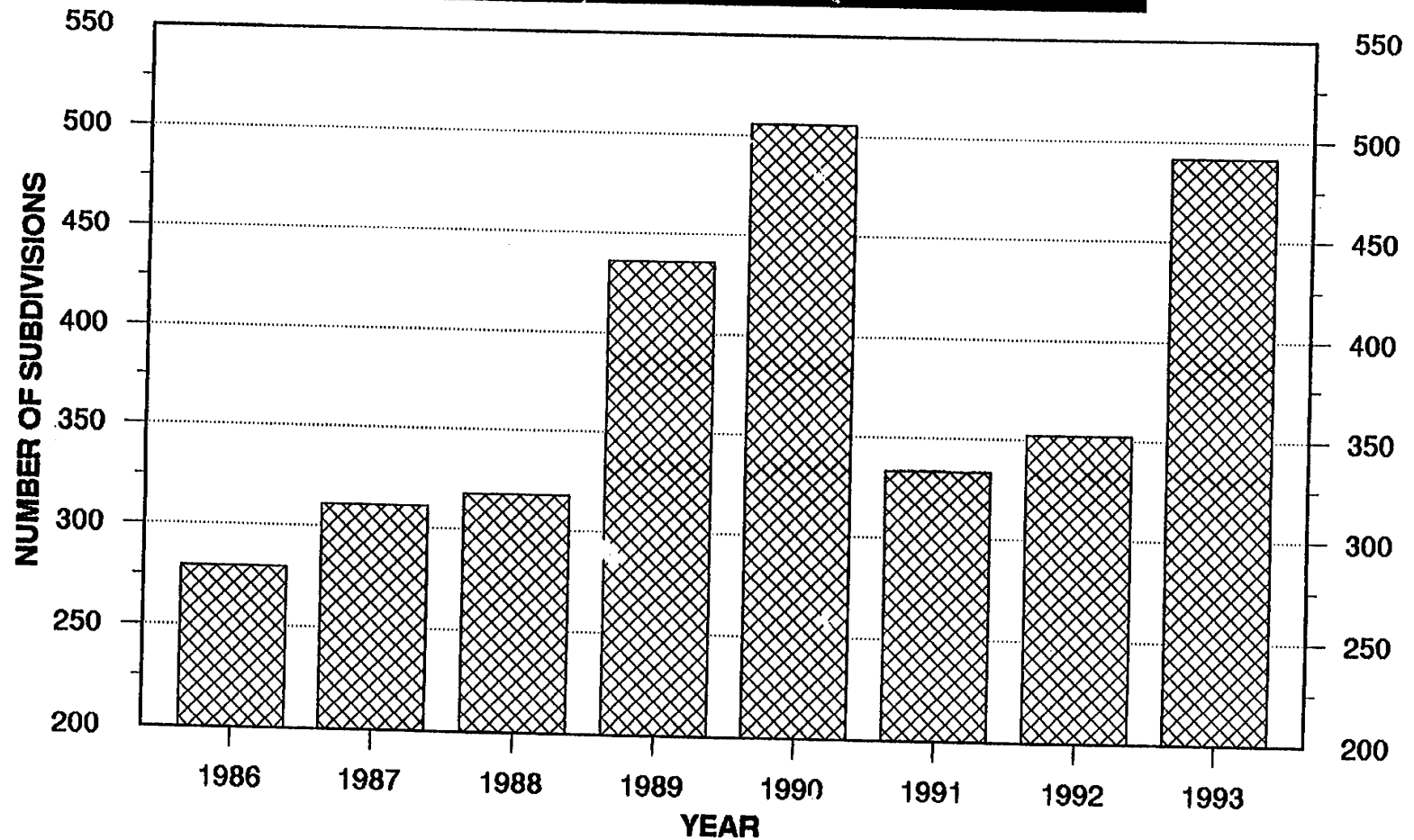
PER YEAR 1905 through 1993



NOTE: 51% of total applications filed after 1976
 tt/totalapp.ch1

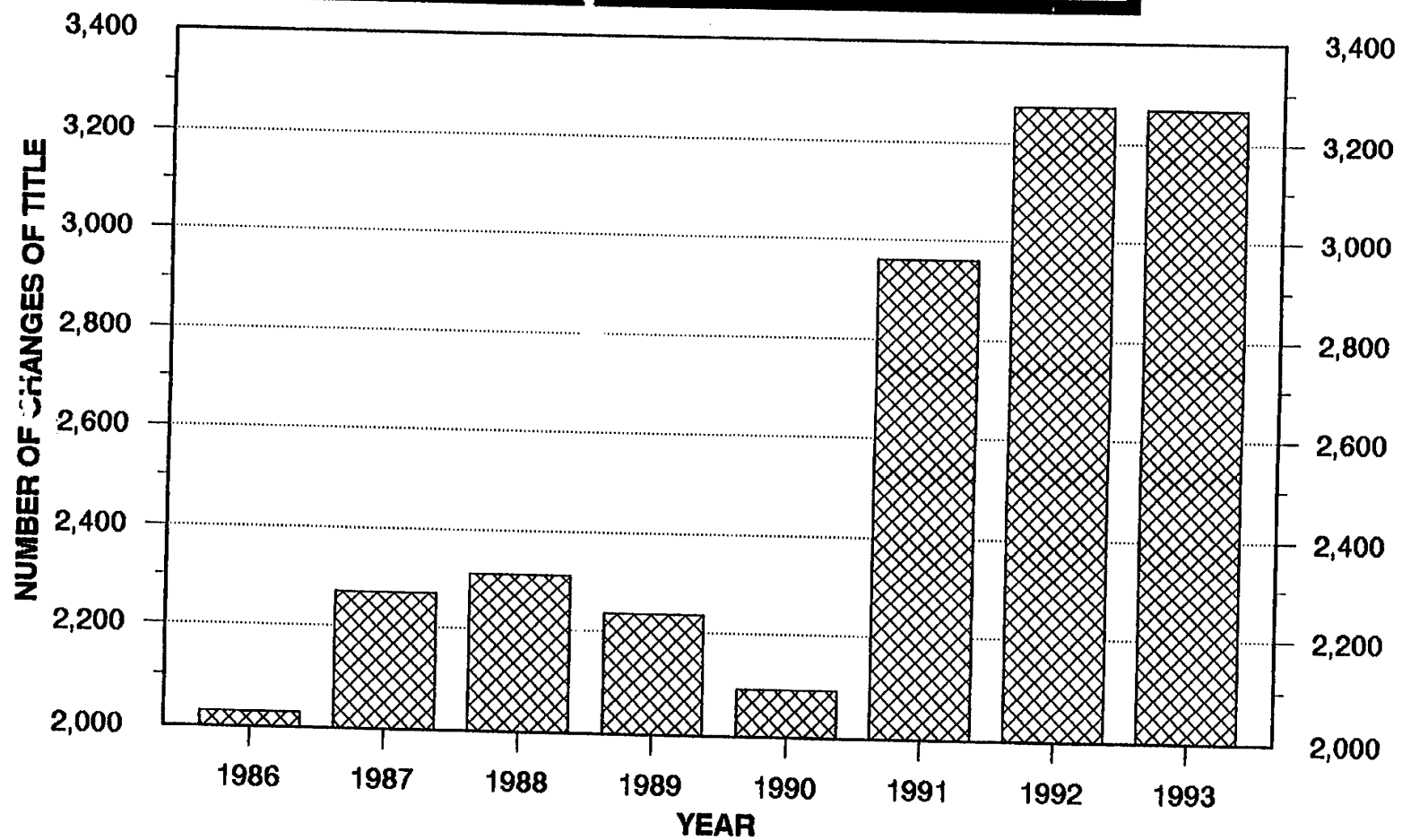
DIVISION OF WATER RESOURCES

TOTAL SUBDIVISIONS (FINAL) RECEIVED



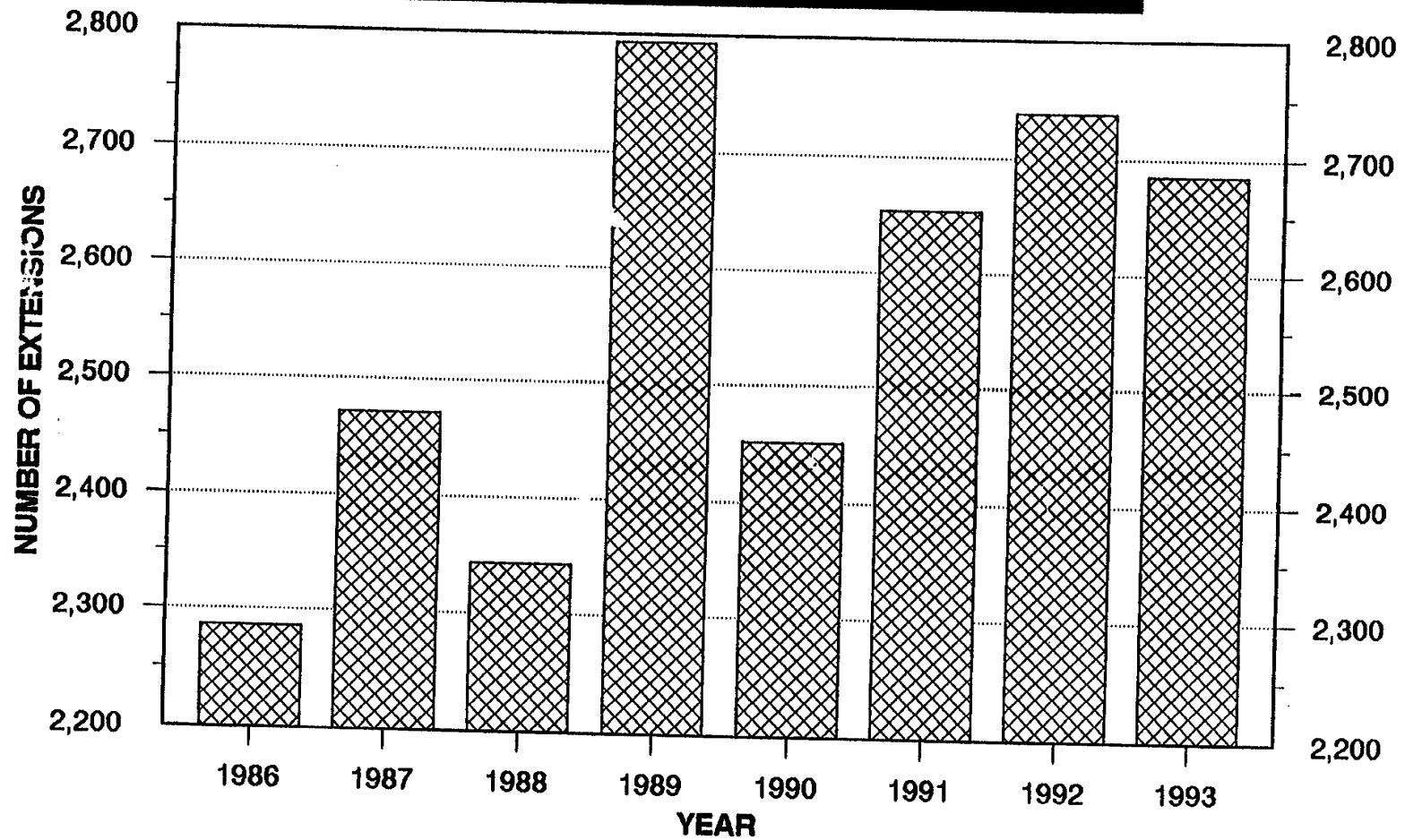
DIVISION OF WATER RESOURCES

TOTAL CHANGES OF TITLE RECEIVED



DIVISION OF WATER RESOURCES

TOTAL EXTENSIONS RECEIVED



**DIVISION OF WATER RESOURCES
SUMMARY OF REVENUES**

ITEM	FY 1988		FY 1991		FY 1994	
	REVENUE COLLECTED	FEE	REVENUE COLLECTED	FEE	REVENUE COLLECTED	FEE
APPLICATION	48,985	\$100 NEW \$40 CHANGE	146,436	\$200 NEW \$100 CHANGE	137,185	\$250 NEW \$150 CHANGE
DEEDS	16,147	\$5.00-\$10.00 PER DOC. PER FILE	27,658	\$5.00-\$10.00 PER DOC. PER FILE	22,456	\$5.00-\$10.00 PER DOC. PER FILE
PERMITS	76,170	\$100/CFS	473,146	\$150 + \$1/AF NEW \$100 + \$1/AF CHANGE	600,522	\$150 + \$2/AF NEW \$100 + \$2/AF CHANGE
EXTENSIONS	63,896	\$25	262,742	\$100	224,995	\$100
PROOF OF COMP	5,055	\$10	6,330	\$10	4,360	\$10
PROOF OF BEN USE	4,056	\$10	18,640	\$50	14,140	\$50
PROTEST	2,510	\$10	50,598	\$10	4,925	\$25
PROOF OF APPR	4,300	\$50	9,500	\$50	22,651	\$50
DAMS	2,600	\$100	140,401	\$500	178,299	\$500
MISC.	14,075	N/A	21,486	N/A	17,195	N/A
SUBDIVISION	0	0	70,651	\$150 + \$1/ LOT	83,421	\$150 + \$1/ LOT
TOTAL	\$237,794		\$1,227,568		\$1,707,765*	
STATE ENGINEERS AUTHORIZED BUDGET	\$1,558,628		\$2,857,119		\$2,693,745	

* FY 1994 TOTAL INCLUDES A PROJECTED REVENUE FOR MAY AND JUNE.

Study on Use, Allocation and Management of Water (SB 327)
Subcommittee on Staffing and Funding the State Engineer
Subcommittee Recommendations

<u>Expense Category</u>	<u>Agency Request FY 1995-96</u>	<u>Subcomm Recommend FY 1995-96</u>	<u>Agency Request FY 1996-97</u>	<u>Subcomm Recommend FY 1996-97</u>
Personnel (7 positions)	\$315,238	\$207,285	\$319,146	\$285,572
Equipment	\$60,760	\$60,760	\$53,971	\$53,971
U.S. Geological Survey	\$50,000	\$50,000	\$50,000	\$50,000
One-Shot Appropriations				
Coop Map Processing- Washoe Co.	\$220,000	\$110,000	\$0	\$0
Emergency Fund - South Fork Dam	\$50,000	\$0	\$0	\$0
Channel Clearance	<u>\$50,000</u>	<u>\$50,000</u>	<u>\$0</u>	<u>\$0</u>
TOTAL	\$745,998	\$478,045	\$423,117	\$389,543

1995-97 TOTAL

Agency Request	\$1,169,115
Subcommittee Recommend	\$867,588

Recommended Changes by the Subcommittee:

Personnel:

- 1) Fund all new positions at step 1 not step 15. (Except new Hearings Officer)
- 2) Fund 7 new positions effective 10/01/95. (Instead of 7/01/95)

Coop map processing-Washoe County:

- 1) Local entities to fund \$110,000 of total project cost.

Emergency Fund - South Fork Dam:

- 1) Utilize Emergency Fund for use by state agencies per NRS 353.263.

**Study on Use, Allocation and Management of Water (SB 327)
Subcommittee on Staffing and Funding the State Engineer
Recommended New Positions**

<u>Position</u>	<u>Grade</u>	<u>FY 1995-96</u>	<u>FY 1996-97</u>
Hearings Officer	42-15	\$51,566	\$69,002
Management Analyst I	33-1	\$27,131	\$37,759
Management Assist III	27-1	\$21,623	\$30,021
Information System Spec	37-1	\$31,806	\$44,271
Engineering Tech V	35-1	\$29,359	\$40,887
Engineering Tech II	27-1	\$21,623	\$30,021
Engineering Tech III	30-1	<u>\$24,178</u>	<u>\$33,611</u>
TOTAL		\$207,285	\$285,572

Positions recommended for funding effective 10/01/95.

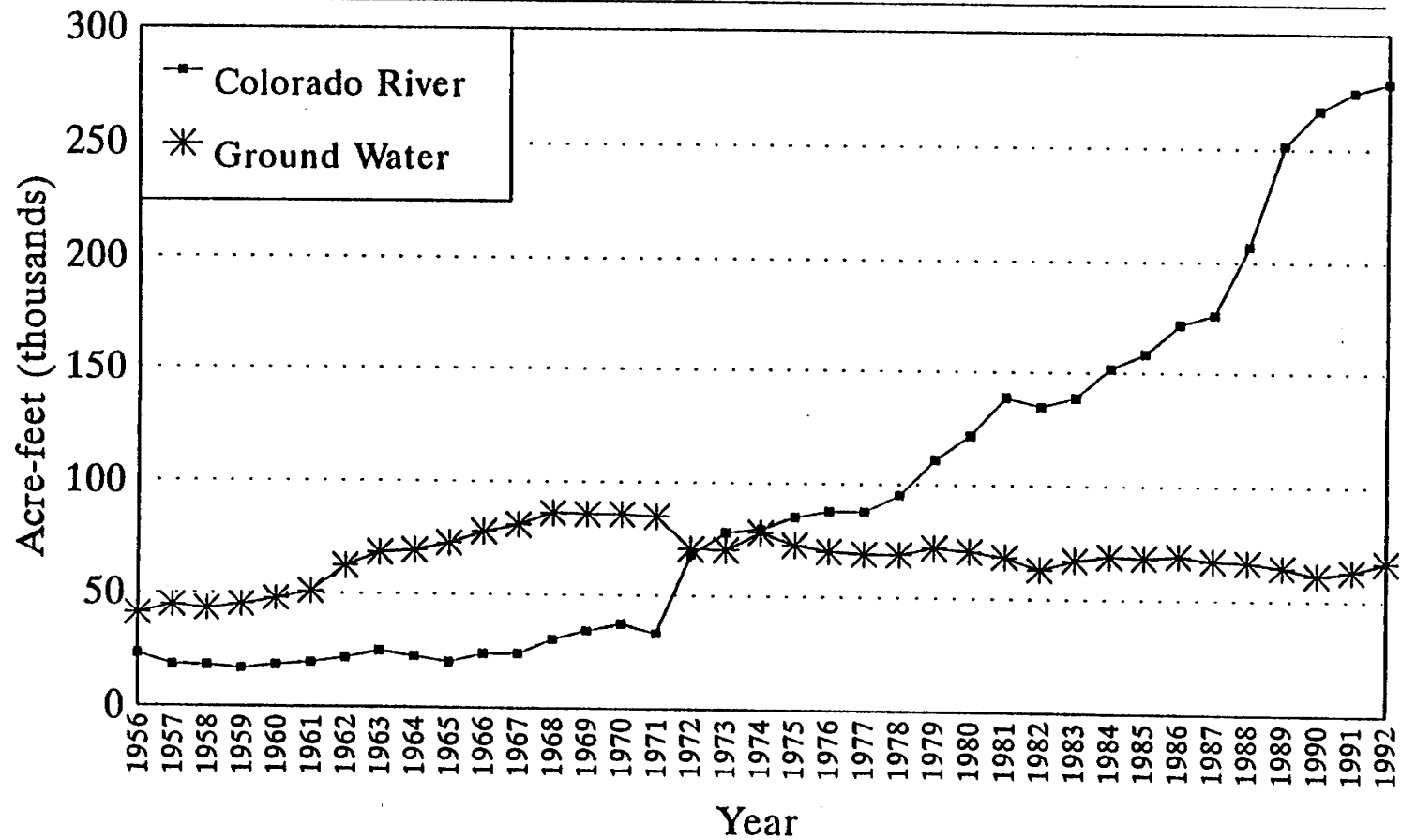
EQUIPMENT

	1995-96	1996-97
6 Executive Units \$2,185 X 6	\$13,110	-0-
2 Secretarial Units \$823 X 2	\$ 1,646	-0-
2 Map Cases	\$ 755	\$ 755
6 File Cabinets	\$ 741	\$ 741
2 Double Sided Shelving Units	-0-	\$ 1,623
1 Truck	-0-	\$13,510
Bar Code Reader Scanner	-0-	\$ 3,000
2 Personal Computers (replacements)	\$ 6,000	\$ 6,000
2 Personal Computers (New Secretaries)	\$ 6,000	-0-
Micro Film	\$10,000	\$ 5,000
Space	\$22,508	\$23,342
TOTAL	\$60,760	\$53,971
U.S.Geological Survey Contract	\$50,000	\$50,000

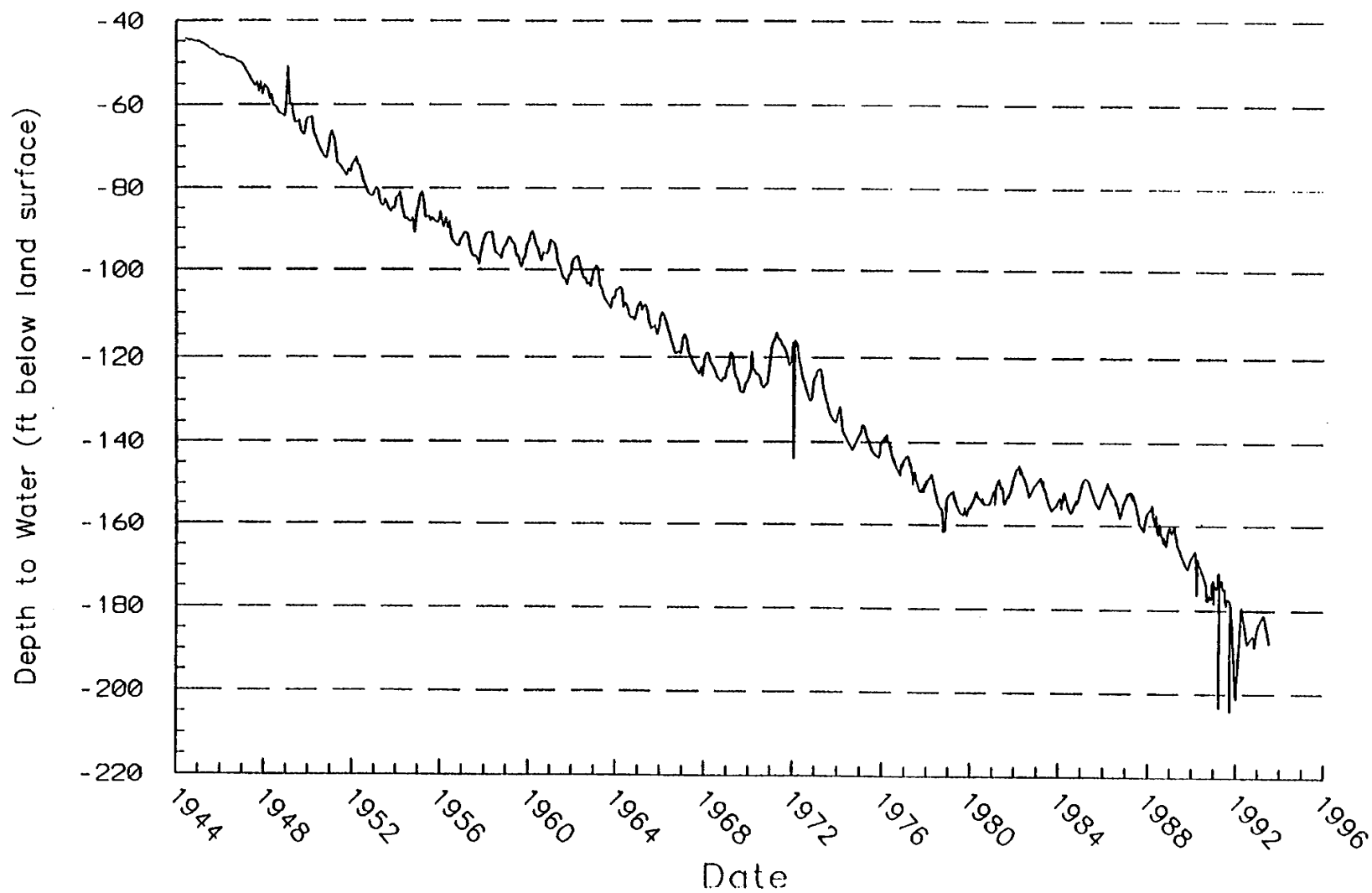
APPENDIX C

**Tables and Information
Submitted by the Southern Nevada Water Authority
on the status of
the Las Vegas Valley Groundwater Basin
and the Proposal for a Groundwater Replenishment District**

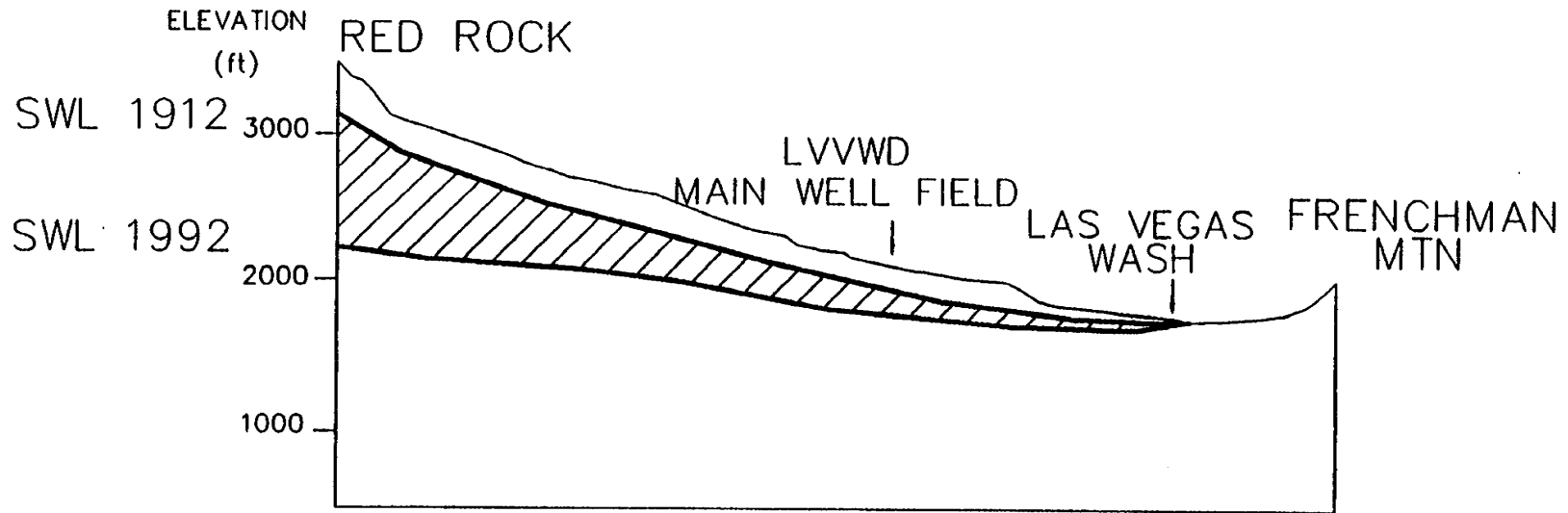
COLORADO RIVER AND GROUND-WATER USE IN LAS VEGAS VALLEY



GROUND-WATER DECLINES NEAR TULE SPRINGS



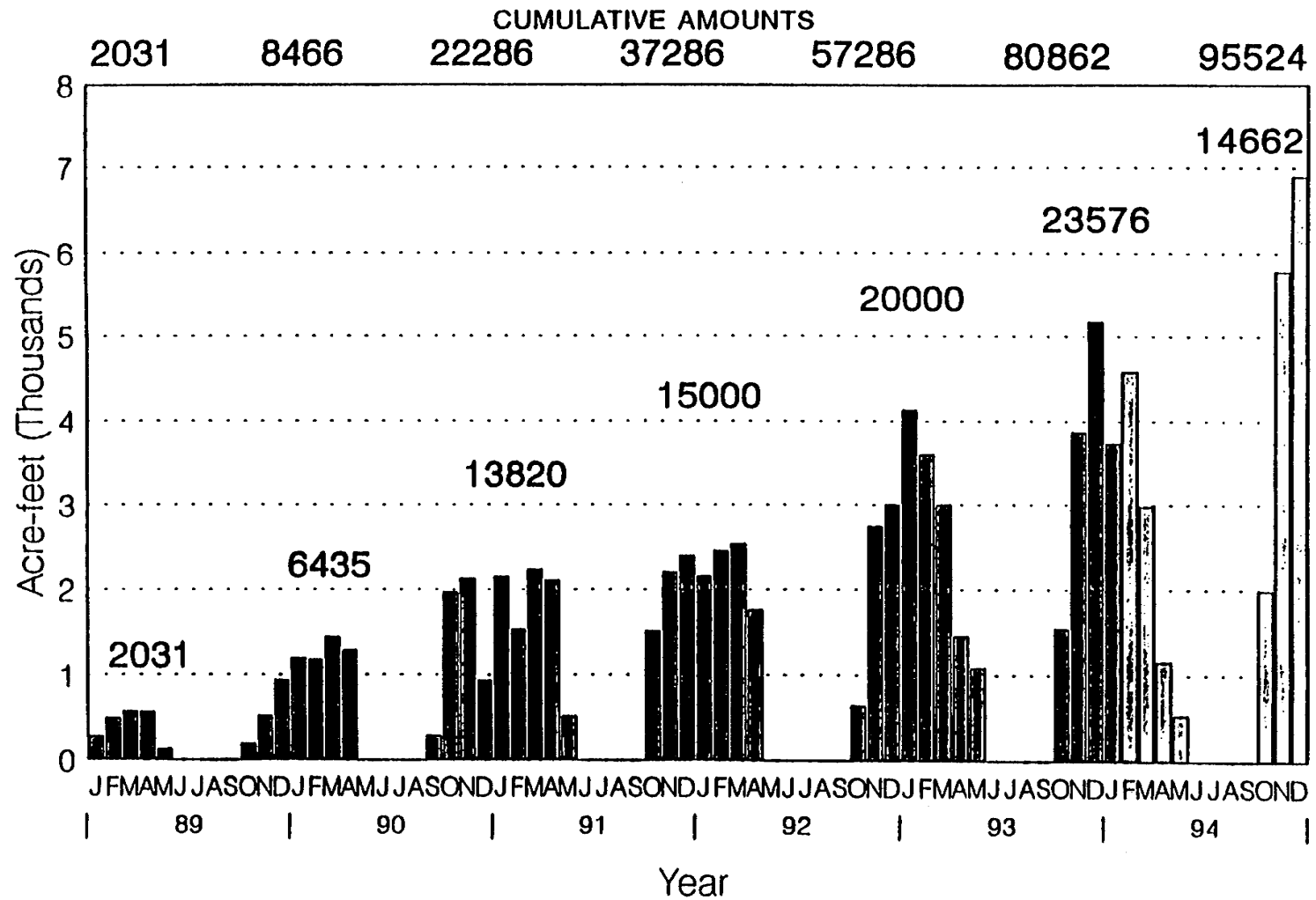
WATER LEVEL DECLINES 1912 – 1992 IN LAS VEGAS VALLEY



SWL – STATIC WATER LEVEL

 – AREA OF WATER LEVEL DECLINE

ARTIFICIAL RECHARGE



Groundwater Pumpage & Artificial Recharge

1992

(acre-feet rounded to nearest 100)

Water Purveyors

Las Vegas Valley Water District	39,800
North Las Vegas	4,200
Nellis Air Force Base	900

Permitted Wells

Metered	12,300
Unmetered	4,300

Domestic Wells	<u>6,700</u>
	68,200

Artificial Recharge

Las Vegas Valley Water District	15,600
North Las Vegas	<u>1,400</u>
	17,000

Las Vegas Valley Water Rights

(acre-feet / year)

		Pumped 1992
Non-revocable	70,734	56,755
Environmental Control	1,377	581
Revocable	15,294	3,942
	<u>87,405</u>	<u>61,278</u>
Domestics ¹⁾	?	6,694

1) Based on a duty of 1.0 acre-foot per year for each well.

LEGISLATION FOR ESTABLISHING A GROUNDWATER REPLENISHMENT DISTRICT

PURPOSE

Legislation and subsequent regulations need to be developed to provide for an agency to administer a groundwater replenishment district tailored for the needs of the Las Vegas Valley. This agency would be called the "Las Vegas Valley Replenishment District" (LVVRD). The LVVRD would specifically allow for continued construction of single-family homes using domestic wells outside the projected boundaries of existing water purveyors. The LVVRD also would provide needed funds for activities to replenish the overdrafted groundwater basin as well as provide a mechanism to encourage well owners within a water purveyor's boundaries to connect to the system.

JURISDICTION

The LVVRD would be under the jurisdiction of the Southern Nevada Water Authority with reporting requirements to the State Engineer. These requirements would ensure that the LVVRD does not fall behind (say 3 years) in the amount of established water credits. If so, the State would have the authority to prohibit the LVVRD from issuing any more permits for domestic wells.

WATER CREDITS

The LVVRD water credits would include water artificially recharged, water credited for not pumping a permitted or certificated right (in-lieu recharge), permitted or certificated groundwater right purchases or acquisitions, and credits for domestic wells connecting to a purveyor (0.5 to 1 AF/well).

MEMBERSHIP

LVVRD membership would consist of new domestic well owners who would be required to obtain a permit from the LVVRD before construction. The legislation should address mechanisms for owners of existing domestic wells, where purveyor service lines are within a reasonable distance, to join the LVVRD and connect to the system. Existing domestic wells outside the purveyor's future boundaries would be subject to fees for groundwater users.

FUNDING

Members of the LVVRD (new domestic well owners) would be required to pay a monthly fee for membership (presently estimated at approximately \$20). Additional funding for the LVVRD would come from assessments on all groundwater pumpers (including the Las Vegas Valley Water District). A fee per acre-foot of water of

approximately \$30 per year would generate funds to implement recharge projects where the water would be left in the basin to replenish the overdrafted aquifer and for general groundwater management efforts.

BENEFITS

For new wells, the benefit is to be allowed to construct a new domestic well without impacting existing well owners. The benefit to all well pumpers is the overall management of the groundwater system.

DEFINITIONS

Amend NRS 534.015 to include:

4. Remains in the aquifer, as a valid groundwater right, within the active area of management, by not withdrawing such groundwater right, termed as in-lieu recharge.

LAS VEGAS VALLEY REPLENISHMENT DISTRICT

- I. Creation of the Las Vegas Valley Replenishment District (LVVRD). The LVVRD is hereby created with the intent of the Legislature to provide for the long-term management of the Las Vegas Valley groundwater basin, designated by the State Engineer as hydrographic basin No. 212. This long-term management will provide for future individual domestic wells as well as the overall management of the existing groundwater users to benefit the hydrographic basin.
 - A. The authority of the LVVRD shall be full and complete, having the right of eminent domain and the right to sue and be sued, conduct studies, own real property, employ counsel and staff, own water rights, and accept water rights by acquisition, gift or purchase. It shall have all necessary other authority to carry out the provisions of this act, including the right to promulgate regulations.
 - B. The LVVRD shall be governed by the Board of Directors of the Southern Nevada Water Authority (SNWA) which was created by interlocal agreement on July 25, 1991. The Board of Directors shall have the authority to levy assessments, charges and fees, including such on permitted groundwater right holders and other groundwater users. All funds collected shall be used by the LVVRD to benefit the groundwater basin and allow for future individual domestic wells. The Board of Directors shall have the right to set the criteria upon which the Las Vegas Valley groundwater users shall be bound by the provisions of this act, thereby becoming members of the replenishment district.
 - C. The LVVRD shall have the power to require the developers of parcels and subdivisions, as those terms are defined in Chapter 278 of NRS, to file with the Clark County Recorder restrictive covenants in a form acceptable to the LVVRD requiring subsequent purchasers of those parcels or lots, together with their successors and assigns, to either connect to a water purveyor or become members of the LVVRD before development of those parcels or lots.
 - D. Sources of water to be utilized by the LVVRD for credits for new individual well construction include permitted groundwater rights, artificial recharge credits and in-lieu recharge. In-lieu recharge is defined under amended NRS 534.015 as permitted groundwater that is not pumped but allowed to remain in the aquifer, within the active area of management, for future withdrawal. A source of water which shall be conveyed and credited to the SNWA for use by the LVVRD are credits from the connection of existing domestic wells, exempt pursuant to NRS 534.180, to a water purveyor's system.

- II. Definitions used in this act are identical to those in Chapters 278, 533 and 534 of NRS with the amendment to include and define in-lieu recharge in NRS 534.015.
- III. The LVVRD will have annual reporting requirements to the State Engineer regarding the use and distribution of water credits as well as the amount of credits, for example artificial recharge and in-lieu recharge in the storage account. Nothing contained herein is intended to supersede the authority granted the State Engineer as set forth in Chapters 278, 533 and 534 of NRS.
- IV. The LVVRD is expressly directed to consult regularly with the State Engineer or his designated deputy. Reports on the number of members in the replenishment district and estimates of water developed shall be sent to the State Engineer on a biannual basis.

APPENDIX D

**Testimony of Craig Bell,
Executive Director of the Western States Water Council,
on State Laws to Protect the Public Interest
and State Water Conservation Laws**

TESTIMONY
before
The Legislative Committee to Study
the Use, Allocation, and Management of Water, State of Nevada
Friday, December 3, 1993

My name is Craig Bell, I am the Executive Director of the Western States Water Council. The Council consists of representatives appointed by the governors of seventeen western states. We consider a broad range of water resource issues, with a major purpose of facilitating cooperation and coordination of water resource development, management, and protection in the West. We also serve to protect state prerogatives over this vital natural resource.

It is my pleasure to participate in this hearing to discuss the laws in the western states pertaining to the public interest and water conservation. I will begin with a discussion of laws to protect the public interest. In so doing, I will confine my remarks to those laws with specific reference to the public interest. However, I have attached a portion of an article prepared by the Council staff, and published in Environmental Law, the law journal of the Northwestern School of Law, pertaining to laws that also might be considered relevant to the protection of the public interest; namely, instream flow laws and laws pertaining to water transfers which allow established uses to change with evolving values and needs. I should also add that I will not be discussing Nevada's statutes in any detail, since those will be covered by Mr. Turnipseed who follows me.

Western State Laws Pertaining to the Protection of the Public Interest

In some ways, the traditional appropriation doctrine succeeded in incorporating public values. A fundamental tenet of prior appropriation law was that land and water estates were separate, and that water could be removed from its natural location and used beneficially elsewhere. This tenet facilitated the public purpose of making an inhabitable region out of arid lands. Beyond this, however, traditional appropriative law gave little consideration to which pending applications might better protect public values.

Since these early times the western states have significantly enhanced protection of public interest values.¹ Both state legislatures and state courts have established and defined public interest criteria that must be met when an application to

¹ See generally Grant, Public Interest Review of Water Right Allocation and Transfer in the West: Recognition of Public Values, 19 ARIZ. ST. L. J. 681 (1987).

appropriate water or to transfer a vested water right is considered. Virtually every member state of the Western States Water Council has some statutory public interest review provisions in its laws governing new appropriations of water.² Several states require consideration of public interest in determining whether to approve a proposed water right transfer.³

The criteria for determining the public interest vary from state to state. But they can be grouped into three categories. First, a few comprehensively define the public interest and include public values. Alaska, for example, relies heavily on statutorily defined public interest considerations in evaluating applications to appropriate water. The same criteria apply to both ground and surface water applications and to applications to reserve instream flows.⁴ The criteria are:

The benefit to the applicant as a result of economic activity, the effect on fish and game resources and on public recreational opportunities, the effect on public health, the effect of loss of alternative uses of water, harm to other persons, and the effect on access to navigable or public waters.

Second, some permit statutes do not comprehensively define the public interest, but still give significant guidance and expressly include some public values in the calculus. Idaho law requires public interest protection in the consideration of applications to appropriate water and to change the place or nature of use of an established right. Idaho statutes do not enumerate public interest criteria, but the Idaho Supreme Court has broadly interpreted the

² ALASKA STAT. §§ 46.15.080(b)(1)-(8) (1984 & Supp. 1986); ARIZ. REV. STAT. ANN. §§ 45-142, 143 (Supp. 1986); CAL. WATER CODE §§ 1225 (West 1971 & Supp. 1987); HAWAII REVISED STATUTES § 174C-49(4) (Supp. 1987); IDAHO CODE §§ 42-203A, 203C (Supp. 1989); MONT. CODE ANN. §§ 85-2-302, 311(2) (1985); NEV. REV. STAT. §§ 533.325, 370(3), 534.050(1) (1989); N.M. STAT. ANN. §§ 72-5-1, 6, 7; 72-12-3(E) (1985); N.D. CENT. CODE §§ 61-04-02, 06 (1985); OR. REV. STAT. §§ 537.130, 170(4) (1985); S.D. CODIFIED LAWS ANN. §§ 46-1-15, 2A-9, 5-10, 6-3 (1983); TEX. WATER CODE ANN. §§ 11.121, 134(3), 134(4), 147, 150, 152, 1271, 1331 (Vernon Supp. 1987); UTAH CODE ANN. §§ 73-3-1, 8(1) (1980 & Supp. 1986); WASH. REV. CODE ANN. §§ 90.03.250, 03.290, 44.050, 44.060 (1962); WYO. STAT. §§ 41-4-503, 41-3-930 to 932 (1977 & Supp. 1986).

³ See e.g., IDAHO CODE § 42-222(1) (Supp. 1989); MONT. CODE ANN. § 85-2-402 (3) (1985); NEV. REV. STAT. § 533.370 (3) (1989); N.M. STAT. ANN. § 72-5-23, 5-24, 12-7, 12B-1 (1985 & Supp. 1986); N.D. CENT. CODE § 61-04-15.1 (1985); S.D. CODIFIED LAWS ANN. § 46-2A-12 (1983).

⁴ ALASKA STAT. § 46.15.080(6)(1)-(A) (1987).

term "public interest" to require consideration of numerous variables including assurance of minimum stream flows, encouragement of conservation, protection of aesthetics and the environment, and an assessment of the appropriation's effect upon vegetation, fish, and wildlife.⁵ The court defined the state legislature's use of the term "local public interest" by saying the legislature "intended to include any locally important factor impacted by proposed appropriations."⁶

Third, other permit statutes give little or no specific guidance about public interest review or the role of public values in such review. A Utah statute requires the state engineer to determine whether approval of an application for a new water use will "unreasonably affect public recreation or the natural stream environment...."⁷ Wyoming law requires rejection of applications to appropriate water that are detrimental to the public interest or welfare.⁸

Regardless of their specificity, these public interest statutes have had an important effect upon western water resource management. For example, relying on these laws, the Wyoming State Engineer evaluated two opposing applications to construct a reservoir and develop water on the same site. The application filed first by a private corporation would have provided industrial water and incidental municipal supply. A subsequent application, filed by the Wyoming Department of Economic Planning and Development, intended to supply a larger share of municipal water.

Based on public interest considerations, the State Engineer denied the initial application in favor of the State agency's application.⁹ The original applicant appealed the matter to the Wyoming Supreme Court, which remanded it to the State Board of

⁵ Shokal v. Dunn, 707 P.2d 441, 449 (1985).

⁶ Id. at 449, 450.

⁷ UTAH CODE ANN. § 73-3-8 (Supp. 1986).

⁸ WYO. STAT. § 41-4-503 (1977).

⁹ The public interest considerations included lack of due diligence and the concerns with the applicant's intent and ability to develop the project, among other things. See letter from George Christopoulos, Wyoming State Engineer, to David Carmichael, et al, Re Petition to initiate a proceeding against and seek rejection of the application of Wyoming Water, Inc., for a permit to construct a reservoir on Deer Creek, a tributary to the North Platte. Temporary Filing No. 216/198 (Dec. 3, 1985) (copy on file at the Western States Water Council office).

Control.¹⁰ The initial applicant then signed over its project development rights to the Wyoming Water Development Commission. Although the effect of the State Engineer's decision cleared the way for the state project, the state agency still had to perfect its application and meet all requirements of Wyoming law, including public interest criteria.

Arizona statutes require the Director of the Department of Water Resources to consider the potential effect on the public interest and welfare when considering applications to use surface water. The Director must reject such applications where a proposed use is contrary to public values.¹¹ The Arizona State Land Department (the predecessor to the Arizona Department of Water Resources which reviewed water appropriation applications) used public interest criteria to deny an application which, if granted, would have resulted in the loss of 1.7% of the total recharge of one of Arizona's ground water basins.¹²

The State Land Department determined that it would not have been in the public interest to place additional strain on a source of ground water supply experiencing substantial overdraft.¹³ The Arizona Court of Appeals upheld the denial of the application. It emphasized that, in a water short area, even a small reduction in recharge might cause substantial injury to the public welfare, particularly if followed by additional reductions.¹⁴

In Idaho, the Director of the Department of Water Resources faced a situation where a hydropower developer filed an application to appropriate water for power production at the Bear River Narrows Project. Sufficient, unappropriated water was available to support the proposed non-consumptive use. The applicant had a track record of successful construction and operation of similar facilities, the director determined the application was made in good faith, and the director found that some positive results would come from the project.

After applying Idaho's public interest criteria to the situation, however, and following extensive public involvement, the director denied the application, based on public interest concerns.

¹⁰ Wyoming Water Inc. v. Christopoulos, No. 86-177 (Wyo. Sup. Ct., Dec. 3, 1987) (Summary Order of Remand).

¹¹ ARIZ. REV. STAT. ANN. § 45-153(A) (1956).

¹² Arizona Game & Fish Dep't v. Arizona State Land Dep't, 24 Ariz. App. 29, 535 P.2d 621 (1975).

¹³ Id. 535 P.2d at 622.

¹⁴ Id. at 623.

He noted that the project could cause some water quality problems but, more importantly, that granting the application would have a negative effect on local recreation, wildlife, and aesthetic values in the area where the project would be built. He noted that the canyon is a local retreat that is easily accessible and heavily used, and that the lost values could not be found in nearby, substitute locations. The majority of witnesses who made presentations at hearings on the proposed project, or submitted written statements, were opposed to the project's construction.

As can be seen from these examples, regardless of the specificity of the statutes, much discretion is left to the administrator in weighing the public interest. This in turn has led administrators to deal with difficult questions. For example the Idaho state engineer faced these questions. "What is the public interest? Who speaks for or can represent it in a formal hearing proceeding? Whose judgement will prevail in a conflict between different interest groups or publics expressing opposing views as to what would bring the greater public value?" In Idaho's case, the Idaho supreme court responded to these questions by expressly deferring to the discretion of the state engineer in the following language: "Of course, not every appropriation will impact every one of the above elements. Nor will the elements have equal weight in every situation. The relevant elements and their relative weights will vary with local needs, circumstances, and interests... The determination of what elements of the public interest are impacted, and what the public interest requires, is committed to Water Resources' sound discretion." (Emphasis added)

In Alaska's case, the statutory lack of detail regarding how to define and weigh the various factors making up the public interest was purposeful. The Alaska water use act is based on a proposed water code that the state employed Frank J. Trelease to draft. In a report to the state setting forth and explaining the code, Trelease commented on the public interest review as follows: "Making decisions...will be difficult. No law can make them, they must be made by people. No economic formula can solve these problems by push button techniques....[T]he balancing of benefits against cost must be performed by the exercise of judgment."

State Water Conservation Laws and Programs

Water conservation has always been the basis of western state water law and management. Indeed, water is the "lifeblood" of the West, and every drop must be used wisely. Water conservation is an essential water management tool. Water conservation is generally considered not as an end in and of itself, but rather a means to an end. Within this context, water conservation measures have three main objectives: (1) to bring about permanent water use reductions; (2) to reduce demand during emergencies such as drought; and (3) to help manage peak water use needs (primarily a

local concern). It should also be recognized that water conservation may result in energy and other cost savings which may be even more important than the water saved. The most effective use of water conservation requires an understanding of the many physical, legal, social, economic and political pieces of the western water management puzzle and how they fit together.

As a forum for the exchange of information and ideas among member states, the Council has found water conservation to be a recurring topic of discussion among its members. States are curious to know how water conservation may be used to respond to current state water problems. While conservation has important benefits, there are trade-offs. Certain measures may or may not make economic sense. Conservation can be expensive, when compared with other alternatives. It is also important to note that many benefits may be difficult or impossible to quantify economically. Environmental benefits of water conservation, such as increased instream flows and improved fish and wildlife habitat are important. However, the opposite is also possible, as water conservation may impose important environmental costs. Conservation can lead to a loss of irrigated or other wetlands, reduced ground water recharge, and reduced streamflows in certain river reaches. A state should at least recognize, and may wish to attempt to avoid or mitigate, such negative impacts.

While much maligned as archaic and an obstacle to water conservation, in fact western water law is a useful tool to encourage or require water conservation. Conservation may or may not be defined in state statutes, but every western state has constitutional authority and/or general statutory authority under state water codes to promote conservation. There is specific statutory authority in Arizona, California, Colorado, New Mexico, Oregon, Texas, Utah and Washington. Hawaii, Idaho, Kansas, Nebraska and Oklahoma also have some type of state water conservation program. Moreover, existing state water development programs in most states can be used to promote conservation. Of particular note, in recent years, a growing number of states have been given authority to require local conservation plans, including Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Texas and Washington. Where local water conservation programs are required, states also monitor and evaluate their effectiveness. However, few have established mandatory local conservation goals.

In general, state water codes provide a firm foundation for promoting conservation as each state has some type of water use monitoring and reporting requirement, and controls surface and ground water use, some to a greater or lesser extent. Requiring water use permits is an important step. The next step involves the degree to which water conservation is considered in granting permits. Idaho, Nevada, and Texas can require conservation plans before granting permits. As I mentioned earlier, almost every

state requires some type of public interest review before a permit is issued, which may include consideration of conservation.

The beneficial use principle of the appropriation doctrine can also be used to promote conservation when issuing water use permits. A more difficult application of the beneficial use requirement in western water law is its application to existing uses. It is much more difficult to reevaluate and redefine water duties for existing water users and impose new conservation conditions. However, this is possible in California, Hawaii, Oregon, South Dakota and Utah.

Every western state prohibits the waste of water and state codes contain abandonment provisions whereby water rights may be forfeit by non-use. Overall, enforcement efforts are generally in response to complaints (which increase during a drought). California and Oregon, to some extent, have revised their statutes to ensure that conservation measures don't lead to the abandonment of water rights, thereby discouraging their use. One of the most obvious changes recently is the enactment of state plumbing codes in Arizona, California, Colorado, Nevada, Oregon, Texas, Utah, and Washington. Another highlight is the increasing number of statutory changes to facilitate ground water recharge and conjunctive management of state water resources to maximize efficient use. All of these measures help promote water conservation.

California, Idaho, Montana, Oregon, Utah and Washington all recognize rights to water salvaged, conserved or reclaimed. In Arizona, effluent has been defined by case law as a resource distinct from either surface or ground waters that may be transferred and sold as long as it has not left the control of a municipality or other entity providing treatment. Once discharged, it returns to the public domain and is subject to Arizona's surface and ground water laws. California's water code includes a number of general provisions that encourage water conservation or the use of reclaimed water in lieu of potable water. Section 1010 excludes from forfeiture or loss any type of water right where the reduction in use is a result of the use of reclaimed, desalted or polluted waters unsuitable for other beneficial uses. Similarly, Section 1011 protects from loss water rights where reduced use is due to water conservation measures. It defines water conservation to mean the use of less water to accomplish the same purpose allowed under the existing appropriative right. Sections 1020-1030 authorize leasing of water for a period of up to five years to assist in water conservation efforts. Sections 1210-1212 make it clear that the owner of the wastewater treatment plant holds exclusive right to the treated water, and a number of statutes encourage or require the use of reclaimed wastewater where it is available. Sections 13575-13577 declare that water recycling is an effective method to help meet the states needs and establishes a statewide goal of

recycling 700,000 acre-feet of water per year by the year 2000 and one million acre-feet per year by the year 2010. Sections 460-465 also declare that the maximum use of reclaimed water is in the primary interest of the state.

Idaho was the first state to establish a water supply bank in 1977 to help achieve conservation through an incentive program that allows agricultural water users to lease rights to unused water. In 1991, Montana similarly clarified rights to salvaged water so that conserved water may be leased or sold for another purpose (Section 85-2-419, MCA). In the same year, a temporary change bill was enacted to allow water users to transfer water rights to another user for up to a period of ten years, that can be renewed (Section 85-2-402, 404 and 407 MCA). Oregon has aggressively sought to encourage conservation by allowing users to salvage and sell saved water, with some percentage of the saving reserved to the state for public uses. Oregon defined conservation as "the reduction of the amount of water consumed or irretrievably lost in the process of satisfying an existing beneficial use." While enacted in 1987, Oregon found that the burden of proof put on a water user to show salvaged water would otherwise have been irretrievably lost was a major obstacle to implementing conservation measures. Therefore, this past year, the state legislature amended the meaning of conservation to include a reduction of the amount of water "diverted to satisfy" an existing beneficial use and measured conserved water as the difference between: "the smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and the amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate." Other water users remain protected from injury through traditional notice and hearing requirements before conservation proposals are approved.

In Utah, the State Engineer has allowed water right applications to be filed based upon a showing of water savings. Under such an application, the burden of proof to demonstrate that water will be saved falls on the applicant. Moreover, in 1992, the Utah Supreme Court held that a senior water right holder may improve irrigation efficiency and reuse the saved water to irrigate more land despite a junior water user's reliance on the run-off. The court said, "If the water conserved could not be used...there would be no incentive to make improvements. So long as the [upstream senior appropriator] diverts only that volume of water to which it is entitled, it should be allowed to make the most efficient use of it." The court did recognize exceptions should the run-off return to the source of diversion or be commingled with a groundwater aquifer, in which case the waters could not be salvaged and reused (Steed v. New Escalante Irrigation Company, No. 90426, August 18, 1992).

In Washington, the state legislature authorized the Department of Ecology to provide funds to finance water conservation projects in the Yakima River Basin in exchange for a conveyance of water rights covering the water savings to the state. These "trust water rights," retain the original date of priority and may be used for instream flows or for irrigation. The changes intended to facilitate a federal/state water enhancement project in the basin. The state's inability under previous law to legally bind and reallocate water savings was a major impediment to congressional approval of federal legislation to implement a number of conservation elements in the enhancement project. In the future, this concept might possibly be applied in other basins.

More and more states are expanding and refining their water conservation programs by explicitly expressing a state policy or strategy, as well as defining water conservation goals. Most states can at least point to some state agency with general water conservation responsibility. Arizona, California, Colorado, Oklahoma, Texas and Utah have all established a specific office of water conservation. Office budget and personnel resources range from less than \$100,000 to over \$1 million, and from one or two staff to more than 20 in California. To a lesser extent, other state agencies' duties with respect to water conservation are being defined. For example, water conservation activities may also be undertaken by a state's department of health, energy or agriculture.

State funding for conservation programs varies substantially. Using general funds, general obligation bonds and severance tax trust funds, Arizona, California, New Mexico, and Texas provide grants and loans for water conservation. Many other states provide assistance for water development projects that may include water conservation. Notably, Arizona and California provide tax credits and/or deductions or rebates for water conserving appliances or plumbing fixtures. More states provide technical assistance, such as user workshops and/or guidebooks, public information materials, school materials and lesson plans, or demonstration gardens and other activities. Further, water conservation is often a topic of state-sponsored water resources research.

A few states have authorized actual water use charges, such as Arizona's ground water pumping tax or Alaska's water export fees and annual water rights administration fee to finance state programs. More states have administrative fees for specific purposes, such as water right filing or transfer fees and adjudication or monitoring fees. More and more states are looking at different water use fees as a means of raising revenue, as well as promoting water conservation.

The attached matrix helps summarize states' capability to promote water conservation. In addition, we will provide this committee with a copy of our complete report on state water conservation laws and programs to be completed within the next few months.

The report will also address interagency cooperation and appropriate roles for state, local, regional and federal governments. In addition, the report will summarize member state evaluations of specific water conservation measures with regard to their objective, effectiveness, costs and benefits, public acceptance, administrative practicality and environmental impacts. Few states require mandatory water conservation measures. Most have found voluntary programs effective. In general, implementing most measures is a private or local responsibility, though states can play an important role.

Among the measures we asked states to evaluate were agricultural on-farm and off-farm efficiency improvements, such as canal lining, land leveling, irrigation scheduling, improved tillage practices, and installation of sprinkler or drip irrigation systems. The use of water of impaired quality, such as treated wastewater, was also included. Municipal water conservation measures included metering, various pricing schemes, system rehabilitation and leak detection, rationing, water reuse and public information. Domestic residential measures include plumbing codes for new construction or retrofit requirements, such as low flow toilets or toilet dams, low flow showerheads, pressure regulators, faucet aerators and water efficient appliances. Landscaping measures to reduce water use include alternative watering days, sprinkler scheduling, soil moisture monitoring and surface mulches. Other landscaping measures include the use of native plants (xeriscape) or hard-scaping (using rocks and concrete), and the use of cistern or gray water systems. Industrial and energy water savings are achieved by measures to reuse cooling and process waters or use waters of impaired quality, such as wastewater or saline waters.

The report being prepared by the Council will also consider how state conservation programs might be improved and where state resources might be focused.

Conclusion

In conclusion, much has been accomplished in the area of state public interest laws and in fostering water conservation in recent years. While each state will need to tailor its programs to its own physical, legal, social, economic, and political needs, I believe the western states face many challenges in common, and that states can learn from the effectiveness of laws and programs instituted in other states. To this end, I hope

that this summary has been helpful, together with the attached information provided the Committee. As I indicated, we will be providing you a copy of our completed water conservation report, and we would be glad to be of any further assistance to the Committee in this work. Thank you.

F:\CHERYL\TESTIMON.2CB

STATE WATER CONSERVATION PROGRAM CAPABILITY MATRIX
by the
Western States Water Council
November 8, 1993

DRAFT

	A	A	C	C	H	I	M	N	N	N	O	O	S	T	U	W	W
	K	Z	A	O	I	D	T	D	M	V	K	R	D	X	T	A	Y
A. State Water Conservation Powers																	
Constitutional Authority
General State Water Code
Special Statutory Authority
State Water Conservation Program
State Water Development Program
Require Local Conservation Plan
Other _____																	
B. State Water Law & Conservation																	
Water Use is Monitored/Reported
Surface Water Use is Controlled
Ground Water Use is Controlled
Water Use Permits are Required
Water Conservation Considered
Water Conservation Plans Required
Public Interest Review Required
Redefines Beneficial Use/Duties
Enforce Waste Prohibition
Enforce Abandonment Provisions
Revise Abandonment Provisions
Plumbing Codes Established
State Basinwide Adjudications
Special Water Management Areas
Water Masters Regulate Use
Allows Temporary Water Transfers
Transfers/Marketing Encouraged
State Water Banks Established
Salvage Rights Recognized
Public Trust Waters Recognized
Instreamflow Rights Recognized
Other _____																	
C. Special Conservation Concerns																	
Water Savings
Reduced Runoff/Recharge
Impacts on Wetlands
Third Party Impacts
Utility Revenue Losses
Energy Savings
Cost Savings
Other _____																	

D. State Water Conservation Program

	A	A	C	C	H	I	M	N	N	N	O	O	S	T	U	W	W
	K	Z	A	O	I	D	T	D	M	V	K	R	D	X	T	A	Y
Water Conservation Defined		.	.	.				.		.	.	.			.	.
State Policy or Strategy		.			.	.		.		.	.	.		.	.
Water Conservation Goals		.	.		.			.		.	.	.		.	.
Lead State Agency Designated		.	.	.	.			.		.	.	.	.	.	.	.
Water Conservation Office		.	.	.	.			.		.	.	.		.	.
Water Conservation Office Funds																	
\$1 Million - or more			.					.									
\$500,000 - \$1 Million		.															
\$100,000 - \$500,000				.						.						.	.
Less than \$100,000				.								.					
Water Conservation Office Staff															.	.	
One to Five FTEs		.		.						.	.				.	.
Five to Ten																	
Ten to Twenty														.			
Twenty or More			.					.									
State Agency Duties Defined*								.		.							
*Please designate lead agency with an "L"								.							.		
Agriculture								.							.		
Energy								.									
Health								.								L	
Natural Resources								.		L							
Water Quality	L							.							.		
Water Resources	L	L	L	L	L			L				L			L	L	
Water Rights								L				L			.		
Conservation Programs Integrated		.			.			.							.	.
Total Conservation Program Funds			.					.						.			
\$10 Million - or more			.					.						.			
\$5 Million - or more																	
\$1 Million - or more			.														
\$500,000 - or more		.	.														
\$100,000 - or more										.					.		
Less than \$100,000				.							.				.		
Sources of State Funding																	
General Fund Appropriations		.	.	.	.			.		.	.	.	.	.	.	.
General Obligation Bonds			.											.			
Other Bonding					.												
Severance Taxes/Trust Funds			.	.													
Water Use Fees		.						.									
Other								.		.					.		
Types of State Water Use Fees																	
Administrative Service Fees	.	.			.	.		.		.	.	.	.	.	.	.
Filing or Transfer Fees	.	.			.	.		.		.	.	.	.	.	.	.
Adjudication/Monitoring	.	.			.			.		.	.	.	.	.	.	.
Other																	
Actual Water Use Charges																	
Ground Water Pumping Tax		.								.							
Water Export Fees	.									.							
General Tax on Water Use																	
Other																	
Other																	

	A	A	C	C	H	I	M	N	N	N	O	O	S	T	U	W	W
	K	Z	A	O	I	D	T	D	M	V	K	R	D	X	T	A	Y
Other Financial Incentives	.	.	.														
Tax Credits/Deductions	.	.	.														
Rebates	.	.	.														
Grants and/or Loans
Other
State Technical Assistance
User Workshops/Guidebooks
Public Information Materials
School Materials/Lessons Plans
Demonstration Programs
Other
State Sponored/Funded Research

**STATE WATER LAWS AND FEDERAL WATER USES:
THE HISTORY OF CONFLICT, THE PROSPECTS FOR
ACCOMMODATION**

(Excerpt from material submitted for publication in
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Northwestern School of Law.)

by
D. Craig Bell, Executive Director
and
Norman K. Johnson, Legal Counsel

Western States Water Council

The traditional appropriation doctrine incorporated public values in some ways. A fundamental tenet of prior appropriation law was that land and water estates were separate and that water could be removed from its natural location and used beneficially elsewhere. This facilitated the public purpose of making an inhabitable region out of arid lands. Also, there were preferred uses under traditional appropriative law. They embodied a public sentiment that, for example, domestic, municipal, and agricultural needs should be met before water could be put to other uses. Beyond this, however, little regard could be given to which pending applications might better protect public values. In determining whether to grant a water right, the state official considered the date of application, the amount of water available, and the potential damage that the newly created right might do to existing rights. Maximizing potential economic benefit often equated with public interest protection.

Public Interest Criteria

Since these early times the western states have significantly enhanced protection of public interest values.¹ Both state legislatures and state courts have established and defined public interest criteria that must be met when an application to appropriate water or to transfer a vested water right is considered. These criteria vary from state to state. Among the member states of the Western States Water Council every state but one, Colorado, has some statutory public interest review provisions in its laws governing new appropriations of water.² Most states

¹ See generally Grant, Public Interest Review of Water Right Allocation and Transfer in the West: Recognition of Public Values, 19 ARIZ. ST. L. J. 681 (1987).

² ALASKA STAT. §§ 46.15.080(b)(1)-(8) (1984 & Supp. 1986); ARIZ. REV. STAT. ANN. §§ 45-142, 143 (Supp. 1986); CAL WATER CODE §§ 1225 (West 1971 & Supp. 1987); HAWAII REVISED STATUTES § 174C-49(4) (Supp. 1987); IDAHO CODE §§ 42-203A, 203C (Supp. 1989); MONT. CODE ANN. §§ 85-2-302, 311(2) (1985); NEV. REV. STAT. §§ 533.325, 370(3), 534.050(1) (1989); N.M. STAT. ANN. §§ 72-5-1, 6, 7; 72-12-3(E) (1985); N.D. CENT. CODE §§ 61-04-02, 06 (1985); OR. REV. STAT. §§ 537.130, 170(4) (1985); S.D. CODIFIED LAWS ANN. §§ 46-1-15, 2A-9, 5-10, 6-3 (1983); TEX WATER CODE ANN. §§ 11.121, 134(3), 134(4), 147, 150, 152, 1271, 1331 (Vernon Supp. 1987); UTAH CODE ANN. §§ 73-3-1, 8(1) (1980 & Supp. 1986); WASH. REV. CODE ANN. §§ 90.03.250, 03.290, 44.050 44.060 (1962); WYO. STAT. §§ 41-4-503, 41-3-930 to 932 (1977 & Supp. 1986).

require consideration of public interest factors in determining whether to approve a proposed water right transfer.³

Alaska, for example, relies heavily on statutorily defined public interest considerations in evaluating applications to appropriate water. The same criteria apply to both ground and surface water applications and to applications to reserve instream flows.⁴ The criteria are:

(1) The benefit to the applicant resulting from the proposed appropriation; (2) the effect of the economic activity resulting from the proposed appropriation; (3) the effect on fish and game resources and on public recreational opportunities; (4) the effect on public health; (5) the effect of loss of alternative uses of water that might be made within a reasonable time if not precluded or hindered by the proposed application; (6) harm to other persons resulting from the proposed appropriation; (7) the intent and ability of the applicant to complete the appropriation; and (8) the effect on access to navigable or public waters.⁵

Idaho law requires public interest protection in the consideration of applications to: (1) appropriate unappropriated water;⁶ (2) reallocate water held in trust from some existing hydropower rights;⁷ (3) appropriate unappropriated water for minimum instream flow;⁸ and (4) change the place or nature of use or point of diversion of an established water right.⁹ The Idaho Supreme Court interpreted the term "public interest" broadly to require consideration of numerous variables including assurance of minimum streamflows, encouragement of conservation, protection of aesthetics and the environment, and the effect of the appropriation

³ See e.g., IDAHO CODE § 42-222(1) (Supp. 1989); MONT. CODE ANN. § 85-2-402 (3) (1985); NEV. REV. STAT. § 533.370 (3) (1989); N.M. STAT. ANN. § 72-5-23, 5-24, 12-7, 12B-1 (1985 & Supp. 1986); N.D. CENT. CODE § 61-04-15.1 (1985); S.D. CODIFIED LAWS ANN. § 46-2A-12 (1983).

⁴ ALASKA STAT. § 46.15.080(6)(1)-(A) (1987).

⁵ Id.; North Dakota has a similar statutory provision, See N.D. CEN. CODE § 61-04-06 (1985).

⁶ IDAHO CODE § 42-203A(5)(e) (1987).

⁷ Id. § 42-203C.

⁸ Id. § 42-1503.

⁹ Id. § 42-222.

upon vegetation, fish, and wildlife.¹⁰ The court defined the state legislature's use of the term "local public interest" by saying the legislature "...intended to include any locally important factor impacted by proposed appropriations."¹¹

A Utah statute requires the state engineer to determine whether approval of an application for a new water use will adversely affect the "...natural stream environment..." or "unreasonably affect public recreation...."¹² In Nevada, three statutory criteria guide the State Engineer when he considers applications to appropriate water. They are: (1) the availability of unappropriated water; (2) the effect on existing rights; and (3) the public interest.¹³ The public interest criterion, in the State Engineer's view, protects the public welfare by requiring the exercise of broad discretion when ruling on permit applications.¹⁴

Using this discretion, the Nevada State Engineer issued appropriative water rights to the United States Bureau of Land Management and Forest Service for recreation, fishery, and wildlife watering, including instream flow rights. He did so even though the statute used to grant the rights did not clearly define the uses as beneficial and contained no specific authority for recognition of instream flow rights. The Nevada Supreme Court upheld this protection of public interest values by the State Engineer notwithstanding arguments by the state Department of Agriculture that issuance of non-diversionary appropriative water rights was contrary to the public interest in Nevada.¹⁵

These statutes have had an important effect upon western water resource management. For example, Wyoming law requires rejection of applications to appropriate water that are detrimental to the public interest or welfare.¹⁶ Recently the State Engineer evaluated two opposing applications to construct a reservoir and develop water on the same site. The application filed first by a private corporation would have provided industrial water and

¹⁰ Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441, 449 (1985).

¹¹ Id. 707 P.2d at 449-50.

¹² UTAH CODE ANN. § 73-3-8 (Supp. 1986).

¹³ NEV. REV. STAT. § 533.370(3) (1989).

¹⁴ Memorandum letter from Peter G. Morros, Nevada State Engineer, to Roland D. Westergard, Director, Nevada Department of Conservation and Natural Resources, (Jun. 12, 1986) (copy on file at the Western States Water Council office).

¹⁵ Nevada v. Morros, 766 P.2d 263 (Nev. 1988).

¹⁶ WYO. STAT. § 41-4-503 (1977).

incidental municipal supply. A subsequent application, filed by the Wyoming Department of Economic Planning and Development, intended to supply a larger share of municipal water.

Based on public interest considerations, the State Engineer denied the initial application in favor of the State agency's application.¹⁷ The original applicant appealed the matter to the Wyoming Supreme Court, which remanded it to the State Board of Control.¹⁸ The matter was later settled when the initial applicant signed over its rights to develop the project to the Wyoming Water Development Commission. Although the effect of the State Engineer's decision cleared the way for the state project, the state agency still had to perfect its application and meet all requirements of Wyoming law, including public interest criteria.

Arizona statutes require the Director of the Department of Water Resources to consider the potential effect on the public interest and welfare when considering applications to use surface water and to reject such applications where a proposed use is contrary to public values.¹⁹ The Arizona State Land Department (the predecessor to the Arizona Department of Water Resources for reviewing applications to appropriate water) used public interest criteria to deny an application which, if granted, would have resulted in the loss of 1.7% of the total recharge of one of Arizona's ground water basins.²⁰

The State Land Department determined that it would not have been in the public interest to place additional strain on a source of ground water supply experiencing substantial overdraft.²¹ The Arizona Court of Appeals upheld the denial of the application. It emphasized that, in a water short area, even a small reduction in

¹⁷ The public interest considerations included lack of due diligence and the concerns with the applicant's intent and ability to develop the project, among other things. See letter from George Christopulos, Wyoming State Engineer, to David Carmichael, et al, Re Petition to initiate a proceeding against and seek rejection of the application of Wyoming Water, Inc., for a permit to construct a reservoir on Deer Creek, a tributary to the North Platte. Temporary Filing No. 216/198 (Dec. 3, 1985) (copy on file at the Western States Water Council office).

¹⁸ Wyoming Water Inc. v. Christopolus, No. 86-177 (Wyo. Sup. Ct., Dec. 3, 1987) (Summary Order of Remand).

¹⁹ ARIZ. REV. STAT. ANN. § 45-153(A) (1956).

²⁰ Arizona Game & Fish Dep't v. Arizona State Land Dep't, 24 Ariz. App. 29, 535 P.2d 621 (1975).

²¹ Id. 535 P.2d at 622.

recharge might cause substantial injury to the public welfare, particularly if followed by additional reductions.²² Arizona has also used its administrative authority to protect public interest values by recognizing instream uses, as noted in the next section.

Instream Flow Laws

Another method of enhancing public interest protection in western water resource management is through establishment and maintenance of instream flows. The traditional law of prior appropriation favored offstream uses. However, indirect protection of instream flows was provided. Long time New Mexico State Engineer, Steve Reynolds, has observed:

The streamflow required at various points in the State is governed by interstate compacts, international treaties, federal court decrees, water rights conferred by the state..., and legislation authorizing federal water development projects. In many situations, an incidental effect of these institutional constraints is an instream flow having important value in terms of recreation, fish and wildlife habitat, and aesthetics. Furthermore, in many areas of the state the geography and public land ownership patterns adequately protect instream values. Mountain streams generally do not provide favorable sites for conservation, storage, and beneficial use of water.²³

These comments describe the incidental "base-line" of instream flow protection under the appropriation doctrine and apply to states other than New Mexico. In addition, the western states have established instream flows to enhance preservation of public values in water resource management by providing water for fish, wildlife, recreation uses, and aesthetics. In every western state legal mechanisms are now in place to provide some protection for instream flows.

One method of providing for protection of instream values occurs in California where public interest statutes form a legal basis to protect "use of water for recreation and preservation and enhancement of fish and wildlife resources [as] a beneficial use of

²² Id. at 623.

²³ Memorandum from Steve Reynolds, New Mexico State Engineer, Re: House Bill 228 (Feb. 7, 1977) at 4 (State Engineer Files, Santa Fe, New Mexico) as quoted in MacDonnell, Rice & Shupe, Editors, INSTREAM FLOW PROTECTION IN THE WEST 334 (1989).

water."²⁴ While California law thus recognizes fish, wildlife, and recreational uses as beneficial, a diversion or impoundment of water must be made to establish an appropriative right. So the state, for example, might grant a right to impound water for use downstream from the impoundment to enhance fish and wildlife habitat. Such a right could be issued to a public or a private entity.²⁵ A state agency may also protect instream flows in California, Oregon, and other states, under state public interest statutes that allow terms and conditions to be included in appropriative rights to maintain bypass flows.²⁶

The effect of these provisions on water for instream uses is twofold. First, the state agency may disallow new appropriations where wildlife or aesthetic values would be harmed. Second, the new appropriation may be allowed only where a by-pass flow can be assured. Further, a transfer proposal may also be disallowed if it is detrimental to the public interest. This assertion might be made by a state agency or, in some instances, by a private party protesting the transfer.

In Montana²⁷ a public entity may acquire a water reservation to secure the equivalent of a right for instream flow. The law provides that reservations for the maintenance of minimum flow, level, or quality of water may be made up to a maximum of 50 percent of the average annual flow of gauged streams. Laws in

²⁴ CAL. WATER CODE § 1243 (West 1971).

²⁵ California also recognizes limited riparian rights, which may be similar to appropriative rights for instream flows in some instances. See *In re Matter of Hallett Creek Stream Sys.*, 44 Cal. 3d 448; 749 P.2d 324 (1987).

²⁶ CAL. WATER CODE § 1243.5 (West 1971); ORE. REV. STAT. § 537.170 (5)(a). See supra text accompanying notes 12-33.

²⁷ MONT. CODE ANN. § 85-2-316.

California,²⁸ Oregon,²⁹ and Washington³⁰ also provide for reservation of water by a state agency, or a similar process.

Wyoming considers instream flow and storage of water for release to maintain instream flow to be beneficial uses under certain conditions, and has established a procedure for appropriating water for such uses.³¹ The Game and Fish Commission identifies stream segments and flow rates that should be appropriated and reports them to the Water Development Commission. The Commission then files an application to appropriate natural flow after analyzing whether natural flow is available, whether storage is required, or whether a combination of both must be used. The date of priority of the appropriative right is the date of the Commission's application. Water commissioners regulate the water course to provide water for the instream use on the basis of its priority.³²

Utah has enacted a similar statute.³³ It allows for acquisition of established water rights by the state to "provide water for instream flows in natural channels necessary for the preservation or propagation of fish within a designated section of

²⁸ See Lilly, Protecting Stream Flows in California 8 ECOL. L.Q. 697 (1979). Note that the use of the term "reserve" in this context refers to the state setting aside, or "reserving" from appropriation, sufficient water to assure maintenance of instream flows and should not be confused with federal "reserved water rights" recognized under the "reserved rights" doctrine. See infra text accompanying notes 226-248.

²⁹ ORE. REV. STAT. § 536.410 allows the Water Resources Commission to withdraw waters from further appropriation while the order of withdrawal is in effect. This is somewhat different from the reservation concept in Montana, which involves reservation of a quantity of water with a priority date. Any Oregon state agency may request a reservation of unappropriated water for future economic development under ORE. REV. STAT. §§ 537.356, 537.358. As to instream flow protection, Oregon has a minimum stream flow program authorized by ORE. REV. STAT. § 536.325. As a practical matter, the minimum streamflow program has been largely supplanted by the Water Resources Commission's instream water rights program.

³⁰ WASH. REV. CODE ANN. § 90.22.010.

³¹ See WYO. STAT. §§ 41-3-1001 to 1014 (Supp. 1988).

³² See WYO. STAT. §§ 41-3-1001-1014 (Supp. 1988).

³³ UTAH CODE ANN. § 73-3-3(11) (Supp. 1988).

a natural stream channel."³⁴ In Colorado, the Water Conservation Board may appropriate "such waters of natural streams and lakes as the Board determines may be required for minimum stream flows or for natural surface water levels or volumes for natural lakes to preserve the natural environment to a reasonable degree."³⁵

Idaho law provides two methods to protect instream flows for public use. First, applications to appropriate water for out-of-stream purposes must be evaluated against broad "local public interest criteria,"³⁶ which include a determination of minimum streamflow to be retained in the natural channel. Second, a minimum instream flow may be assured by establishing a recorded right for the flow. The Idaho Water Resources Board, an eight-member citizen policy commission, is authorized under state law to apply for and hold such rights.³⁷ The Idaho Supreme Court has affirmed the validity of instream flows, and has recognized some instream public uses as beneficial uses under state law.³⁸

Oregon protects instream flows in a variety of ways. One is legislative³⁹ or administrative⁴⁰ withdrawal of streams from further appropriation. Also, since 1955 Oregon has established minimum streamflows by administrative rule, to support aquatic life and minimize pollution.⁴¹ In 1987, Oregon's minimum streamflow program was largely superseded by the legislature's explicit authorization of instream water rights.⁴² The Oregon Departments of Fish and Wildlife, Environmental Quality, and Parks and Recreation may apply for instream water rights for public use.⁴³ Public uses include recreation; conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values; pollution abatement; and

³⁴ Id.

³⁵ COLO. REV. STAT. § 37-92-102(3) (Supp. 1987).

³⁶ IDAHO CODE § 42-203A(5) (Supp. 1987).

³⁷ Id. § 42-1503.

³⁸ State Dep't of Parks v. Idaho Dep't of Water Admin., 96 Idaho 440, 530 P.2d 924, 928-9 (1974).

³⁹ ORE. REV. STAT. §§ 538.100 - .300 (1988).

⁴⁰ Id. § 536.410.

⁴¹ ORE. REV. STAT. §§ 536.235, 536.325.

⁴² Id. §§ 537.332 - .360.

⁴³ Id. § 537.336.

navigation.⁴⁴ The Water Resources Commission holds instream water rights in trust for the people of the state.⁴⁵ The Commission has converted most earlier established minimum streamflows to instream rights.⁴⁶

In Washington the legislature declared in 1949 that the policy of the state was "...that a flow of water sufficient to support game, fish and foodfish populations be maintained at all times in the streams of th(e) State."⁴⁷ The statute allows the Department of Ecology Director to refuse to issue permits where instream flow needs would be harmed.⁴⁸ Often, rather than deny permits, the Department issues them with conditions protecting instream flows. Also, Washington law provides a more formal process to protect instream flows. The Department of Ecology, on its own or when requested by the Department of Fisheries or the Game Commission, may establish minimum streamflows and lake levels to protect fish and wildlife resources or recreation or aesthetic values.⁴⁹

In Alaska the Water Use Act allows for the reservation of water for the following instream uses: "(1) protection of fish and wildlife habitat, migration, and propagation; (2) recreation and park purposes; (3) navigation and transportation purposes; and, (4) sanitary and water quality purposes."⁵⁰ The statute authorizes local, state, and federal agencies, and private individuals to apply for reservations for instream uses. To aid private entities, the state has published a booklet describing the instream flow reservation program. It contains detailed instructions on how to apply for a reservation.⁵¹

There are a few states where instream flow appropriations, or their equivalent, are not recognized by statute. Nevertheless, protection may be provided by state administrators pursuant to

⁴⁴ Id. § 537.332(4).

⁴⁵ Id. § 537.341.

⁴⁶ Id. § 537.346.

⁴⁷ WASH. REV. CODE § 75.20.050 (1989).

⁴⁸ Id.

⁴⁹ Id. § 90.22.

⁵⁰ ALASKA STAT. § 46.15.145 (1987).

⁵¹ ALASKA DEPARTMENT OF NATURAL RESOURCES, STATE OF ALASKA INSTREAM FLOW HANDBOOK - A GUIDE TO RESERVING WATER FOR INSTREAM USE (1985).

public interest provisions.⁵² In Arizona and Nevada state officials have interpreted their laws that require a diversion to establish a water right to allow for "in situ" water use. The Arizona Court of Appeals has held that state statutes authorize in situ appropriations for recreation and wildlife purposes.⁵³ The Arizona Department of Water Resources has issued three permits to appropriate water for instream use. In April 1983 it issued two permits to the Nature Conservancy, and in March 1989 one permit to the federal Bureau of Land Management.⁵⁴

In Nevada, the State Supreme Court upheld the State Engineer's issuance of appropriative water rights to two federal agencies for recreation, fishery, and stock and wildlife watering purposes, including "in situ," or instream, rights.⁵⁵ The Court said: "Applications by the United States' agencies to appropriate water for applications to beneficial uses pursuant to their land management functions must be treated on an equal basis with applications by private landowners."⁵⁶ Thus, instream rights were provided for use on federal lands under state regulatory authority, not federal proprietary claims. These rights will enjoy the protection of state law and will be integrated into the regimen of rights administered by the State Engineer.

Water Transfers

Transfers may also promote the public interest by allowing established uses to change with evolving values and needs. The ability to make such transfers was recognized early in the development of the prior appropriation doctrine.⁵⁷ As used here,

⁵² See generally Grant, Public Interest Review of Water Right Allocation and Transfer in the West: Recognition of Public Values, 19 ARIZ. ST. L. J. 681 (1987).

⁵³ *McClellan v. Jantzen*, 26 Ariz. App. 223, 547 P.2d 494, 496 (1976).

⁵⁴ Letter from Kathleen Ferris, Director, Arizona Department of Water Resources to Norman K. Johnson (Jun. 20, 1986) (copy on file at the Western States Water Council office). Telephone conversation between Laurence Linser, Arizona Department of Water Resources and Norman Johnson (Dec. 19, 1989).

⁵⁵ *Nevada v. Morros*, 766 P.2d 263 (Nev. 1988).

⁵⁶ *Id.*, 766 P.2d at 268.

⁵⁷ See *McDonald v. Bear River & Auburn Water & Mineral Co.*, 13 Cal. 220, 232 (1859); *Thayer v. California Development Co.*, 164 Cal. 117, 128 Pac. 21 (1912).

"transfer" refers to the conveyance of a water right from one user to another involving a change in the location or type of use.

The interrelated nature of appropriative water rights requires state agencies to play an active role in the water right transfer process. Generally, before a transfer may proceed, a "change" or "transfer" application must be filed with and approved by a state administrative body or a state water court. This gives third parties the opportunity to protest the transfer if they believe it may harm their rights. Usually a state agency or court must also determine whether the transfer will be in the public interest. Most states allow temporary transfers.⁵⁸

A transfer application is either approved or disapproved after a time period for objections by third parties and consideration of the implications of the transfer by a state agency. Historic consumptive use is generally the quantity of water that may be transferred. The state agency's decision is usually subject to judicial review. Complex transfers, with the potential to affect a number of vested rights, can be costly and time consuming, while routine transfers are "business as usual" in many states.⁵⁹

Most states recognize instream flows as a beneficial use to which water may be transferred. However, in some states only state entities are authorized to obtain transfer approval of a diversionary water right to an instream right.⁶⁰

According to a 1986 survey by the Western States Water Council, the annual number of transfers varies significantly from state to state. Alaska, Nebraska, and North and South Dakota have a paucity of transfers, while water rights are transferred frequently in other states. Colorado, Idaho, Nevada, New Mexico, Utah, Washington, and Wyoming reported that 50 or more transfers occur annually. Colorado, Nevada, and Utah reported that more than 300 transfers occur each year.⁶¹

Recently, some states have simplified the marketing of water rights. In 1979, Idaho formalized some types of water transfer

⁵⁸ A matrix summarizing state-by-state water right transfer information was included as part of a report entitled WATER EFFICIENCY: OPPORTUNITIES FOR ACTION, REPORT TO THE WESTERN GOVERNORS from the WESTERN GOVERNORS' ASSOCIATION WATER EFFICIENCY WORKING GROUP (July 6, 1987).

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

activities by creating a water bank for marketing purposes.⁶² The bank "provide[s] a source of adequate water supplies to benefit new and supplemental water uses, and provide[s] a source of funding for improving water user facilities and efficiencies."⁶³ The Idaho Water Resource Board operates the bank on a statewide basis and appoints committees in local drainage areas. Farmers "deposit" water held under private rights or by allocations in federal reservoirs into either the state or the local water banks where it may be leased by other water users.

The California legislature adopted a policy to encourage transfers. It directs the Department of Water Resources, the State Water Resource Control Board, and other appropriate state agencies "to encourage voluntary transfers of water and water rights, including, but not limited to, providing technical assistance to persons to identify and implement water conservation measures which will make additional water available for transfer."⁶⁴ The legislature also requested the Department of Water Resources to establish a program to facilitate the voluntary exchange of water rights and to report legal and procedural changes that could be made to facilitate water marketing. Further, the Department must prepare and update a "water transfer guide" and create and maintain a periodically updated list of entities seeking to enter water transfer, lease, or exchange agreements.⁶⁵

Other Developments

The states have acted to protect public interest values in various other ways.⁶⁶ For example, Colorado has expanded the state

⁶² See IDAHO CODE § 42-1761 (Supp. 1988).

⁶³ Id.

⁶⁴ CAL. WATER CODE § 109 (West 1971).

⁶⁵ Id., §§ 470-483 (West 1989).

⁶⁶ Although this report focuses on state water quantity laws, western states have also become increasingly active in water quality protection. Many surface water pollution control efforts occur under provisions of the federal Clean Water Act, 33 U.S.C. §§ 1251-1376 (1982), which allows states to attain primacy for carrying out most important water pollution control programs, Id. § 1342. The act recognizes "the primary responsibilities and rights of the states" to mitigate and control water pollution. Id. § 1251(b).

In addition to state and federal efforts to mitigate surface water pollution under federal law, every state has acted to protect ground water quality. See, WESTERN STATES WATER COUNCIL,

role in the administration of appropriative water rights, with an increased recognition of the State Engineer's discretion to make rules governing water use. Instead of being guided by the priority of application alone, the Engineer can formulate rules to optimize water use.⁶⁷ The courts have expanded this principle, indicating that "maximum utilization" does not require a "single-minded endeavor to squeeze every drop of water" from a water source, but to make "optimum use" of the resource.⁶⁸

WESTERN STATE GROUND WATER MANAGEMENT, 1986. The states continue to enhance their legal protection of ground water quality. The U.S. Environmental Protection Agency reported in 1989 that, nationwide, 37 states enacted ground water legislation during the period 1985-1987, with 27 states enacting underground storage tank programs and 25 enacting legislation to protect ground water from contamination by agricultural chemicals. Twelve states enacted comprehensive statewide ground water protection strategies. See, United States Environmental Protection Agency, "Survey of State Ground Water Quality Protection Legislation Enacted 1985-1987," pp. vii-xi (1989).

States have also expanded upon federal legal protection for surface water. Many states have established standards more stringent than national standards to protect public drinking water supplies, for purposes of secondary wastewater treatment, and with respect to base-line water quality. States have also acted independently of federal law to control water pollution by establishing underground storage tank programs (see, e.g., ARIZ. REV. STAT. ANN. §§ 36-3301 et. seq. (1986); MONT. CODE ANN. §§ 75-10-403 et. seq. (1987); and S.D. CODIFIED LAWS ANN. § 34 A-2-98 (1987)); chemigation controls (see, e.g., CAL. FOOD & AGRIC. CODE § 13145 (West 1986); COLO. REV. STAT. § 35-11-106 (1987); N.D. CONT. CODE § 4-35.1-03 (1987)); pesticide controls (see, e.g., ARIZ. REV. STAT. ANN. §§ 49-301 et. seq. (1986) and CAL. FOOD & AGRIC. CODE §§ 13141 et. seq. (West 1986)); and critical ground water management areas (see, e.g., COLO. REV. STAT. § 37-90-106 (1987); ID. CODE § 42-233 (1985); OR. REV. STAT. § 537.730 (1988)), among other water quality programs. States have also created state super funds and programs to control hazardous waste and toxic substances. See Begley, et al, E pluribus, plures: without leadership from Washington, the states set the environmental agenda for the Nation, Newsweek, Nov. 13, 1989, at 70.

⁶⁷ See Fellhauer v. People, 167 Colo. 320, 447 P.2d 986, 994 (1968); Colorado Springs v. Bender, 148 Colo. 458, 366 P.2d 552, 556 (1961).

⁶⁸ Alamosa-La Jara Water Users Protective Ass'n v. Gould, 674 P.2d 914, 935 (Colo. 1983).

Also, the State Engineer enforces due diligence requirements more strictly relating to the acquisition of conditional water rights. In the past, conditional rights, rights established by declaring an intent to divert water without making a diversion, have sometimes been maintained for many years with only minimal physical effort or investment. Colorado courts have imposed stricter requirements.⁶⁹ Thus, the water courts are scrutinizing such rights to insure that there is a genuine intent to appropriate, and not merely to speculate.⁷⁰ Further, Colorado law⁷¹ now requires proof that a project will be completed with diligence before a decree for a conditional right can be issued.⁷² Imposing stricter requirements on conditional rights makes more water available for current demands to meet present economic uses.

In 1987 Oregon enacted a law to provide for the sale or lease of "conserved water."⁷³ The law defines conserved water as "that amount...previously unavailable to subsequent appropriators, that results from conservation measures."⁷⁴ "Conservation" is defined as "the reduction of the amount of water (previously) consumed or irretrievably lost...achieved either by improving the technology or method for diverting, transporting, applying or recovering the water or by implementing other improved conservation measures".⁷⁵ Any water right holder may apply to the Water Resources Commission for approval to carry out conservation measures.

In determining the applications the Commission must consider whether the project would be feasible, whether the public interest would be served, if any injury would accrue to other vested water rights, and whether the project adequately mitigates effects on other water users. The Water Resources Commission allocates a percentage of the water proposed to be conserved to the applicant

⁶⁹ Colorado River Conservation Dist. v. City & County of Denver, 640 P.2d, 1139 (Colo. 1982).

⁷⁰ See, e.g. Colorado River Water Conservation Dist. v. Vidler Tunnel Water Co., 197 Colo. 413, 594 P.2d 566, 568 (1979).

⁷¹ COLO. REV. STAT. § 37-92-305(9)(b) (Cum. Supp. 1987).

⁷² See Southeastern Colorado Water Conservancy Dist. v. City of Florence, 688 P.2d 715, 718 (Colo. 1984); see also Talco Ltd. v. Danielson, 769 P.2d 468 (Colo. 1989).

⁷³ ORE. REV. STAT. §§ 537.455 - 537.500.

⁷⁴ Id. § 537.455(2).

⁷⁵ Id. § 537.455(1).

(usually 75%), and a percentage (presumed to be 25% unless reasons dictate a lesser or greater percentage) to the state.⁷⁶

After the applicant successfully carries out the conservation project, the Commission determines the amount of conserved water and issues a new water right certificate to the conserving party for that party's percentage of the water.⁷⁷ The certificate contains a priority to the conserved water "one minute after the priority of the water right held by the person implementing the conservation measure."⁷⁸ This law encourages water conservation and protects the public interest by allowing a water user not only to benefit from his conservation measures, but at the same time, to increase water available for other public uses. Any person or agency allocated conserved water may reserve the water instream for future out-of-stream use or otherwise use or dispose of conserved water.⁷⁹

Public Trust Doctrine

Public interest values in western water resource management are also protected by the public trust doctrine. This doctrine is based on ancient common law principles forcefully articulated in the U.S. Supreme Court's 1892 decision in Illinois Cent. R.R. v. Illinois.⁸⁰ In that case the Illinois legislature had conveyed to the railroad company the bed of Lake Michigan bordering Chicago. Subsequently, the legislature reviewed its action and rescinded the conveyance. The railroad brought a quiet title suit to settle its ownership of the harbor bed. The Supreme Court, relying on Illinois' sovereign power over navigable waters, ruled that the legislature could revoke the conveyance because it had been made

⁷⁶ Id. § 537.470.

⁷⁷ Id. § 537.475.

⁷⁸ Id. § 537.485.

⁷⁹ Id. § 537.490. Oregon is also formulating a policy to expand the state's longstanding prohibition of waste in water use to require water users to employ best practicable technology to assure maximum efficiency. Public hearings on the subject are currently being held. The hearings have been well attended and interest in the subject has been high. See remarks by William Young, Director, Oregon Water Resources Department, Meeting of the Western States Water Council (July 13, 1990) (included as part of the minutes on file at the Western States Water Council Office). Washington state is considering similar actions. See remarks by Ken Slattery, Washington Department of Ecology, Meeting of the Western States Water Council, Id.

⁸⁰ 146 U.S. 387 (1892).

initially in violation of the public trust. The ruling appeared to be based on federal common law. In Appleby v. City of New York, however, the Court stated that the decision was based on Illinois state law.⁸¹

Many western state courts have recognized the public trust doctrine.⁸² Among the various public trust cases, National Audubon Society v. Superior Court,⁸³ and United Plainsmen v. North Dakota State Water Commission⁸⁴ are important to a basic understanding of the effect the public trust doctrine may have on state systems of water resource management.⁸⁵

In the National Audubon Society case, commonly referred to as the Mono Lake case, the California Supreme Court held that the state can balance environmental water uses against other uses in California, and concluded that the public trust doctrine exists apart from the appropriation doctrine. The court found that the need for public trust protection provides a procedural tool to reexamine and, in some instances, retroactively modify vested appropriative water rights to protect the public trust. The operation of the public trust doctrine as described in Mono Lake was specifically adopted by at least one other state court.⁸⁶

In the United Plainsmen case, the North Dakota Supreme Court declared that, with respect to water resource management, a state

⁸¹ 271 U.S. 364, 395 (1926).

⁸² See National Audubon Soc'y v. Superior Court, 33 Cal. 3d 419, 658 P.2d 609, 189 Cal. Rptr. 364 (1983); Kootenai Environmental Alliance v. Panhandle Yacht Club, 105 Idaho 622, 671 P.2d 1085 (1983); Dep't of State Lands v. Pettibone, 216 Mont. 361, 702 P.2d 948 (1985); United Plainsmen Ass'n v. North Dakota State Water Conservation Comm'n 247 N.W. 2d 457 (N.D. 1976); Morse v. Oregon Div. of State Lands, 34 Ore. App. 855, 581 P.2d 520 (1978); State v. Lain, 162 Tex. 549, 349 S.W. 2d 579 (Tex. 1961).

⁸³ 33 Cal. 3d 419, 658 P.2d 709 (1983).

⁸⁴ 247 N.W. 2d 457 (N.D. 1976).

⁸⁵ For an excellent analysis of the relationship between the public trust doctrine and western water resource management see generally Walston, The Public Trust Doctrine in the Water Rights Context: The Wrong Environmental Remedy, 22 SANTA CLARA L. REV. 63 (1982), and Walston, The Public Trust Doctrine in the Water Rights Context, 29 NAT. RESOURCES J. 585 (1989).

⁸⁶ See Kootenai Env'tl. Alliance v. Panhandle Yacht Club, 105 Idaho 622, 671 P.2d 1085 (1983).

statute⁸⁷ expressed the public trust doctrine. The court found that state statutory and constitutional laws establish a policy in favor of long term water planning. The court also found that the public trust doctrine confirms the state's role as trustee of its water resources and complements constitutional and statutory authority, but does not impose an independent obligation on the state that requires continual review of vested appropriative water rights.

These and other rulings, including the Illinois Central ruling itself, indicate that the public trust doctrine likely exists in every state, but may be different from state to state. Thus, western states are obligated to give adequate consideration to public trust interests in their administration and management of western water resources.⁸⁸ This is so even where the public doctrine is currently latent. These uses, however, are not the same in every state. To the contrary, they may differ depending on climate, economics, hydrology, traditional water and land use patterns, and a variety of other factors. Further, the public trust compels no particular decision in any given water use situation. It is neutral as to choices states make, but it requires that trust uses and values be given adequate consideration when the choices are made.

Where public trust uses have received inadequate protection, the public trust doctrine may provide a basis for challenging decisions that resulted from the neglect. However, the United Plainsman case confirms the theory that many state systems of water law, as they presently function, may adequately protect the public trust. Where state water allocations inadequately protect public trust uses and values, the public trust doctrine may provide a tool to modify such allocations.

SUMMARY

In summary, the appropriation doctrine has evolved in the West to provide protection and enhancement of public interest values. This is accomplished primarily pursuant to: (1) provisions requiring consideration of the public interest in water allocation and transfer decisions; (2) laws and programs to enable establishment of instream flows and protection of instream values; and (3) provisions and policies to facilitate and encourage water

⁸⁷ See N.D. CENT. CODE § 61-01-01 (1985).

⁸⁸ See Littleworth, The Public Trust vs. The Public Interest, 19 PACIFIC L. J. 1201, 1207-12 (1988).

transfers. These measures are supplemented in varying degrees by the public trust doctrine.⁸⁹

The federal government has also moved to protect and enhance public interest values in western water resources, as defined for its purposes by federal public land and environmental laws. These federal efforts have often resulted in conflicts with western state water law systems as the following section will show.

⁸⁹ For additional information on protection of the public interest in western water resource management through statutory provisions, instream flow laws, water transfers, and the public trust doctrine see N. Johnson and C. DuMars, A Survey of the Evolution of Western Water Law in Response to Changing Economic and Public Interest Demands, 29 NAT. RESOURCES J. 347-387 (1989).

APPENDIX E

Public Interest Considerations In Nevada's Water Law

PUBLIC INTEREST CONSIDERATIONS IN NEVADA'S WATER LAW

Source: Supplemental Ruling on Remand #3787A in the Office of the State Engineer of the State of Nevada, dated October 9, 1992, pages 9 - 13.

Nevada's water law does not define public interest, so it is a matter within the discretion of the State Engineer. However, public interest considerations are found throughout NRS chapters 533, 534 and 540.

The water of all sources above or beneath the ground belongs to the public. (NRS 533.025)

Subject to existing rights, all such water may be appropriated for beneficial use as provided in this chapter and not otherwise. [NRS 533.030(1)]

The beneficial use of water is declared a public use. (NRS 533.050)

State policy is to recognize and provide for the protection of existing water rights, and to encourage efficient and nonwasteful use of the state's limited supplies of water resources. [NRS 540.011(1)]

The Legislature recognizes the relationship between the critical nature of the state's limited water resources and the increasing demands placed on these resources as the population of the state continues to grow. [NRS 540.011(2)]

The Legislature recognizes the use of water for wildlife including the establishment and maintenance of wetlands and fisheries. (NRS 533.023)

Springs on which wildlife customarily subsist must be protected. (NRS 533.367)

The Legislature encourages the use of effluent where such use is not contrary to public health, safety or welfare. (NRS 533.024)

Water for recreational purposes from either underground or surface sources is declared to be a beneficial use. [NRS 533.030(2)]

Livestock watering is declared to be a beneficial use. [NRS 533.490(1)]

Springs and streams on which livestock subsist must be protected. (NRS 533.495)

The law addresses not allowing the waste of water and allowing rotation among users. [NRS 533.075 and 533.530(1)]

The law prohibits the pollution and contamination of underground water and directs the State Engineer to promulgate rules to prevent such. [NRS 534.020(2)]

The law prohibits the diversion of water when the necessity for its use no longer exists. (NRS 533.045)

The State Engineer, therefore, finds that the Nevada Legislature has provided substantial guidance as to what it determines to be in the public interest.

* * * * *

From his review of Nevada's water law, the State Engineer finds that the following principles should serve as guidelines in his determination of what constitutes "the public interest" within the meaning of NRS 533.370:

1. An appropriation must be for a beneficial use. [NRS 533.030(1)]
2. The applicant must demonstrate the amount, source and purpose of the appropriation. (NRS 533.335)
3. If the appropriation is for municipal supply, the applicant must demonstrate the approximate number of persons to be served and the approximate future requirements. [NRS 533.340(3)]
4. The right to divert ceases when the necessity for the use of the water does not exist. (NRS 533.045)
5. The applicant must demonstrate the magnitude of the use of water such as the number of acres irrigated, the use to which generated hydroelectric power will be applied, or the number of animals to be watered. (NRS 533.340)
6. In considering extensions of time to apply water to beneficial use, the State Engineer must determine the number of parcels and commercial or residential units which are contained or planned in the area to be developed, economic conditions which affect the ability of the developer to complete application of the water to beneficial use, and the period contemplated for completion in a development project approved by local governments or in a planned unit development. [NRS 533.380(4)]
7. For large appropriations, the State Engineer must consider whether the applicant has the financial capability to develop the water and place it to beneficial use. (NRS 533.375)

8. The State Engineer may cooperate with Federal authorities in monitoring the development and use of the water resources of the State. [NRS 532.170(1)]
9. The State Engineer may cooperate with California authorities in monitoring the future needs and uses of water in the Lake Tahoe area and to study ways of developing water supplies so that the development of the area will not be impeded. (NRS 532.180)
10. Rotation in use is authorized to bring about a more economical use of supplies. (NRS 533.075)
11. The State Engineer may determine whether there is overpumping of groundwater and refuse to issue permits if there is no unappropriated water available. [NRS 534.110(3)]
12. The State Engineer may determine what is a reasonable lowering of the static water level in an area after taking into account the economics of pumping water for the general type of crops growing and the effect of water use on the economy of the area in general. [NRS 534.110(4)]
13. Within an area that has been designated, the State Engineer may monitor and regulate the water supply. [NRS 534.110(6)]

APPENDIX F

Comment Letter and Legal Opinion on the Water Rights Provision of the Proposed Rules for Rangeland Reform '94

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July 6, 1994

Rangeland Reform '94
P.O. Box 66300
Washington, D.C. 20035-6300

Dear Sir or Ms.:

Thank you for the opportunity to comment on the proposed rules for Rangeland Reform '94 by the United States Bureau of Land Management (BLM). This letter is to comment only on the water rights provision of the proposed rules--Section 4120.3-9, *Water Rights for the Purpose of Livestock Grazing on Public Lands*.

The comments in this letter are provided on behalf of, and with the unanimous approval of, the bipartisan membership of the Nevada Legislature's Committee to Study the Use, Allocation and Management of Water (Senate Bill 327, Chapter 655, *Statutes of Nevada* 1993). Over the past year, this interim water study committee has held hearings in all areas of the State and received extensive testimony on this issue and a variety of other topics concerning Nevada's administration and management of its precious water resources.

Summary

The Nevada Legislature's water study committee strongly objects to the water rights provision of the proposed rules for Rangeland Reform '94. This provision would significantly modify the existing three-way system for administering livestock water rights in Nevada, it would alter the cooperative relationship that now exists between the State and the BLM in this area, and it would unduly infringe upon the State's primacy and control of its water law and policy. The committee has yet to hear a coherent or convincing argument of the need for this language or the problems that would be resolved.

The Nevada Legislature's water study committee recommends that the water rights provision (Section 4120.3-9) of the proposed rules be deleted in its entirety, or that the proposal be amended to incorporate Nevada's three-way system into nationwide policy for the BLM. As a minimum, the committee recommends that the language of the proposed water rights provision be modified to allow for the continued use of the three-

way system in Nevada. Attached is a proposed revision which demonstrates the changes that are recommended for the water rights provision.

Three-Way System

The water rights provision in the Rangeland Reform '94 proposal raises significant concerns and is unclear on its application in Nevada. The language of the provision appears to be fairly innocuous with its apparent acquiescence to state water law. However, this language could represent a major change in water policy between the Federal Government and the State, depending upon how the provision is interpreted and how aggressively it is applied by the Federal land management agencies.

For many years, and particularly since the decision in the case of *Nevada v. Morros*, 104 Nev. 709 (Dec. 1988), the United States has been treated like any other "person" in Nevada who can properly be granted and hold water rights on the lands it owns for the purpose of watering livestock and wildlife. Apparently at the insistence of the BLM, an informal policy was developed with the State Engineer to deal fairly with the allocation of water rights on federal land. This policy, known as the "three-way system," essentially provides that:

1. If the range user (a private person) develops the water right on the public land, the water right is acquired and perfected in his or her name.
2. If the Federal Government develops the water right on the public land, the water right is acquired and perfected in its name.
3. If the range user and the Federal Government work together in developing the water right on public land, the water right is acquired and perfected jointly in both names.

This system has worked well in protecting the interests of the United States as the landowner and in recognizing the interests of the rancher who has invested his resources to place the water to beneficial use. The three-way system is current practice in this State, but it is not codified.

Lack of Clarity

The avowed purpose of the water rights provision in the Rangeland Reform '94 proposal is for the United States, under State law, to acquire and perfect any new rights to water on public land for livestock grazing. This purpose essentially eliminates two of the options under the three-way system.

The language of the proposed rule indicates that State water law would have primacy, so Nevada could formally put the three-way system into law by statute or regulation and maintain the current practice. Such an action, however, would place the State's law

in conflict with the intended purpose of the proposed federal rule. It also raises several concerns about the application of the proposed rule, such as:

- If State law continues to allow private individuals to acquire and perfect water rights on public lands for livestock grazing, will the Federal land management agencies recognize such rights?
- With such a law in place, would the Federal land management agencies use its authorizations for developing water on public lands (cooperative agreements and range improvement permits) to maintain control of the water resources or otherwise deny access?
- If the Federal Government acquires and perfects a water right for livestock purposes on public lands and if the lands are not permitted for grazing so that the water is not beneficially used, would that water right be subject to the State's forfeiture statutes? Would that forfeited water revert to the State and become available for further appropriation by a private individual?

These and other questions indicate the lack of clarity in the language of the proposed rule.

Lack of Rationale

The proposed water rights provision obviously is intended to establish general policy for the BLM's administration of livestock grazing on the public lands throughout the Western States. But every state's water laws are different. The people of Nevada need to know how the proposed general policy would work under this State's laws in real life situations.

The Nevada Legislature's water study committee has included discussion of the water rights provision in its hearings over the past several months. In each instance, the State BLM officials could not offer a convincing, comprehensive or logical explanation of the need for, or the problems to be addressed by, this provision.

One argument apparently relates to some fear of the transfer of water resources from rural to urban areas of the State. This issue, however, is not within the purview of the Federal Government. Water transfers are a matter of State concern which should be managed under State water policy.

Another argument relates to consistency. The *Federal Register* notice indicates that the proposed rule on water rights " * * * is intended to generally make BLM's policy consistent with Forest Service practice, and with BLM policy prior to being changed in the early 1980's." According to United States Forest Service (USFS) officials in Nevada, a comparable rule does not exist in the regulations of the USFS. Policies are outlined in the *Forest Service Manual*, but these policies reflect a degree of flexibility

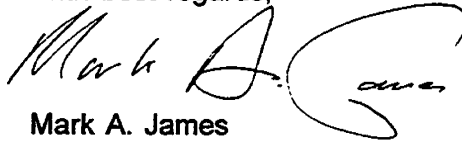
that is not found in the BLM proposal. In addition, the lands administered by the USFS generally are significantly different from those managed by the BLM.

In reference to the consistency of BLM policy, it should be noted that the BLM generally did not apply for water rights in Nevada prior to the early 1980's. The policy was changed late in the 1980's after the decision in the case of *Nevada v. Morros*. This change resulted in a greater level of cooperation between the State and the BLM under the three-way system. The proposed rule would establish a totally inconsistent policy in Nevada.

Conclusion

The people of Nevada know that the three-way system works well and that it is perceived as fair to all parties on the rangelands. This cooperative system should be continued. The water rights provision of the Rangeland Reform '94 proposal should be eliminated, or clarified to ensure that its application in Nevada includes maintenance of the existing three-way system. As the driest, and fastest growing state in the Nation, Nevada also must be assured that it will maintain primacy of control over its most vital resource through the application of the State's water laws.

With best regards,

A handwritten signature in black ink, appearing to read "Mark A. James", with a large, stylized flourish at the end.

Mark A. James
Nevada State Senator
Chairman
Legislative Committee to Study the Use,
Allocation and Management of Water

MAJ/BD/cl
Code:waterwt4
Enc.

cc: Governor Bob Miller
Nevada's Congressional Delegation

Rangeland Reform '94
Proposed Revision to the Water Rights Provision

The Nevada Legislature's Committee to Study the Use, Allocation and Management of Water (Senate Bill 327, Chapter 655, *Statutes of Nevada 1993*) makes the following suggestion to revise Section 4120.3-9 of Subpart 4120 of Part 4 of Title 43 of the *Code of Federal Regulations*, as proposed by the Bureau of Land Management in its regulation published in the *Federal Register* on March 25, 1994:

Any right acquired on or after (the effective date of the rule) to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained and administered in accordance with the following policy:

1. If the range user (a private person) develops the water right on the public land, the water right is acquired and perfected in his name.
2. If the Federal Government develops the water right on the public land, the water right is acquired and perfected in its name.
3. If the range user and the Federal Government work together in developing the water right on the public land, the water right is acquired and perfected jointly in both names.

Code:waterw14a

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June 7, 1994

Senator Mark A. James
Chairman, Legislative Committee
To Study The Use, Allocation and
Management of Water
Bank of America Plaza
300 S. 4th Street, Suite 800
Las Vegas, Nevada 89101

Dear Senator James:

As Chairman of the Legislative Committee to Study the Use, Allocation and Management of Water (Senate Bill No. 327), you have asked this office for an opinion whether Nevada law sufficiently incorporates the "three-way system" for obtaining water rights on federal land so that, under the regulation proposed by the Bureau of Land Management, commonly referred to as the Rangeland Reform '94 proposal, the only way the federal government can acquire and perfect water rights in its own name is if it, rather than the range user, develops the water right. It is the opinion of this office that, while it can be argued that the law of this state incorporates the "three-way system," it is necessary to statutorily adopt the "three-way system" to ensure that, under the proposed regulation, the federal government acquires and perfects water rights in its own name only when it develops the water right.

Section 4120.3-9 of Subpart 4120 of Part 4 of Title 43 of the Code of Federal Regulations, as proposed by the Bureau of Land Management in its regulation published in the Federal Register dated March 25, 1994, provides:

Any right acquired on or after (The Effective Date of the Rule Would be Inserted here) to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such

land is located. To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.

Thus, pursuant to the proposed regulation, to the extent allowed by the substantive and procedural laws of this state, any right to use water on public land for the purpose of livestock watering on public land will be acquired, perfected, maintained and administered in the name of the United States. A review of the "three-way system" and of the laws of this state is necessary to determine whether the "three-way system" is sufficiently incorporated into the laws of this state so that, pursuant to the proposed regulation, the only way the federal government acquires and perfects a water right in the name of the United States is if the federal government develops the water right.

Based on discussions at various meetings of the committee, it is apparent that the practice of the State Engineer's Office concerning the acquisition and perfection of water rights on federal land, referred to as the "three-way system," is essentially as follows:

1. If the range user (a private person) develops the water right on the public land, the water right is acquired and perfected in his name.
2. If the federal government develops the water rights on the public land, the water right is acquired and perfected in its name.
3. If the range user (a private person) and the federal government work together in developing the water right on the public land, the water right is acquired and perfected in both names jointly.

Pursuant to subsection 1 of NRS 533.030, water appropriation in Nevada is governed by statute. Water may be appropriated only after obtaining a permit from the State Engineer. NRS 533.325. Upon perfection of a water right pursuant to the provisions of chapter 533 of NRS, the State Engineer records a certificate of the water right in his office and sends a copy to the permit holder. NRS 533.425. There is no statutory provision concerning the "three-way system." Nor is the "three-way system" established as the law of this state by way of caselaw. There has been some discussion at various meetings of the committee to the effect that State v. Morros, 104 Nev. 709 (Dec. 1988), supports the establishment of such a system as being the law in Nevada. The only issue addressed in Morros which is pertinent to the "three-way system" is that portion of the holding which states that the United States can properly be granted and hold water rights on lands it owns for the purpose of watering livestock and wildlife.

The "three-way system" described above is the current practice of the State Engineer's Office. However, no regulation has been adopted concerning this system and the practice is otherwise unwritten in any form. According to the State Engineer's Office, the "three-way system" came into practice in 1989 or 1990 as a result of insistence by the Bureau of Land Management that certain permits for the watering of livestock on public lands be recorded by the State Engineer jointly in the names of the Bureau of Land Management and the specific range user.

The term "law" has been construed by many courts for many purposes. For example, courts have broadly construed the term "laws" to mean nothing more than rules promulgated by government as a means to an ordered society. Miami Laundry Co. v. Florida Dry Cleaning & Laundry Bd., 183 So. 759, 764 (Fla. 1938). Law, in its generic sense, is a body of rules of action or conduct prescribed by a controlling authority, and having binding legal force. United States Fidelity and Guaranty Co. v. Guenther, 281 U.S. 34, 37 (1930). Pursuant to broad definitions such as these, it could be argued that because an unwritten policy of the State Engineer is a rule promulgated by a government and is a ruling prescribed by a controlling authority, it should be considered a law.

However, a review of relevant legal authority reveals that, historically, courts have more commonly applied a narrower definition. For example, "law" has been defined to mean statutes and decisions of courts. Miller v. Dunn, 14 P. 27, 29 (Cal. 1887); Warren v. U.S., 340 U.S. 523, 526 (1951); Matter of Estate of Perlberg, 694 S.W. 2d 304, 307 (Tenn. App. 1984). More particularly, the "law of the state" has also been defined as including common law, although it is more commonly understood to mean enactments promulgated by the legislature. Lycoming Fire Ins. Co. v. Wright, 12 A. 103, 108 (Vt. 1888); State ex rel. Ralston v. State Dept. of Licenses, 374 P.2d 571, 574 (Wash. 1962). Finally, regulations of a governmental agency have been afforded the status of law. Irving Trust Co. v. Nationwide Leisure Corp., 95 F.R.D. 51, 60 (1982); Hartzell v. Connell, 201 Cal. Rptr. 601, 612-613 (Cal. 1984); Jackson v. First Federal Sav. of Arkansas, 709 F.Supp. 887, 892 (E.D. Ark. 1989). Therefore, under the more narrow definition, because the "three-way system" is not found in statute, regulation or decision of a court, it would not be construed to be "law" in this state.

It follows that, for the purpose of the proposed regulation, because the federal government may construe the term "law of this state" under the most narrow of the definitions of law, unless the "three-way system" is codified into statutory law, it cannot be conclusively stated that the "law of the state" in Nevada sufficiently incorporates this system so as to have the force and effect of "law" under the proposed regulation.

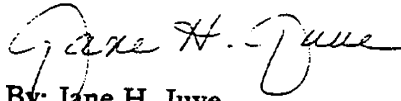
Based on the foregoing, it is the opinion of this office that, although the "three-way system" may be the customary practice and unwritten policy of the State Engineer's Office, it cannot be conclusively stated that the current law of this state

Senator Mark James
June 7, 1994
Page 4

sufficiently incorporates this system so as to have the force and effect of "law" under the proposed federal regulation set forth in the Rangeland Reform '94 proposal. Therefore, to ensure that the "three-way system" is considered to be the "law of this state" pursuant to the most narrow definition of that term under the proposed regulation of the Bureau of Land Management, it is necessary to adopt the system statutorily.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel



By: Jane H. Juve
Deputy Legislative Counsel

cc: Assemblyman Joseph E. Dini, Jr., Vice Chairman
Senator Ernest E. Adler
Senator Dean A. Rhoads
Assemblyman Val Z. Garner
Assemblyman Joan A. Lambert

APPENDIX G

Suggested Legislation

BDR	Summary	<u>Page</u>
BDR 48-982	Makes various changes relating to titling and recording of water rights	111
BDR 48-983	Makes various changes relating to recording of conveyances of water rights	121
BDR 48-985	Requires state engineer to establish system of credit for conservation of water	125
BDR 48-986	Enacts provisions governing acquisition of water rights on public lands for purposes of watering livestock	131
BDR 48-987	Requires state engineer to establish program to map water rights	133
BDR 48-988	Defines "subsisting right" to water livestock	135
BDR 48-989	Revises provisions governing approval by state engineer of application or permit to appropriate water	137
BDR 48-990	Revises definition of "domestic use" for purposes of statutes governing underground water and wells	141
BDR 48-991	Revises definition of "person" and changes reference from "tax" to "assessment" for purposes of applicability of certain provisions governing water rights	145
BDR 48-992	Requires development of statewide water plan	153
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BDR 48-994	Provides for adjustment of tax on transfer of water from county of origin 161
BDR R-995	Urges Federal Government to adhere to states' laws governing use, allocation, management and protection of water 163
BDR 48-996	Authorizes board of directors of irrigation district to allow transfer of storage water to land excluded from storage benefits of district irrespective of size or ownership of parcels of land 167
BDR 30-997	Revises provisions governing eligibility of certain purveyors of water to receive grants for making capital improvements to publicly owned water systems 171
BDR 40-998	Provides for distribution of administrative fine imposed for violation of certain laws and regulations governing suppliers of water 173
BDR R-999	Urges Congress to approve California-Nevada Interstate Compact 175
BDR R-1000	Urges Congress to investigate utility of importing water to Nevada from sources outside Nevada 177

SUMMARY--Makes various changes relating to titling and recording of water rights. (BDR 48-982)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; making various changes relating to the titling and recording of water rights; providing that water rights appurtenant to land are presumed to be conveyed with the land; providing expressly that the tax on a transfer of real property is applicable to an instrument in writing by which title to a water right is conveyed; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 533 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *Except as otherwise provided in section 6 of this act, every conveyance of a water right or of water already appropriated must be:*

- 1. Made by deed;*
- 2. Acknowledged in the manner provided in NRS 240.161 to 240.168, inclusive; and*

3. *Recorded in the office of the county recorder of each county in which the water is:*

- (a) Applied to beneficial use; or*
- (b) Diverted from its natural source.*

Sec. 3. *A person conveying a water right or water already appropriated shall file with the state engineer, together with the prescribed fee, a report of conveyance which includes the following information on a form to be provided by the state engineer:*

- 1. An abstract of title;*
- 2. A copy of any deed, written agreement or other document pertaining to the conveyance of the water right or water already appropriated; and*
- 3. Any other information requested by the state engineer.*

Sec. 4. *The county recorder of each county in which a deed is recorded pursuant to section 2 of this act shall promptly transmit a copy of the deed to the state engineer. The state engineer shall file the copy of the deed upon receipt.*

Sec. 5. 1. *The recording of a deed pursuant to section 2 of this act shall be deemed to impart notice of the contents of the deed to all persons at the time the deed is recorded, and a subsequent purchaser or mortgagee shall be deemed to purchase and take with notice of the contents of the deed.*

2. The deed of a water right or of water already appropriated that has not been recorded as required by section 2 of this act shall be deemed void as against a subsequent purchaser who in good faith and for valuable consideration purchases the same water right or water already appropriated, or

any portion thereof, if the subsequent purchaser first records his deed in compliance with section 2 of this act.

Sec. 6. *The provisions of sections 2 to 5, inclusive, of this act do not apply to the conveyance of shares of stock in a ditch company which owns water rights or water already appropriated.*

Sec. 7. NRS 533.185 is hereby amended to read as follows:

533.185 After the hearing the court shall enter a decree affirming or modifying the order of the state engineer. *Within 30 days after the entry of final judgment by the district court, or if an appeal is taken, within 30 days after the entry of the final judgment by the appellate court or within 30 days after the entry of the final judgment after remand, the clerk of the court issuing the final judgment shall:*

- 1. Deliver to the state engineer a certified copy of the final judgment; and*
- 2. Cause a certified copy of the final judgment to be filed in the office of the county recorder in each county in which the water adjudicated is:*

(a) Applied to beneficial use; or

(b) Diverted from its natural source.

Sec. 8. NRS 533.324 is hereby amended to read as follows:

533.324 As used in NRS [533.325, 533.345 and 533.425,] 533.324 to 533.435, *inclusive, and sections 2 to 6, inclusive, of this act, "water already appropriated" includes water for whose appropriation the state engineer has issued a permit but which has not been applied to the intended use before an application to change the place of diversion, manner of use or place of use is made.*

Sec. 9. NRS 533.385 is hereby amended to read as follows:

533.385 1. An assignment of a water permit or application is valid only if it is made to a person otherwise authorized to acquire the permit.

2. Except as *otherwise* provided in subsection 3, any application for a permit or any permit to appropriate water may be assigned subject to the conditions of the permit . [, but no such assignment is binding except between the parties thereto, unless filed for record in the office of the state engineer.]

3. The governing body of any local government of this state and any public utility which is a purveyor of water within the state may submit an affidavit or other document upon oath to the state engineer, clearly indicating that rights for diverting or appropriating water are appurtenant to any real property described in the affidavit which is owned by the governing body or utility. Upon receipt of the affidavit, the state engineer shall assign those rights to that local government or utility if he finds that the affiant is qualified to sign the affidavit.

Sec. 10. NRS 533.435 is hereby amended to read as follows:

533.435 1. The state engineer shall collect the following fees:

For examining and filing an application for a permit to
appropriate water \$250.00

This fee includes the cost of publication, which is
\$50.

For examining and acting upon plans and specifications for
construction of a dam 500.00

For examining and filing an application for each permit to change the point of diversion, manner of use or place of use of an existing right..... 150.00

This fee includes the cost of the publication of the application, which is \$50.

For issuing and recording each permit to appropriate water for any purpose, except for generating hydroelectric power which results in nonconsumptive use of the water or watering livestock or wildlife purposes..... 150.00

plus \$2 per acre-foot approved or fraction thereof.

For issuing and recording each permit to change an existing right whether temporary or permanent for any purpose, except for generating hydroelectric power which results in nonconsumptive use of the water, for watering livestock or wildlife purposes which change the point of diversion or place of use only, or for irrigational purposes which change the point of diversion or place of use only 100.00

plus \$2 per acre-foot approved or fraction thereof.

For issuing and recording each permit to change the point of diversion or place of use only of an existing right whether temporary or permanent for irrigational purposes 200.00

For issuing and recording each permit to appropriate or change the point of diversion or place of use of an existing right only whether temporary or permanent for

watering livestock or wildlife purposes for each second-foot of water approved or fraction thereof.....	50.00
For issuing and recording each permit to appropriate or change an existing right whether temporary or permanent for water for generating hydroelectric power which results in nonconsumptive use of the water for each second-foot of water approved or fraction thereof.....	100.00
This fee must not exceed \$1,000.	
For filing a secondary application under a reservoir permit.....	200.00
For approving and recording a secondary permit under a reservoir permit	200.00
For reviewing each tentative subdivision map	150.00
plus \$1 per lot.	
For storage approved under a dam permit for privately owned nonagricultural dams which store more than 50 acre-feet ..	100.00
plus \$1 per acre-foot storage capacity. This fee includes the cost of inspection and must be paid annually.	
For filing proof of completion of work	10.00
For filing proof of beneficial use.....	50.00
For filing any protest.....	25.00
For filing any application for extension of time within which to file proofs.....	100.00

For <i>examining and</i> filing [any assignment or water right deed, for each water right assigned,] <i>a report of conveyance of a water right or water already appropriated</i> , actual cost of the work up to	10.00
For filing any other instrument	1.00
For making copy of any document recorded or filed in his office, for the first 100 words.....	1.00
For each additional 100 words or fraction thereof.....	.20
For certifying to copies of documents, records or maps, for each certificate.....	1.00
For each blueprint copy of any drawing or map, per square foot .....	.50
The minimum charge for a blueprint copy, per print.....	3.00

2. When fees are not specified in subsection 1 for work required of his office, the state engineer shall collect the actual cost of the work.

3. Except as otherwise provided in this subsection, all fees collected by the state engineer under the provisions of this section must be deposited in the state treasury for credit to the general fund. All fees received for blueprint copies of any drawing or map must be kept by him and used only to pay the costs of printing, replacement and maintenance of printing equipment. Any publication fees received which are not used by him for publication expenses must be returned to the persons who paid the fees. If, after exercising due diligence, the state engineer is unable to make the refunds, he shall deposit the

fees in the state treasury for credit to the general fund. The state engineer may maintain, with the approval of the state board of examiners, a checking account in any bank qualified to handle state money to carry out the provisions of this subsection. The bank account must be secured by a depository bond satisfactory to the state board of examiners to the extent the account is not insured by the Federal Deposit Insurance Corporation.

Sec. 11. Chapter 111 of NRS is hereby amended by adding thereto a new section to read as follows:

Unless the deed conveying land specifically provides otherwise, all applications and permits to appropriate any of the public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, and all adjudicated water rights appurtenant to the land are presumed to be conveyed with the land.

Sec. 12. NRS 375.010 is hereby amended to read as follows:

375.010 The following terms, wherever used or referred to in this chapter, have the following meaning unless a different meaning clearly appears in the context:

1. "Deed" means every instrument in writing, except a last will and testament, whatever its form, and by whatever name it is known in law, by which title to any estate or present interest in real property , *including a water right or water already appropriated as defined in NRS 533.324*, is conveyed or transferred to, and vested in, another person, but does not include a lease for any term of years or an easement.

2. "Value" means:

(a) In the case of any deed not a gift, the amount of the full, actual consideration paid or to be paid, excluding the amount of any lien or liens assumed.

(b) In the case of a gift, or any deed with nominal consideration or without stated consideration, the estimated price the real property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Sec. 13. 1. The provisions of sections 2 to 5, inclusive, of this act, are not applicable to a conveyance of a water right or water already appropriated as defined in NRS 533.324 which is completed before October 1, 1995.

2. The amendatory provisions of section 9 of this act are not applicable to an assignment of an application for a permit or for any permit to appropriate water which is completed before October 1, 1995.

3. The amendatory provisions of section 11 of this act are not applicable to a conveyance of land which is completed before October 1, 1995.

SUMMARY--Makes various changes relating to recording of conveyances of water rights. (BDR 48-983)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; making various changes relating to the recording of conveyances of water rights; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 533 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *Except as otherwise provided in section 6 of this act, every conveyance of a water right or of water already appropriated must be:*

- 1. Made by deed;*
- 2. Acknowledged in the manner provided in NRS 240.161 to 240.168, inclusive; and*
- 3. Recorded in the office of the county recorder of each county in which the water is:*
 - (a) Applied to beneficial use; or*
 - (b) Diverted from its natural source.*

Sec. 3. The county recorder of each county in which a deed is recorded pursuant to section 2 of this act shall:

1. If the place of use of the water is wholly or partly within the boundaries of an irrigation district, promptly transmit a certified copy of the deed to that irrigation district; and

2. Promptly transmit a copy of the deed to the state engineer. The state engineer shall file the copy of the deed upon receipt.

Sec. 4. 1. The recording of a deed pursuant to section 2 of this act shall be deemed to impart notice of the contents of the deed to all persons at the time the deed is recorded, and a subsequent purchaser or mortgagee shall be deemed to purchase and take with notice of the contents of the deed.

2. The deed of a water right or of water already appropriated that has not been recorded as required by section 2 of this act shall be deemed void as against a subsequent purchaser who in good faith and for valuable consideration purchases the same water right or water already appropriated, or any portion thereof, if the subsequent purchaser first records his deed in compliance with section 2 of this act.

Sec. 5. A water right or water already appropriated may be conveyed with the land with which it is associated as an appurtenance or may be conveyed separately.

Sec. 6. The provisions of sections 2 to 5, inclusive, of this act do not apply to the conveyance of shares of stock in a ditch company which owns water rights or water already appropriated.

Sec. 7. NRS 533.324 is hereby amended to read as follows:

533.324 As used in NRS [533.325, 533.345 and 533.425,] 533.324 to 533.435, inclusive, and sections 2 to 6, inclusive, of this act, "water already appropriated" includes water for whose appropriation the state engineer has issued a permit but which has not been applied to the intended use before an application to change the place of diversion, manner of use or place of use is made.

Sec. 8. The provisions of sections 2 to 5, inclusive, of this act, are not applicable to a conveyance of a water right or water already appropriated as defined in NRS 533.324 which is completed before October 1, 1995.

SUMMARY--Requires state engineer to establish system of credit for conservation of water. (BDR 48-985)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; requiring the state engineer to establish a system of credit for the conservation of water; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 533 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The state engineer shall establish a system of credit for the conservation of water to encourage the conservation of water by issuing credit for the conservation of water to a holder of a right to use water who conserves all or a portion of the water. If no proceeding for forfeiture is pending, and no notice of intended forfeiture has been given pursuant to NRS 533.060 or 534.090, a holder of a right to use water, whether the right is adjudicated, unadjudicated or permitted, who is conserving some of the water subject to the right may apply to the state engineer, and, upon showing the fact and extent of the conservation in

compliance with this section and the regulations adopted pursuant thereto, may obtain credit for the conservation of water for the quantity of water conserved.

2. The state engineer may, solely in his discretion, issue a credit for the conservation of water to a holder of a right to use water who submits adequate data to establish that:

(a) He has implemented a recognized method of salvaging water or conserving water; and

(b) Actual water usage has been reduced.

3. The state engineer shall prescribe by regulation:

(a) What practices in the use of water constitute conservation for the purposes of this chapter and chapter 534 of NRS;

(b) How the quantity of water conserved is to be ascertained; and

(c) Forms for the application for credit for the conservation of water.

4. If the state engineer issues credit for the conservation of water to a holder of a right to use water, the holder shall retain his right to use the water beneficially, subject to existing rights and subject to the provisions of NRS 533.030.

Sec. 2. NRS 533.060 is hereby amended to read as follows:

533.060 1. Rights to the use of water [shall be] *are* limited and restricted to so much thereof as may be necessary, when reasonably and economically used for irrigation and other beneficial purposes, irrespective of the carrying capacity of the ditch. All the balance of the water not so appropriated [shall] *must* be allowed to flow in the natural stream from which [such] *the* ditch

draws its supply of water, and [shall] *must* not be considered as having been appropriated thereby.

2. Except as otherwise provided in *this subsection and* subsection 4, if the owner or owners of any such ditch, canal, reservoir, or any other means of diverting any of the public water fail to use the water therefrom or thereby for beneficial purposes for which the right of use exists during any 5 successive years, the right to so use shall be deemed [as having been] abandoned, and any such owner or owners thereupon forfeit all water rights, easements and privileges appurtenant thereto theretofore acquired, and all the water so formerly appropriated by such owner or owners and their predecessors in interest may be again appropriated for beneficial use the same as if [such] *the* ditch, canal, reservoir or other means of diversion had never been constructed, and any qualified person may appropriate any such water for beneficial use. *If the water described in this subsection is not used because it has been conserved and the state engineer has issued a credit for the conservation of water for the quantity of water conserved, the right to use the water in the amount of the credit is not abandoned.*

3. No prescriptive right to the use of such water or any of the public water appropriated or unappropriated can be acquired by adverse user or adverse possession for any period of time , [whatsoever,] but any such right to appropriate any of such water [shall] *must* be initiated by first making application to the state engineer for a permit to appropriate the [same] *water* as provided in this chapter and not otherwise.

4. The State of Nevada reserves for its own present and future use all rights to the use and diversion of water acquired pursuant to chapter 462, Statutes of Nevada 1963, or otherwise existing within the watersheds of Marlette Lake, Franktown Creek and Hobart Creek and not lawfully appropriated on April 26, 1963, by any person other than the Marlette Lake Company. No such right may be appropriated by any person without the express consent of the legislature.

Sec. 3. NRS 534.090 is hereby amended to read as follows:

534.090 1. Except as *otherwise* provided in subsections 2 [and 3,] , 3 and 4, failure for 5 successive years after April 15, 1967, on the part of the holder of any right, whether it is an adjudicated right, an unadjudicated right [,] or a permitted right, and further whether the right is initiated after or before March 25, 1939, to use beneficially all or any part of the underground water for the purpose for which the right is acquired or claimed, works a forfeiture of both undetermined rights and determined rights to the use of that water to the extent of the nonuse. Upon the forfeiture of a right to the use of ground water, the water reverts to the public and is available for further appropriation, subject to existing rights. If, upon notice by registered or certified mail to the person of record whose right has been declared forfeited, that person fails to appeal [such] *the* ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the forfeiture becomes final.

2. The state engineer may, upon the request of the holder of any right described in subsection 1, extend the time necessary to work a forfeiture under that subsection if the request is made before the expiration of the time

necessary to work a forfeiture. The state engineer may grant any number of extensions, but no single extension may exceed 1 year. In determining whether to grant or deny a request, the state engineer shall, among other reasons, consider:

(a) Whether the holder has shown good cause for his failure to use all or any part of the water beneficially for the purpose for which his right is acquired or claimed;

(b) The unavailability of water to put to a beneficial use which is beyond the control of the holder;

(c) Any economic conditions or natural disasters which made the holder unable to put the water to that use; and

(d) Whether the holder has demonstrated efficient ways of using the water for agricultural purposes, such as center-pivot irrigation.

3. If the failure to use the water pursuant to subsection 1 is because of the use of center-pivot irrigation before July 1, 1983, and such use could result in a forfeiture of a portion of a right, the state engineer shall, by registered or certified mail, send to the owner of record a notice of intent to declare such a forfeiture. The notice must provide that the owner has at least 1 year from the date of the notice to use the water beneficially or apply for additional relief pursuant to subsection 2 before forfeiture of his right is declared by the state engineer.

4. *If a portion of the water not beneficially used and otherwise subject to forfeiture pursuant to subsection 1 was being conserved and the state engineer has issued a credit for the conservation of water for the quantity of water*

conserved, the right to use the water in the amount of the credit is not subject to forfeiture.

5. A right to use underground water whether it is vested or otherwise may be lost by abandonment. If the state engineer, in investigating a ground water source, upon which there has been a prior right, for the purpose of acting upon an application to appropriate water from the same source, is of the belief from his examination that an abandonment has taken place, he shall so state in his ruling approving the application. If, upon notice by registered or certified mail to the person of record who had the prior right, that person fails to appeal such ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the alleged abandonment declaration as set forth by the state engineer becomes final.

SUMMARY--Enacts provisions governing acquisition of water rights on public lands for purposes of watering livestock. (BDR 48-986)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; providing that a certificate of appropriation for the right to use water for the purpose of watering livestock on public land be issued in the name of the person who perfected the application; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 533 of NRS is hereby amended by adding thereto a new section to read as follows:

1. When issuing a certificate of appropriation pursuant to NRS 533.425 for the right to use water for the purpose of watering livestock on public land, the state engineer shall issue the certificate of appropriation:

(a) If the application was perfected by a person other than the Federal Government, in the name of that person;

(b) If the application was perfected by the Federal Government, in the name of the Federal Government; or

(c) If the application was perfected jointly by a person other than the Federal Government and by the Federal Government, in the name of that person and the Federal Government, jointly.

2. As used in this section, "Federal Government" includes any agency, department, instrumentality or corporation of the Federal Government.

Sec. 2. NRS 533.425 is hereby amended to read as follows:

533.425 [As] *Except as otherwise provided in section 1 of this act, as soon as practicable after satisfactory proof has been made to the state engineer that any application to appropriate water or any application for permission to change the place of diversion, manner or place of use of water already appropriated has been perfected in accordance with the provisions of this chapter, the state engineer shall issue to the holder of the permit, his assign or assigns, a certificate setting forth:*

- 1. The name and post office address of the appropriator, his assign, or assigns.*
- 2. The date, source, purpose and amount of appropriation.*
- 3. If for irrigation, a description of the irrigated lands by legal subdivisions, when possible, to which the water is appurtenant.*
- 4. The number of the permit under which the certificate is issued.*

Sec. 3. This act becomes effective upon passage and approval.

SUMMARY--Requires state engineer to establish program to map water rights.

(BDR 48-987)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Contains
Appropriation.

AN ACT relating to water; requiring the state engineer to implement a program to map water rights statewide on a geographic information system; making an appropriation; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 532.165 is hereby amended to read as follows:

532.165 The state engineer shall:

1. Conduct necessary studies and inventories.
2. Review and evaluate proposals by federal, state and local agencies for flood control and water development projects to ensure that such proposals are compatible with the state water resource plan and are in compliance with Nevada water laws.

3. Within the limits of legislative appropriations, implement a program to map water rights statewide on a geographic information system.

Sec. 2. There is hereby appropriated from the state general fund to the state engineer the sum of \$110,000 to implement a program to map water rights statewide on a geographic information system pursuant to subsection 3 of NRS 532.165. In carrying out the program to map water rights, the state engineer shall give first priority to the mapping of water rights in the Truckee River.

Sec. 3. Any remaining balance of the appropriation made by section 2 of this act must not be committed for expenditure after June 30, 1996, and reverts to the state general fund as soon as all payments of money committed have been made.

Sec. 4. This act becomes effective on July 1, 1995.

SUMMARY--Defines "subsisting right" to water livestock. (BDR 48-988)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; defining a "subsisting right" to water livestock; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 533.492 is hereby amended to read as follows:

533.492 1. A subsisting right to water livestock *is an existing right to water livestock and* may be proven by an owner of livestock by one or more of the following items of evidence for the number of livestock and date of priority:

(a) As to water rights on open range, whether public lands or unfenced private lands or a combination of these:

(1) A statement of priority of use submitted to the Taylor Grazing Service, predecessor to the Bureau of Land Management, to show the numbers of livestock grazed upon the open range, for years from 1928 to 1934, inclusive, if accompanied by evidence of changes or absence of change since the date of the statement;

(2) A license issued by the Taylor Grazing Service for use upon the open range; or

(3) A statement of priority of use, or a license, issued by the United States Forest Service for the grazing of livestock before 1950.

(b) As to water rights on other privately owned land:

(1) An affidavit concerning the number and kind of livestock by a person familiar with the use made of the lands;

(2) A record of livestock assessed to the claimant of the right, or his predecessor, by a county assessor;

(3) A count of livestock belonging to the claimant or his predecessor made by a lender; or

(4) An affidavit of a disinterested person.

2. The location of a subsisting right to water livestock and its extent along a stream may be shown by marking upon a topographic map whose scale is not less than 1:100,000 or a map prepared by the United States Geological Survey covering a quadrangle of 7 1/2 minutes of latitude and longitude and by further identifying the location or extent by one-sixteenth sections within a numbered section, township and range as certified by a registered state water right surveyor.

Sec. 2. This act becomes effective upon passage and approval.

SUMMARY--Revises provisions governing approval by state engineer of application for permit to appropriate water. (BDR 48-989)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; requiring that an applicant for a permit to appropriate water provide proof of his financial ability and reasonable expectation actually to apply the water to beneficial use with reasonable diligence; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 533.370 is hereby amended to read as follows:

533.370 1. Except as otherwise provided in NRS 533.345, 533.371 and 533.372 and this section, the state engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use if:

- (a) The application is accompanied by the prescribed fees;
- (b) The proposed use or change, if within an irrigation district, does not adversely affect the cost of water for other holders of water rights in the district or lessen the district's efficiency in its delivery or use of water; and

(c) The applicant provides proof satisfactory to the state engineer of:

(1) His intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence; [and]

(2) If the application proposes to divert 1 or more cubic feet per second of water, his financial ability to construct the work with reasonable diligence [.] ; and

(3) *His financial ability and reasonable expectation actually to apply the water to the intended beneficial use with reasonable diligence.*

2. Except as otherwise provided in subsection 5, the state engineer shall either approve or reject each application within 1 year after the final date for filing protest. However:

(a) Action can be postponed by the state engineer upon written authorization to do so by the applicant or, in case of a protested application, by both the protestant and the applicant; and

(b) In areas where studies of water supplies are being made or where court actions are pending, the state engineer may withhold action until it is determined there is unappropriated water or the court action becomes final.

3. Except as otherwise provided in subsection 5, where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest, the state engineer shall reject the application and refuse to issue the requested permit. Where a previous application for a similar use of water within the same basin has been rejected on these grounds, the new application may be denied without publication.

4. If a hearing is held regarding an application, the decision of the state engineer must be in writing and include findings of fact, conclusions of law and a statement of the underlying facts supporting the findings of fact. The written decision may take the form of a transcription of an oral ruling. The rejection or approval of an application must be endorsed on a copy of the original application, and a record made of the endorsement in the records of the state engineer. The copy of the application so endorsed must be returned to the applicant. Except as otherwise provided in subsection 6, if the application is approved, the applicant may, on receipt thereof, proceed with the construction of the necessary works and take all steps required to apply the water to beneficial use and to perfect the proposed appropriation. If the application is rejected the applicant may take no steps toward the prosecution of the proposed work or the diversion and use of the public water so long as the rejection continues in force.

5. The provisions of subsections 1, 2 and 3 do not apply to an application for an environmental permit.

6. The provisions of subsection 4 do not authorize the recipient of an approved application to use any state land administered by the division of state lands of the state department of conservation and natural resources without the appropriate authorization for such a use from the state land registrar.

Sec. 2. This act becomes effective upon passage and approval.

SUMMARY--Revises definition of "domestic use" for purposes of statutes governing underground water and wells. (BDR 48-990)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; revising the definition of "domestic use" for the purposes of the statutes governing underground water and wells; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 534.013 is hereby amended to read as follows:

534.013 "Domestic use" or "*domestic purpose*" extends to culinary and household purposes, in a single-family dwelling, the watering of a family garden [, lawn] and *lawn*, the watering of domestic animals [.] , *and to those buildings, facilities and uses determined by the state engineer to be incidental and secondary to the single-family dwelling, including garages, greenhouses, workshops, swimming pools, storage facilities, guest houses and residences for caretakers.*

Sec. 2. NRS 534.350 is hereby amended to read as follows:

534.350 1. The state engineer shall adopt regulations establishing a program that allows a public water system to receive credits, as provided in

this section, for the addition of new customers to the system. The program must be limited to public water systems in areas:

(a) Designated as ground water basins by the state engineer pursuant to the provisions of NRS 534.030; and

(b) In which the state engineer has denied one or more applications for any municipal uses of ground water.

2. Before the state engineer adopts any regulations pursuant to this section regarding any particular ground water basin, he shall hold a public hearing:

(a) Within the basin to which the regulations will apply if adequate facilities to hold a hearing are available within that basin; or

(b) In all other cases, within the county where the major portion of that basin lies,

to take testimony from any interested persons regarding the proposed regulations.

3. Upon adoption of the regulations required by this section regarding a particular ground water basin, a public water system which provides service in that basin is entitled to receive a credit for each customer who is added to the system after the adoption of those regulations and:

(a) Voluntarily ceases to draw water from a domestic well located within that basin; or

(b) Is the owner of a lot or other parcel of land, other than land used or intended solely for use as a location for a water well, which:

(1) Is located within that basin;

(2) Was established as a separate lot or parcel before July 1, 1993;

(3) Was approved by a local governing body or planning commission for service by an individual domestic well before July 1, 1993; and

(4) Is subject to a written agreement which was voluntarily entered into by the owner with the public water system pursuant to which the owner agrees not to drill a domestic well on the land and the public water system agrees that it will provide water service to the land. Any such agreement must be acknowledged and recorded in the same manner as conveyances affecting real property are required to be acknowledged and recorded pursuant to chapter 111 of NRS.

4. The state engineer may require a new customer, who voluntarily ceases to draw water from a domestic well as provided in paragraph (a) of subsection 3, to plug that well.

5. A credit granted pursuant to this section:

(a) Must be sufficient to enable the public water system to add one service connection for a single-family dwelling to the system, except that the credit may not exceed the increase in water consumption attributable to the additional service connection or 1,800 gallons per day, whichever is less.

(b) May not be converted to an appropriative water right.

6. This section does not:

(a) Require a public water system to extend its service area.

(b) Authorize any increase in the total amount of ground water pumped in a ground water basin.

(c) Affect any rights of an owner of a domestic well who does not voluntarily bring himself within the provisions of this section.

7. As used in this section:

(a) "Domestic well" means a well used for [culinary and household purposes in a single-family dwelling, including the watering of a garden, lawn and domestic animals] *domestic purposes* and where the draught does not exceed 1,800 gallons per day.

(b) "Public water system" has the meaning ascribed to it in NRS 445.376.

SUMMARY--Revises definition of "person" and changes reference from "tax" to "assessment" for purposes of applicability of certain provisions governing water rights. (BDR 48-991)

FISCAL NOTE: Effect on Local Government: No.
 Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; revising the definition of "person" to include any government or Indian tribe for purposes of certain provisions governing water rights; changing certain statutory references from "tax" to "assessment" for the purpose of certain provisions governing water rights; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 533.010 is hereby amended to read as follows:

533.010 As used in this chapter, *unless the context otherwise requires*, "person" includes [the United States and this state.] *any power district, government, governmental agency or political subdivision of a government, or any Indian tribe, group of tribes or organized segment of a tribe.*

Sec. 2. NRS 533.190 is hereby amended to read as follows:

533.190 1. At any time in the course of the hearings, the court may, in its discretion, by order assess and adjudge against any party such costs as it deems

just and equitable or may so assess the costs in proportion to the amount of water right standing allotted at that time , [;] or the court may assess and adjudge such costs and expenses in its final judgment upon the signing, entry and filing of its formal findings of fact, conclusions of law and decree adjudicating the water rights against any party as it deems just and equitable, or may so assess the costs in proportion to the amount of water right allotted and decreed in the final judgment.

2. After the making, entry and filing by the court of the first findings of fact, conclusions of law and decree made, entered and filed by the court in any such water adjudication as distinguished from the first proposed findings of fact, conclusions of law and decree, the court shall assess all costs and expenses against the loser or losers, in any and all subsequent proceedings in any such water adjudication.

3. If costs are assessed or allowed as provided for in this section and in NRS 533.170 and allotted, the state engineer, within 60 days after such filing and entry, as above described, shall certify to the boards of county commissioners of the respective counties wherein the stream system is situate either the amount of acreage set forth in the order of determination to which water has been allotted, or the respective water rights against which such costs have been assessed by the court, and the charges against each water user in accordance with the court's judgment and allocation of costs. Upon receipt of the certificate from the state engineer by the board of county commissioners, the board of county commissioners shall certify the respective charges contained therein to the county assessor of the county in which the land or

property served is situated. The county assessor shall enter the amount of the charge on the assessment roll against the claimant's property or acreage served.

4. The proper officer of the county shall collect the [tax as other taxes] *assessment as other assessments* are levied and collected, and the [charge] *assessment* is a lien upon the property so served and must be collected in the same manner as other [taxes] *assessments* are collected , [;] but such costs must be collected in equal installments over 2 fiscal years.

5. When the [taxes] *assessments* are collected, the [tax receiver collecting the same] *person collecting the assessments* shall transmit the money collected to the state treasurer at the time he transmits other [tax money] *assessments* collected by him as provided by law, and the state treasurer shall deposit the money in the adjudication emergency account provided for in NRS 532.200, out of which [such] costs and expenses must be paid in the manner provided by law.

Sec. 3. NRS 533.285 is hereby amended to read as follows:

533.285 1. Upon receipt of such budget by the board of county commissioners, the board of county commissioners shall certify the respective charges contained therein to the county assessor. The county assessor shall enter the amount of [such] *the* charge or charges on the assessment roll against the claimants and the property or acreage served.

2. The proper officers of the county shall collect [such special tax] *the special assessment* as other special [taxes] *assessments* are levied and collected, and [such charge shall be] *the assessment* is a lien upon the property so served

[, and shall] *and must* be collected in the same manner as other [taxes] *assessments* are collected.

Sec. 4. NRS 533.290 is hereby amended to read as follows:

533.290 1. The [taxes] *assessments* and charges provided for in NRS 533.285, when collected, must be deposited with the state treasurer, in the same manner as other special [taxes.] *assessments*, for credit to the water district account which is hereby created in the state general fund.

2. All bills against the water district account must be certified by the state engineer or his assistant and, when certified and approved by the state board of examiners, the state controller may draw his warrant therefor against the account.

3. [No advances may] *An advance must not* be made from a stream system account that has been depleted until the [advances are] *advance is* reimbursable from the proceeds of any [tax levies] *assessments* levied against the particular stream system or water district for which any claims are presented.

4. Any money remaining in the water district account at the end of the current year must remain in the account and be available for use in the following year.

5. The state controller shall keep separate accounts of the money for each stream system or water district received from the various counties within which the stream system or water district is located, and shall not draw warrants against an account until he has been notified by the state engineer that assessments have been filed with the board of county commissioners, as

required by NRS 533.285, that will return to the State of Nevada money advanced by the state out of the water distribution revolving account provided for in NRS 532.210.

Sec. 5. NRS 534.014 is hereby amended to read as follows:

534.014 "Person" includes any [municipal corporation,] power district, [political subdivision of this or any state, or an agency of the United States Government.] *government, governmental agency or political subdivision of a government, or any Indian tribe, group of tribes or organized segment of a tribe.*

Sec. 6. NRS 534.040 is hereby amended to read as follows:

534.040 1. Upon the initiation of the administration of this chapter in any particular basin, and where the investigations of the state engineer have shown the necessity for the supervision over the waters of that basin, the state engineer may employ a well supervisor and other necessary assistants, who shall execute the duties as provided in this chapter under the direction of the state engineer. The salaries of the well supervisor and his assistants must be fixed by the state engineer. The well supervisor and his assistants are exempt from the provisions of chapter 284 of NRS.

2. The board of county commissioners shall levy a special [tax] *assessment* annually, or at such time as the [tax] *assessment* is needed, upon all taxable property situated within the confines of the area designated by the state engineer to come under the provisions of this chapter in [such] an amount as is necessary to pay those salaries, together with necessary expenses, including the compensation and other expenses of the [state] well drillers' advisory

board if the money available from the license fees provided for in NRS 534.140 is not sufficient to pay those costs. In designated areas within which the use of ground water is predominantly for agricultural purposes the levy must be charged against each water user who has a permit to appropriate water or a perfected water right, and the charge against each water user must be based upon the proportion which his water right bears to the aggregate water rights in the designated area. The minimum charge is \$1.

3. The salaries and expenses may be paid by the state engineer from the water distribution revolving account pending the levy and collection of the [tax] *assessment* as provided in this section.

4. The proper officers of the county shall levy and collect the special [tax] *assessment* as other special [taxes] *assessments* are levied and collected, and the [tax] *assessment* is a lien upon the property.

5. The [tax] *assessment* provided for, when collected, must be deposited with the state treasurer for credit to the water district account to be accounted for in basin well accounts.

6. Upon determination and certification by the state engineer of the amount to be budgeted for the current or ensuing fiscal year for the purpose of paying the per diem and travel allowances of the ground water board and employing consultants or other help needed to fulfill its responsibilities, the state controller [must] *shall* transfer that amount to a separate operating account for that fiscal year for the ground water basin. Claims against the account must be approved by the ground water board and paid as other claims against the state are paid. The state engineer may use money in a particular basin well account

to support an activity outside the basin in which the money is collected if the activity bears a direct relationship to the responsibilities or activities of the state engineer regarding the particular ground water basin.

Sec. 7. This act becomes effective upon passage and approval.

SUMMARY--Requires development of statewide water plan. (BDR 48-992)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to water; requiring the division of water planning of the state department of conservation and natural resources to coordinate with local governments in developing a statewide plan for the use of water resources; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 540.101 is hereby amended to read as follows:

540.101 1. The [administrator may develop plans] *division shall develop a plan* for the use of water resources [which affect a specified region, the area] within the [jurisdiction of a local government or the] state.

2. [A] *The division shall coordinate with local governments in developing the plan pursuant to subsection 1. Upon request of the division, each local government shall cooperate with and assist the division in the development of the plan.*

3. *The water plan developed pursuant to subsection 1 must include provisions designed to protect the identified needs for water for current and future development in the rural areas of the state. These provisions must*

preclude an interbasin transfer of water that would unreasonably adversely affect:

(a) The economy of a rural community; or

(b) The quality of life of the residents of a rural community.

4. The water plan developed pursuant to subsection 1 must be approved by the legislature before it is implemented.

5. As used in this section, "local government" means a political subdivision of this state, including, without limitation, a city, county, irrigation district, water district or water conservancy district.

SUMMARY--Revises provisions governing plans of water conservation adopted by suppliers of water. (BDR 48-993)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; requiring certain suppliers of water to report their progress on their efforts of conservation; requiring certain suppliers of water to adopt amended plans of water conservation under specified circumstances; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 540.131 is hereby amended to read as follows:

540.131 1. Except as otherwise provided in subsection [5,] 8, each supplier of water [which supplies water for municipal, industrial or domestic purposes] *supplying water before July 1, 1992, shall, on or before July 1, 1992, adopt a plan of water conservation based on the climate and the living conditions of its service area in accordance with the provisions of NRS 540.141. Any supplier of water that began supplying water on or after July 1, 1992, shall, on or before July 1, 1996, or within 1 year after it began supplying water, whichever is later, adopt a plan of water conservation based on the climate and the living conditions of its service area in accordance with the provisions of NRS 540.141.*

2. *Each supplier of water supplying water on or before July 1, 1995, shall, on or before July 1, 1996, and at each successive interval of 4 years thereafter, submit to the division a report of the supplier of water's progress regarding its efforts of conservation and the effectiveness of its plan or amended plan of water conservation. If the supplier of water begins supplying water after July 1, 1995, the supplier of water shall submit the report to the division not more than 4 years after it begins supplying water, and at each successive interval of 4 years thereafter.*

3. *The division shall review the report submitted pursuant to subsection 2 to determine the effectiveness of the supplier of water's plan or amended plan of water conservation and to determine whether the supplier of water has made satisfactory progress regarding its efforts of conservation. If, based upon its review of the report, the division determines that the supplier of water's plan or amended plan has not been effective or the supplier of water has not made satisfactory progress, the division may require the supplier of water to revise its plan or amended plan of water conservation or to adopt an amended plan of water conservation in accordance with the provisions of NRS 540.141.*

4. *The provisions of [the] a plan or an amended plan adopted pursuant to this section must apply only to the supplier's property and its customers. The supplier of water may request assistance from the division to develop [the plan.] a plan or an amended plan.*

5. *As part of the procedure of adopting a plan [,] or amended plan, the supplier of water shall provide an opportunity for any interested person, including, but not limited to, any private or public entity that supplies water*

for municipal, industrial or domestic purposes. to submit written views and recommendations on the plan [.

3. The plan must be reviewed by the division] *or amended plan.*

6. *The division shall review:*

(a) A plan of water conservation within 30 days after its submission . [and]

(b) An amended plan of water conservation within 90 days after its submission.

A plan or amended plan of water conservation must be approved for compliance with this section and NRS 540.141 before it is adopted by the supplier of water.

[4.] The division shall approve a plan or amended plan if it is based on the climate and living conditions of the service area and complies with the requirements of this section and NRS 540.141.

7. The plan [:] *or amended plan:*

(a) Must be available for inspection by members of the public during office hours at the offices of the supplier of water; and

(b) May be revised from time to time to reflect the changing needs and conditions of the service area. Each such revision must be made available for inspection by members of the public.

[5.] 8. Suppliers of water:

(a) Who are required to adopt a plan *or amended plan* of water conservation pursuant to this section; and

(b) Whose service areas are located in a common geographical area.

may adopt joint plans *or amended joint plans* of water conservation based on the climate and living conditions of that common geographical area. Such a plan *or amended plan* must comply with the requirements of this section and NRS 540.141.

[6.] 9. The board of county commissioners of a county, the governing body of a city and the town board or board of county commissioners having jurisdiction of the affairs of a town shall:

(a) Adopt any ordinances necessary to carry out a plan *or amended plan* of conservation adopted pursuant to this section which applies to property within its jurisdiction;

(b) Establish a schedule of fines for the violation of any ordinances adopted pursuant to this subsection; and

(c) Hire such employees as it deems necessary to enforce the provisions of any ordinances it adopts pursuant to this subsection.

Sec. 2. NRS 540.141 is hereby amended to read as follows:

540.141 1. A plan [or] , *amended plan, joint plan or amended joint plan* of water conservation submitted to the division for review must include provisions relating to:

(a) Methods of public education to:

(1) Increase public awareness of the limited supply of water in this state and the need to conserve water.

(2) Encourage reduction in the size of lawns and encourage the use of plants that are adapted to arid and semiarid climates.

(b) Specific conservation measures required to meet the needs of the service area, including, but not limited to, any conservation measures required by law.

(c) The management of water to:

(1) Identify and reduce leakage in water supplies, inaccuracies in water meters and high pressure in water supplies; and

(2) Increase the reuse of effluent.

(d) A contingency plan for drought conditions that ensures a supply of potable water.

(e) A schedule for carrying out the plan [.] *or joint plan*.

(f) Measures to evaluate the effectiveness of the plan [.] *or joint plan*.

2. A plan [or] , *amended plan, joint plan or amended joint plan* submitted for review must be accompanied by an analysis of the feasibility of charging variable rates for the use of water to encourage the conservation of water.

3. [The division shall review any plan or joint plan submitted to it within 30 days after its submission and approve the plan if it is based on the climate and living conditions of the service area and complies with the requirements of this section.

4.] The administrator may exempt wholesale water purveyors from the provisions of this section which do not reasonably apply to wholesale supply.

SUMMARY--Provides for adjustment of tax on transfer of water from county of origin. (BDR 48-994)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; providing for the adjustment of the tax on the transfer of water from the county of origin to another county; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 533.438 is hereby amended to read as follows:

533.438 1. If an application or applications to appropriate ground water would result in the transfer of water to be used in a county in this state other than the county in which the water is to be appropriated or in another state, the county of origin may impose a tax [of \$6 per acre-foot per year] on the transfer. *The annual amount of the tax per acre-foot per year on July 1, 1995, is the sum of:*

(a) Six dollars; and

(b) Six dollars multiplied by the percentage of increase for all items in the Consumer Price Index for the previous calendar year.

On July 1 of each subsequent year, the amount of the tax, including all previous annual increases, must be increased by the percentage of increase for all items in the Consumer Price Index for the previous calendar year.

2. All money collected from this tax must be deposited in a trust fund for the county. The principal and interest of the trust fund may be used by the county only for the purposes of economic development, health care and education.

3. For the purposes of this section, if a basin includes land lying in more than one county each county any part of whose land is included is a county of origin to the extent of the proportionate amount of water transferred from it. The state engineer shall determine the respective proportions.

4. As used in this section:

(a) A "basin" is one designated by the state engineer for the purposes of chapter 534 of NRS.

(b) "Origin" means the place where water is taken from underground.

Sec. 2. This act becomes effective on July 1, 1995.

SUMMARY--Urges Federal Government to adhere to states' laws governing use, allocation, management and protection of water.
(BDR R-995)

FISCAL NOTE: Effect on Local Government: No.
 Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Urging the Federal Government to adhere to the states' laws governing the use, allocation, management and protection of water.

WHEREAS, Nevada and the other western states of the United States are critically dependent upon present and future water resources for their quality of life and economic base; and

WHEREAS, The western states are geographically, hydrologically and economically diverse and distinct from each other and from the eastern states; and

WHEREAS, Nevada has developed and customized a system of water allocation in response to the arid conditions of the state; and

WHEREAS, Water resources in many of the major interstate river basins in the west are apportioned and administered through interstate compacts or court decrees between two or more states; and

WHEREAS, There has been a long-standing policy of deference to the states by the Federal Government in the area of the use, allocation, management and protection of water; and

WHEREAS, Nevada has extensive experience in managing its own water resources, including both surface and ground water supplies, and recognizes the importance of protecting its water resources for present and future beneficial use; and

WHEREAS, The individual water users within the various states have relied upon the law and policies of their respective states and court decrees to acquire vested water rights and for the protection of those rights; and

WHEREAS, Nevada's laws governing the use, allocation, management and protection of water provide for public participation and are based upon the public interest; and

WHEREAS, The number of federal agencies involved in some aspect of water policy or management continues to increase, adding duplication, confusion and conflicting policies; and

WHEREAS, Congress is considering several pieces of legislation related to the management of water resources, some of which contain elements that would increase the role of the Federal Government in the administration of water resources and undermine the primacy of the states' laws governing the use, allocation, management and protection of water; now, therefore, be it

RESOLVED BY THE AND OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature urges the Federal Government:

1. To recognize that the use, allocation, management and protection of water resources is primarily the responsibility of the states;

2. To recognize the primacy of the states' laws governing the use, allocation, management and protection of water; and

3. To require all federal agencies to conduct their activities in accordance with the states' laws governing the use, allocation, management and protection of water;

and be it further

RESOLVED, That the Nevada Legislature urges the United States Department of the Interior, the United States Army Corps of Engineers, the United States Forest Service, the United States Bureau of Land Management, and all other federal agencies to refrain from further efforts to erode the authority now vested in the various states to use, allocate, manage and protect their precious water resources; and be it further

RESOLVED, That the _____ of the _____ prepare and transmit a copy of this resolution to the President of the United States, the Secretary of the Interior, the Chief of Engineers of the United States Army Corps of Engineers, the Chief of the United States Forest Service, the Director of the Bureau of Land Management, the Director of the State Department of Conservation and Natural Resources and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval.

SUMMARY--Authorizes board of directors of irrigation district to allow transfer of storage water to land excluded from storage benefits of district irrespective of size or ownership of parcels of land.
(BDR 48-996)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; providing that the board of directors of an irrigation district may allow a transfer of storage water to land excluded from the benefits of the district irrespective of the size or ownership of the parcels of land; establishing standards to be considered by the board of directors in exercising its discretion to allow a transfer; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 539.705 is hereby amended to read as follows:

539.705 1. The owner of land excluded from participation in the benefits of the district, that is, stripped of storage water and benefits under the provisions of NRS 539.700 and 539.703, may petition the board of directors to transfer to such stripped land [, which shall be in one parcel and not less than

40 acres in area,] the storage rights and benefits apportioned to other land . [, which shall be in one parcel and not less than 40 acres in area, owned by him.] Upon the hearing of the petition the board of directors may at its discretion grant or refuse [such] *the* transfer in whole or in part. *In exercising its discretion the board of directors shall consider the effect of the proposed change on the cost of water for other holders of water rights in the district, the district's efficiency in its delivery or use of water, the existing water rights in the affected land and the public interest.*

2. [Such petition shall:] *The petition must:*

- (a) Be in writing and under oath.
- (b) Describe the land and acreage from which it is proposed to transfer the storage water and benefits.
- (c) Specify the amount of storage water and benefits proposed to be transferred.
- (d) Describe the land and acreage to which the transfer of storage water and benefits is proposed to be made.
- (e) List in detail all liens existing against each parcel of land.

3. Upon receipt of [such] *the* petition, together with the sum of money required for advertising, the secretary of the board shall cause notice of [such] *the* application and the date of hearing thereof to be given by posting for a period of not less than 10 days and also by two publications 7 days apart in a newspaper of general circulation in the county in which the land is situated, during such period.

4. Any person interested in [such] *the* proposed transfer may file a written protest thereto at any time [prior to] *before* the hearing day . [, and such protest shall] *The protest must* be considered by the board of directors in exercising its discretion to grant or refuse the requested transfer.

5. The board of directors may consider [such] *the* application at any regular or special meeting, but [in no event] *not* sooner than 14 days after the first date of publication.

6. At [such] *the* hearing a full record of all proceedings [shall] *must* be taken and spread upon the minutes. If the petition proposes to change the point of diversion or manner of use, the board of directors shall not make any order on the petition until such time as an appropriate permit [shall be] *is* secured from the state engineer in accordance with chapter 533 of NRS authorizing [such] *the* change.

7. The petition, notices, protests, resolutions and all subsequent proceedings in relation to [such application shall] *the application must* be file marked and preserved for record purposes. If the board of directors grants all or a part of the transfer requested, a certified copy thereof [shall] *must* be recorded in the office of the county recorder of the county in which the land to be affected is situated, and thereafter [such] *the* recorded copy [shall] *must* be delivered to the petitioner upon payment by him of the recording fees.

8. To the extent that [such] *the* transfer is granted it [shall and will constitute] *constitutes* a waiver and relinquishment on the part of the district of all restrictive covenants and provisions against the use of storage water and benefits on the land contained in any deed executed by the board of directors.

9. From and after the granting of any transfer of storage water and benefits , the land from which [such] *the* water and benefits are taken [shall] *must* have the status of stripped land, [shall be thenceforth] *must be* excluded from participation in the benefits of the district, and [shall] *must* receive no further storage water or benefits unless [such land shall have] storage water and benefits *are* restored *to the land* under the provisions of this section, and all land to which [such] *the* storage water and benefits are transferred [shall] *must* be treated in all respects as though it had never become delinquent and had never been stripped of storage water and benefits and denied the benefits of the district.

10. Any person aggrieved by the order of the board of directors may, within 30 days after the entry of the order, petition the district court of the county in which the office of the board of directors is located to set the same aside for such order as may be proper.

Sec. 2. This act becomes effective upon passage and approval.

SUMMARY--Revises provisions governing eligibility of certain purveyors of water to receive grants for making capital improvements to publicly owned water systems. (BDR 30-997)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; revising the provisions governing the eligibility of certain purveyors of water to receive grants for making capital improvements to publicly owned water systems; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 349.983 is hereby amended to read as follows:

349.983 1. Except as otherwise provided in this subsection, grants may be made to purveyors of water under the program only for those community and nontransient water systems that were in operation and publicly owned on July 3, 1991. A community or nontransient water system which:

(a) Was in existence on July 3, 1991, as a privately owned [, not for profit] business; and

(b) Has since become publicly owned,
is also eligible to receive grants under the program.

2. In making its determination of which purveyors of water are to receive grants, the board shall give preference to those purveyors of water whose public water systems regularly serve fewer than 6,000 persons.

3. Each recipient of a grant shall provide, from a source other than the State of Nevada, an amount of money for the same purpose. The board shall develop a scale to be used to determine that amount, but in no case may the recipient be required to provide an amount less than 15 percent or more than 75 percent of the amount of the grant. The scale must be based upon the average household income of the customers of the recipient, and provide adjustments for the demonstrated economic hardship of those customers, the existence of an imminent risk to public health and any other factor that the board determines to be relevant.

4. Except as otherwise provided in subsections 1 and 2, the determination of which purveyors of water are to receive grants is solely within the discretion of the board.

Sec. 2. This act becomes effective upon passage and approval.

SUMMARY--Provides for distribution of administrative fine imposed for violation of certain laws and regulations governing suppliers of water. (BDR 40-998)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to water; providing for the distribution of an administrative fine imposed for violating certain laws and regulations governing suppliers of water; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 445.397 is hereby amended to read as follows:

445.397 1. Any supplier of water who willfully:

(a) Violates any standard established pursuant to NRS 445.379;

(b) Violates or fails to comply with an emergency order issued pursuant to NRS 445.389;

(c) Violates any condition imposed by the state board of health upon granting a variance or exemption under NRS 445.391;

(d) Violates a regulation adopted by the state board of health pursuant to NRS 445.381; or

(e) Fails to give a notice as required by NRS 445.393,
shall pay a civil penalty of not more than \$5,000 for each day of the violation.

2. In addition to the civil penalty prescribed in subsection 1, the state board of health may impose an administrative fine against a supplier of water who willfully commits any violation enumerated in subsection 1. The administrative fine imposed may not be more than \$2,500 per day for each such violation.

3. *The administrative fine prescribed in subsection 2 must be paid to the state board of health. All administrative fines collected by the state board of health pursuant to this section must be deposited with the state treasurer for credit to the account for the education of water suppliers, which is hereby created in the state general fund. The state board of health shall distribute the money in the account to a nonprofit educational organization for the purpose of training and educating water suppliers on water laws and regulations.*

4. The civil penalty and administrative fine prescribed in this section may be imposed in addition to any other penalties or relief prescribed in NRS 445.361 to 445.399, inclusive.

Sec. 2. This act becomes effective July 1, 1995.

SUMMARY--Urges Congress to approve California-Nevada Interstate Compact. (BDR R-999)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Urging Congress to approve the California-Nevada Interstate Compact relating to the Lake Tahoe, Truckee River, Carson River and Walker River basins.

WHEREAS, Water is one of the most precious natural resources of both Nevada and California; and

WHEREAS, By virtue of their common border Nevada and California share certain water resources, including the water within the Lake Tahoe, Truckee River, Carson River and Walker River basins; and

WHEREAS, Nevada and California have competing needs for their shared water resources; and

WHEREAS, Without an interstate compact these competing needs result in conflict and controversy between Nevada and California; and

WHEREAS, The California-Nevada Interstate Compact addresses these conflicts and controversies by:

1. Providing equitable apportionment of water between Nevada and California;

2. Promoting interstate comity and furthering intergovernmental cooperation;

3. Protecting and enhancing existing economies; and

4. Permitting the orderly and integrated development, use, conservation and control of water within the Lake Tahoe, Truckee River, Carson River and Walker River basins;

and

WHEREAS, The California-Nevada Interstate Compact has been ratified by both the Nevada and California legislatures but has not been consented to by the Congress of the United States; and

WHEREAS, The California-Nevada Interstate Compact must be approved by Congress to become effective; now, therefore, be it

RESOLVED BY THE AND OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature hereby urges the Congress of the United States to give its consent to the California-Nevada Interstate Compact; and be it further

RESOLVED, That the of the prepare and transmit a copy of this resolution to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives, each member of the Nevada Congressional Delegation, the President Pro Tempore of the Senate of the State of California and the Speaker of the Assembly of the State of California; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval.

SUMMARY--Urges Congress to investigate utility of importing water to Nevada from sources outside Nevada. (BDR R-1000)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

JOINT RESOLUTION--Urging the Congress of the United States to investigate the utility of importing water to Nevada from sources outside Nevada.

WHEREAS, The present demand on the limited supply of water in the State of Nevada is threatening the vitality of the lakes in western Nevada including Pyramid Lake and Walker Lake; and

WHEREAS, Millions of acre-feet of water flow from the rivers of the northwestern United States into the Pacific Ocean each year and are lost to reclamation; and

WHEREAS, The water lost to reclamation could be used beneficially in the State of Nevada to preserve the vitality of the lakes in western Nevada including Pyramid Lake and Walker Lake; and

WHEREAS, The interregional transfer of water is technologically feasible; now, therefore, be it

RESOLVED BY THE AND OF THE STATE OF NEVADA, JOINTLY, that the Nevada Legislature urges the Congress of the

United States to investigate the utility of importing water to Nevada from sources outside Nevada; and be it further

RESOLVED, That the of the prepare and transmit a copy of this resolution to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval.