

**EXHIBIT 1 - Continued**

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## APPENDIX A

### KEY COURT DECISIONS AND ATTORNEY GENERAL'S OPINIONS ON WATER

#### **EARLY APPLICATION OF APPROPRIATION DOCTRINE**

*Lobdel vs. Simpson*, 2 Nev. 783 (1866). The Supreme Court recognized and applied the doctrine of appropriation in its first reported decision in a controversy over water rights. It followed the doctrine which had been well settled in California; If two parties claim rights to the use of water, merely by its appropriation, the one has the best right who is the first in time. The court discussed the rights of a riparian proprietor, but specifically withheld comment as to what it might have held if the plaintiff had relied upon his rights as a riparian proprietor rather than as an actual appropriator.

#### **EARLY APPROPRIATION DOCTRINE ON PUBLIC LANDS**

*Ophir Silver Mining Co. vs. Carpenter*, 4 Nev. 534, 543 (1869). The court stated that where the right to the use of running water is based upon appropriation and not upon an ownership in the soil, it is the generally recognized rule in Nevada that priority of appropriation gives the superior right. In *Covington vs. Becker*, 5 Nev. 281, 282-283 (1869) the parties had agreed that the only title to the lands of the plaintiffs and defendants was a possessory one, the fee being in the federal government;

hence there could be no basis for a claim of riparian rights in the case.

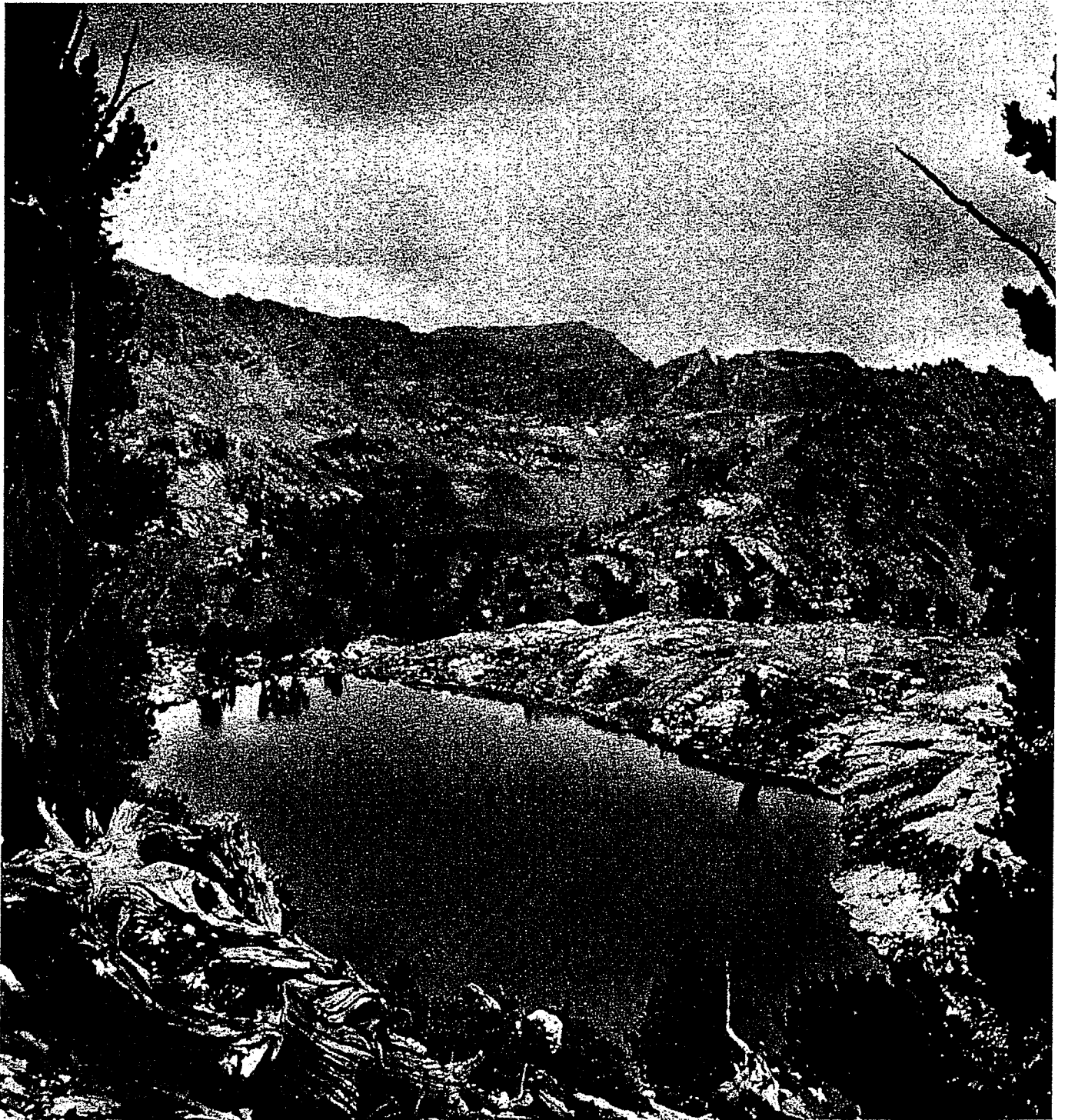
#### **NEVADA RIPARIAN DOCTRINE**

*Vansickle vs. Haines*, 7 Nev. 249, 256, 257, 260-261, 265, 285 (1872). The Nevada Supreme Court held that the common law was the law of Nevada and must prevail in all cases where the right to water was based upon absolute ownership of the soil. This meant that (1) running water was primarily adjacent to or part of the soil over which it naturally flowed; and (2) the right of the riparian proprietor was a right to have the water flow in its natural course and condition, subject only to certain uses by other riparian proprietors; and (3) a patent from the United States issued prior to the passage of the Act of 1866 conveyed to the patentee not only the land but the stream naturally flowing through it. (See *Jones vs. Adams*, 19 Nev. 78, 84-88; 6 Pac. 442 [1885] ).

#### **REPUDIATION OF RIPARIAN DOCTRINE**

*Jones vs. Adams*, 19 Nev. 78, 84-88; 6 Pac. 442 (1885). The Nevada Supreme Court reversed its stand with respect to riparian rights and concluded that the riparian doctrine did not serve the wants and necessities of the people for either mining or agriculture. The court





has since applied the doctrine of prior appropriation.

*Reno Smelting Works vs. Stevenson*, 20 Nev. 269 (1889). The Defendant tapped into Plaintiff's dam and conveyed water to the State Mental Hospital. Plaintiff does not base his claim upon prior appropriation, but rather upon the Riparian Doctrine.

The Court discussed English Common law and how it has been used in this country only if suitable under the conditions. If the conditions are such that common law is unreasonable, then the various state legislatures are free to pass laws which fit the circumstances.

The Court concluded "that the common law doctrine of riparian rights is unsuited to the condition of our state, and that this case should have been determined by the principles of prior appropriation."

Thus, the Nevada Supreme Court reaffirmed their holding in *Jones vs. Adams* whereby prior appropriation was established, and the riparian doctrine repudiated.

#### WATER RIGHT APPURTENANT TO LAND

*Prosoli vs. Steamboat Canal Co.*, 37 Nev. 154, 161; 140 Pac. 720; 144 Pac. 744 (1914). It has been well established in Nevada and in the arid region generally that a water right for agricultural purposes, to be available and effective, must be attached to the land and become, in a sense, appurtenant to it by actual application of the water to beneficial use.

#### BENEFICIAL USE

*Union Mill and Mining Co. vs. Dangberg*, 81 Fed. 73, 97 (D. Nev. 1897). An excessive diversion of water for any purpose cannot be regarded as a diversion to a beneficial use. Water in this state is too scarce, needful and precious for irrigation and other purposes to admit of waste.

*State of Nevada Ex Rel Hugh Shamberger vs. United States*, 165 F. Supp. 600 (D. Nev. 1958). The State of Nevada sought a declaration that the United States may not make use of underground waters developed by wells located on a military reservation (U.S. Naval Ammunition Depot, Hawthorne, Nevada) without applying for it pursuant to state law. The United States District Court, District of Nevada, dismissed the complaint in a decision dated Aug. 27, 1958, on the grounds that there is no mandate in law that compels the federal government to bend its knee to state law and regulation.

#### DOCTRINE OF RELATION

*Ophir Silver Mining Co. vs. Carpenter*, 4 Nev. 534, 543-544 (1869). If the work of constructing facilities, diverting and using water is prosecuted with reasonable diligence, the date of priority of the right relates back to the time when the first step was taken to obtain that right. If, however, the work is not prosecuted with reasonable diligence, then the priority of the right does not relate back, but generally dates from the time when the work is completed or the appropriation fully perfected.

#### ABANDONMENT AND FORFEITURE

*In Re Waters of Manse Spring*, 60 Nev. 280 (1940). The issue was whether the right to use the waters of Manse Spring had been abandoned through a five year period of nonuse.

The Court held that when one voluntarily abandons a right to use water, the water again becomes part of the natural stream or source and such abandoned water is subject to immediate appropriation.

The statute under which the problem evolved, enacted in 1913, used both the words "abandonment" and "forfeiture". The Court clarified these meanings by saying "While, upon the one hand, abandonment is the relinquishment of the right by the owner with the intent to forsake and desert it, forfeiture, upon the other hand, is the involuntary or forced loss of the right, caused by the failure of the appropriator or owner to do or perform some act required by the statute". "The element of intent, therefore, so necessary in the case of an abandonment, is not a necessary element in the case of forfeiture".

The Court found that the right to use the water had vested prior to the enactment of the 1913 water law. The five year period of nonuse started in 1929. Thus the abandon was found, so the Supreme Court held for respondent.

Since the law prior to 1913 required an abandonment of water rights, and this right was acquired prior to 1913, an intent to abandon a right must be found. No intent to abandon was found, so the Supreme Court held for respondent.

In conclusion, the court held that the law to be applied to the loss of a water right must be the law in existence at the creation of such right.

#### CONDEMNATION

*Thorn vs. Sweendy*, 10 Nev. 251 (1877). Defendant

Sweendy attempted to, and partially completed a ditch across plaintiff's land. The purpose of the ditch was to convey water to the Carson Water Works.

The Court held that it is within the power of the legislature to pass an act providing for the condemnation of land for the purpose of bringing water into cities and towns, and that such a taking would be for a "public use" within the meaning of the term as used in the Constitution.

This case is important for the proposition that the legislature recognizes the great importance of water as shown by their passing legislation to permit a person to construct a ditch across another's land. Without such legislation, those landowners not adjacent to a stream would be at the mercy of those landowners over which their ditch would have to be constructed.

#### DEVELOPED WATERS

*Cardelli et al vs. The Comstock Tunnel Co.*, 26 Nev. 284 (1901). Action by Plaintiff Cardelli to determine his alleged right to one-half of the waters flowing and to flow from the Sutro Tunnel, for damages caused by Defendants interference with the alleged right and for an injunction enjoining Defendants from interfering with said alleged right in the future.

Plaintiff claims one-half of the waters flowing from the Sutro Tunnel based on:

1. By appropriation and use.
2. By prescription and adverse use.
3. By acquiescence in the use of the same.

The issue to be decided is whether the waters flowing from the Sutro Tunnel are subject to appropriation.

The Court held that the waters are an artificial and temporary stream developed through labor and appliances. As an artificial stream, it becomes the property of those who develop it.

Basically, the Court held that waters developed and flowing in an artificial stream are not subject to appropriation (See Attorney General's Opinion No. 331, dated April 25, 1966, regarding the appropriation of developed water).

#### WASTE WATERS

*Bidleman vs. Short*, 38 Nev. 467 (1915). Plaintiff Bidleman brought this action in equity to enjoin Defendant from interfering with the waste waters which flowed from Defendant's lands to Plaintiff's.

Plaintiff was putting to beneficial use the waste and surplus waters which flowed off Defendant's lands to

Plaintiff's land. Defendant constructed ditches which conveyed this water away from Plaintiff's land.

The Court held that so long as waste water flowed upon Plaintiff's land, it was his property. The Defendant was not entitled to go upon Plaintiff's property and interfere with his ditches.

The case is important in that it says that waste water is not subject to a permanent right (i.e. cannot be made into a final water right), but may be used by that person to whose land the water flows. Waste water, being able to be put to beneficial use, is entitled to the same judicial protection as other water rights.

#### PRESCRIPTIVE RIGHT

*Application of Filippini*, 66 Nev. 17 (1949). The Nevada Supreme Court held that an appropriation of water is an original acquisition from the government by diversion and use and that no rights can be acquired against or from the government by prescription, and hence there can be no appropriation by prescription. In order to gain a water right by prescription, there must be an adverse use which infringes upon the rights of a prior appropriator.

Subsequent to this decision, the 1949 Legislature amended the water law to include a provision that effectively precludes obtaining a water right by prescription through adverse use or adverse possession.

#### GROUND WATER

*Strait vs. Brown*, 16 Nev. 317 (1881). The basic issue was whether water running underground in a defined channel was to be treated as surface water or percolating water.

The Court held that "no distinction exists in the law between waters running under the surface in defined channels and those running in distinct channels upon the surface. The distinction is made between all waters running in distinct channels, whether upon the surface or subterranean, and those oozing or percolating through the soil in varying quantities and uncertain directions."

Thus, since the water was running in a defined underground channel, it was treated the same as surface water. Since Plaintiff was the prior appropriator, he prevailed.

#### DIVERSION NECESSARY FOR APPROPRIATION

*Walsh vs. Wallace*, 26 Nev. 299 (1902). The issue to

be decided was what constitutes an appropriation of water.

The facts indicated that the water was not put to beneficial use on the date claimed by Plaintiff. "Their rights were not initiated by settlement upon the land, by having the same surveyed, or by marking the boundaries thereof." No diversion of water was made on the claimed date, and the cutting of wild grass produced by the overflow of the Reese River was insufficient to constitute an appropriation of water.

The Court held that "... there must be an actual diversion of water, with intent to apply it to a beneficial use, followed by an application to such use within a reasonable time."

On remanding the case, the Court held that "The judgment and decree in this respect should be certain and definite, and, unless the decree is certain and definite in this respect, it cannot be upheld, except, under the circumstances of the case, the indefinite and uncertain quantity given by the decree is capable of ascertainment."

The case is of great importance today for two reasons:

1. There must be an actual appropriation of water prior to it being put to beneficial use.
2. The wording and language of river and stream adjudication decrees are to be exact and explicit. Each appropriator is to know the exact amount of water to be used on a certain piece of property.

## CONSTITUTIONALITY

*Ormsby County vs. Kearney*, 37 Nev. 314 (1914). In this suit, two cases were joined because they involved substantially the same question.

The basic thrust of the suit was that those sections of the 1913 statutes giving the State Engineer responsibility in adjudicating vested rights were unconstitutional, invalid, null and void.

The Court held that it is within the State Police Power to regulate the waters within its boundaries. As long as a lawful procedure is used to determine the relative rights of all users within a stream system, then no constitutional right has been infringed. There is no deprivation of due process, because the amount of water each claimant is decreed is subject to judicial review. Therefore, the claim that the State Engineer is without authority to determine the relative rights on a stream system is unfounded as the act is constitutional.

Also held was that Administrative hearings before the State Engineer are not "cases in equity" or "cases at law" as quoted in the Nevada Constitution. Thus, the Appellant's claim that the State Engineer was without jurisdiction in determining the rights of various users was rejected.

The provisions authorizing the State Engineer to investigate and determine the relative rights of water appropriators or users upon any stream or stream system is valid. Also valid is the requirement that the various proofs be filed with the State Engineer.

The Court construed the act to insure that all rights acquired prior to the adoption of the water law are to be recognized. Thus, section 84 was held to be valid, and vested rights were to be in no way impaired.

This case is extremely important in that it held it within the State Engineer's power, as conferred upon him by the legislature, to determine the rights of various water users along a stream system. The adjudication procedure is still used today, and is an effective manner of determining the various rights of claimants. If the statutes had been held unconstitutional, the State Engineer's authority would be greatly diminished. Also, the adjudication procedure would be greatly complicated, as the Courts would have to handle the bulk of the work.

*Vineyard Land and Stock Co. vs. District Court*, 42 Nev. 1, (1918). This case was similar to the case of *Ormsby Co. vs. Kearney*, 37 Nev. 314 (1914), in that the constitutionality of the adjudication process was challenged. The importance of the case is great, because the challenge of whether it is constitutional for the State Engineer to enter an Order of Determination was decided. The basic holding was that the Legislative enactment of 1915, conferring upon the State Engineer the power to enter an Order of Determination was upheld.

## LIMIT OF WATER RIGHT

*Barnes vs. Sabron*, 10 Nev. 217 (1875). The amount of water to be utilized by a prior appropriator is limited to the amount necessary to irrigate those lands irrigated prior to a subsequent appropriation by another party.

## NAVIGABILITY OF CARSON RIVER

*State of Nevada vs. Julius Bunkowski, et al*, 1972. Bunkowski commenced dredging operations on the Carson River. The State of Nevada through the Department of Fish and Game, brought an action to prevent the

dredging. The State's contention was that the Carson River is navigable. Since the State owns the bed of a navigable river, the State could prevent the dredging if the river was found navigable.

The District Court, upon the recommendation of a Special Master, found the river to be non-navigable. The State of Nevada appealed.

The Nevada Supreme Court reversed the lower court and held that the Carson River was navigable at the date of statehood because logs were floated down the river from about 1860 to 1895. As a result, the respondent could be enjoined from mining the bed of the river.

#### DOCTRINE OF RELICTION

*State Engineer vs. Cowles Bros.*, 86 Nev. 872. In 1964, Cowles Brothers, Inc., owners of land adjoining the dry bed of Winnemucca Lake, filed an application with the State Engineer of Nevada to drill a well on property located in the dry Winnemucca Lake bed for the purpose of irrigating lands within the dry lake bed.

NRS 537.030 declared Winnemucca Lake to be navigable and vested title to the Lake Bed in the State of Nevada. The basic question was whether the lands exposed by the receding level of the lake remained in the name of the State or became the property of the adjoining land owners through application of the doctrine of reliction.

The Supreme Court held that "Every parcel of land should have an owner, for private ownership encourages use and development — usually much more quickly than public ownership." The court also held that the doctrine of reliction is not repugnant to NRS 537.030 and therefore the exposed lands of the Winnemucca lake bed should belong to the adjoining land owners.

#### WATER RELATED ATTORNEY GENERAL'S OPINIONS

*Opinion No. 133*, June 4, 1973. The Truckee River is a navigable stream and ownership of the streambed is vested in the State.

*Opinion No. 331*, April 25, 1966. Water developed during a mining operation is subject to appropriation under the Nevada Water Law and the precedent established under *Cardelli et al vs. The Comstock Tunnel Co.*, 26 Nev. 284 (1901) is superceded.

*Opinion No. 107*, December 14, 1972. The U.S. Supreme Court opinion and decree in *Arizona vs. Cali-*

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

*Letter Opinion*, August 12, 1965. Geothermal steam is considered water and, as such, use of it must comply with the provisions of the Nevada Water Laws.

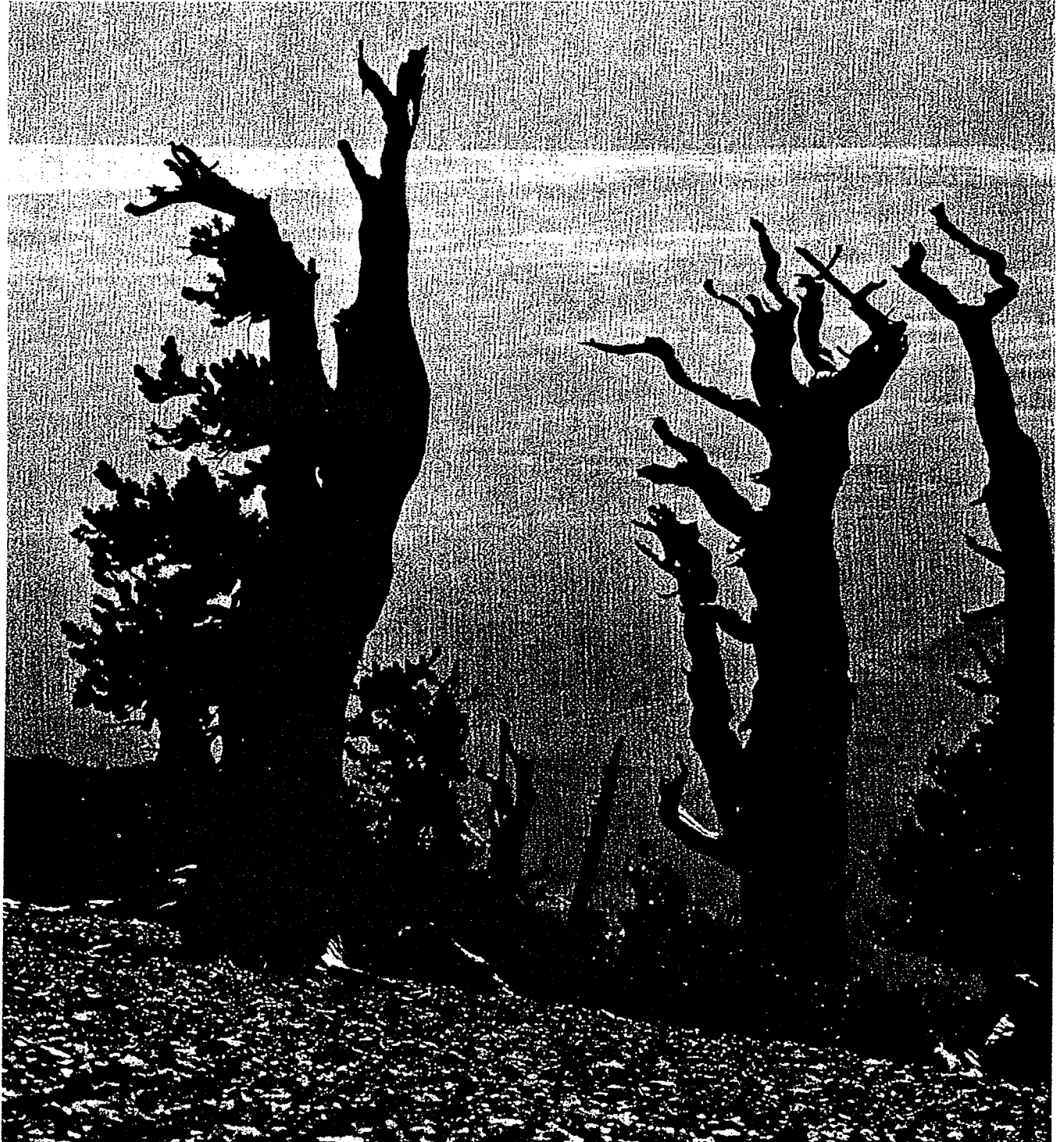


## APPENDIX B

### DESIGNATED GROUND WATER BASINS

January 1, 1974

- Antelope — Middle Reese River Valley
- Dayton Valley
- Diamond Valley
- Eagle Valley
- Grass Valley (Pershing County) and a Portion of Winnemucca Segment
- Las Vegas Artesian Basin
- Lemmon Valley
- Muddy River Springs Area
- Oreana Subarea
- Pahrump Artesian Basin
- Paradise Valley
- Quinn River Valley
- Silver State Valley
- Smith Valley



## APPENDIX C

### STATUS OF ADJUDICATION PROCEEDINGS IN NEVADA ADJUDICATED STREAMS

#### TRUCKEE RIVER BASIN

The first use of water from the Truckee River for irrigation took place in Truckee Meadows in Reno in 1858. After completion of the Truckee-Carson Project (Newlands Project) near Fallon in 1915, the United States brought a condemnation action in Federal District Court against the Truckee River General Electric Co. This resulted in a decree giving the federal government a perpetual easement to land at the outlet of Lake Tahoe, and the dam at that point, together with storage rights and the right to operate the dam to control releases.

The court also found that the power company has a right to an average flow of 500 c.f.s. (cubic feet per second) continually from March 1, to September 30, and an average of 400 c.f.s. continually from October 1, to the last day of February, of each year, at Floriston. These flow rates are for the generation of power and are commonly known as the "Floriston Rates."

In 1935 the United States and Nevada water users entered into the "Truckee River Agreement" to supplement the 1915 decree. This document allows reduction of the "Floriston Rates" when the surface of Lake Tahoe drops below 6,226 feet above sea level. There are further provisions for supplemental storage in Lake Tahoe.

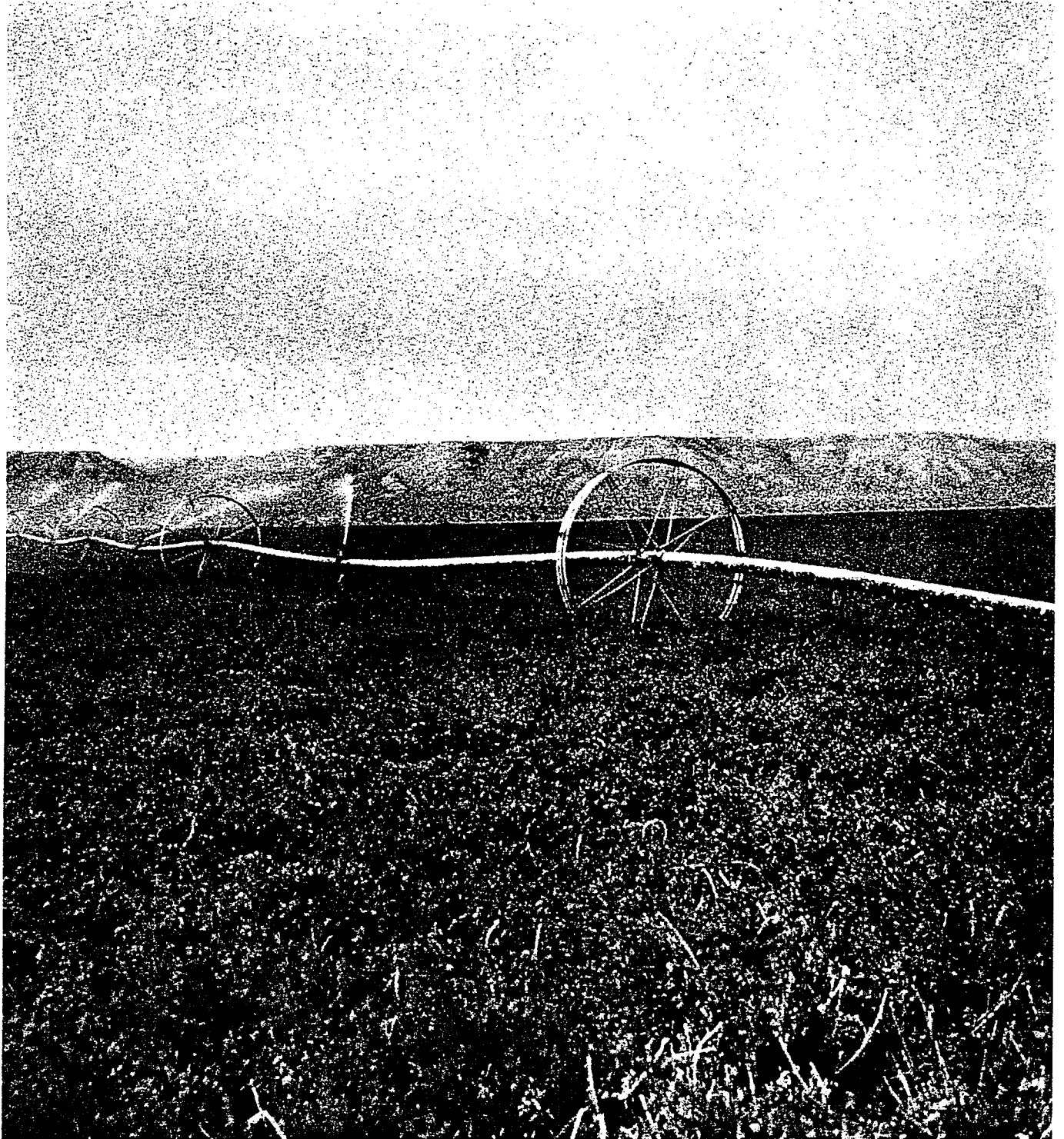
for releases from this supplemental storage to maintain "Floriston Rates" and for prevention of high water damage at Lake Tahoe.

The Truckee River Decree itself goes back to 1914 when the United States started proceedings in Federal District Court, *United States vs. Orr Water Ditch Co.*, to adjudicate the relative rights of water users in Nevada. A temporary restraining order was issued from this proceeding in 1926. This order set out the relative rights established in the suit, and also recognized and affirmed the Lake Tahoe storage rights and power generating rights in Nevada and California.

In 1944 the Federal Court issued its final decree which made minor corrections to the temporary restraining order of 1926, and also included the "Truckee River Agreement" of 1935. No right to the use of Truckee River Water in California was included in this decree.

The California-Nevada Interstate Compact recognizes and incorporates this 1944 decree, which adjudicates the relative rights of water users in Nevada. California rights are recognized in the compact by incorporation of the judgment handed down in *United States vs. Sierra Valley Water Co.*

In addition to the rights established by these decrees, agreements and judgments, the compact establishes a



formula for dividing unused water between California and Nevada.

In the Truckee system — as well as the other three systems — each state's share of water which the commission determines is unused must be appropriated in compliance with the law of the state where the water will be used.

#### CARSON RIVER BASIN

A 1905 suit decided in U.S. District Court, (*Anderson vs. Bassman*) provides that California and Nevada users shall rotate all the available water of the West Carson River from the first of June through the end of October.

The "Price Decree," a state court decision relating to California rights only, was entered as a result of a 1919 petition for determination of rights on the West Carson River in Alpine County, California.

In 1925, the United States brought suit against Alpine Canal and Reservoir Co. to determine all the rights on the Carson River system. In 1951 a Special Master appointed by the court filed his "Proposed Findings of Fact, Conclusions of Law and Decree." Most of the objections to the proposed findings were settled by stipulation, and an amended proposed finding was entered in 1958. In 1968, the Pyramid Lake Indian Tribe filed a motion to intervene, which was denied.

The California-Nevada Interstate Compact allocates the waters of the Carson River in an amount equal to the totals shown in the proposed decree — plus allowance for storage in and/or direct use from Lahontan Reservoir to supply the Truckee-Carson Irrigation Division of the Newlands Project. The compact also provides for rotation of the West Fork of the Carson River when the flow drops to below 175 c.f.s.

California also will have a right to store 2,000 acre-feet of water per year in Alpine County, adversely to Lahontan Reservoir, if this provision is included in the final decree issued in the case of *United States vs. Alpine Land and Reservoir Co.*

Additional yields will be allocated on an equal priority basis, 20 percent to California and 80 percent to Nevada.

#### WALKER RIVER BASIN

The waters of the Walker River are distributed in accordance with the federal decree issued in *United States vs. Walker River Irrigation District*. The California-Nevada Interstate Compact recognizes the decree and makes provisions for the allocation of unappropriated water — 35 percent to California and 65 percent to Nevada.

#### HUMBOLDT RIVER BASIN

##### *Humboldt River*

The largest stream system in Nevada in terms of acres irrigated is the Humboldt River and tributaries. Because this river begins and ends entirely within Nevada, it is an example of a stream system wholly adjudicated under the provisions of the Nevada Water Law.

The earliest recognized priority on the Humboldt is 1861 at Lassen Meadows near Imlay. But no real attempt to adjudicate was made by the water users until 1903, when the State Engineer began adjudication proceedings. However, the Order of Determination was not filed with the Court until 1925. The Court handed down its decree in 1931. This is known as the Bartlett Decree. Protests were filed, the case was reopened, and resultant changes in the Bartlett Decree, which the Court felt were justified, were then incorporated in a decree entered in 1935, known as the Edwards' Decree.

The case was appealed to the State Supreme Court, which refused to allow further protests, thereby making the adjudication final in 1938.

Today the system is distributed in accordance with the 1931, or Bartlett Decree and the 1935, or Edwards' Decree.

#### SNAKE RIVER BASIN

##### *Salmon Falls River*

The Salmon River Canal Co., Ltd., is the owner of a project devised and constructed under the provisions of the Carey Act of Congress. Under it, the water of Salmon Falls Creek is impounded by a dam and reservoir located in Idaho a few miles north of the Nevada-Idaho state line. The dam was completed in 1911, and its use for irrigation began in June of that year. The appropriation was acquired under three permits issued by the State Engineer of Idaho.

Before 1915, there was considerable litigation between the Nevada users of the head waters of the Salmon Falls Creek, originally a tributary of the Snake River, and the downstream users in Idaho. A decree entered in 1916 by the Federal District Court in Idaho granted the Nevada users (Vineyard Land and Stock Co.) a total of 12,500 acre-feet of water to satisfy their rights, which were prior to those of the Idaho users (Salmon River Canal Co., Ltd.).

A Nevada District Court decree in 1923 adjudicated all vested rights of the Salmon River and tributaries in Nevada, and provided for 40,338 acre-feet of water apurtenant to 13,433.48 acres of land. In March, 1934, the

Salmon River Canal Co., Ltd. filed a petition for the adoption of rules for administering the federal decree. A Federal District Court filed an opinion in 1935 recommending adoption of the proposed rules. The Vineyard Land and Stock Co. appealed the decision — and the proposed rules were drastically curtailed. The 1916 decree had involved only the water rights owned by the Vineyard Land and Stock Co. in Nevada and the Salmon River Canal Co. in Idaho; it was in no way binding on other users in Nevada.

In May, 1947, the Salmon River Canal Co., Ltd., acquired a portion of the property of the Vineyard Land and Stock Co. together with appurtenant water rights.

In August, 1947, 13 applications were filed with the Nevada State Engineer by other users to appropriate water from the Salmon River and tributaries.

In May, 1949, the Salmon River Canal Co., Ltd. filed application with the Nevada State Engineer to transfer all the water rights acquired by purchase of a portion of the property of the Vineyard Land and Stock Co. in Nevada to portions of the property in Idaho. All applications to appropriate and to change were protested; after negotiation a compromise was reached and set down in the Salmon River Agreement, dated October 6, 1952, between the Salmon River Canal Co., Ltd. and Nevada users.

#### *Owyhee River*

Suit was filed on June 17, 1924, in Federal District Court, by the Union Land and Cattle Co. against R. M. Woodward, et. al., for appropriating the waters of the Owyhee River belonging to the Union Land and Cattle Co. On July 25, 1930, the Federal District Court of Nevada made all users of the South Fork of the Owyhee River and its tributaries in Nevada defendants in the suit of *Ellison Ranching Co., successors of the Union Land and Cattle Co., vs. R. M. Woodward, et. al.* The Court appointed a Special Master on September 18, 1931, to take evidence and to submit to the Court findings and form of proposed decree. On November 21, 1939, the District Court denied the plaintiff's motion for trial and granted the defense motion to dismiss the case without prejudice to the institution of a new case.

No further proceedings have been recorded since that date. The Nevada State Engineer has continued to accept claims of vested rights by filing proofs of appropriation submitted in accordance with statutory procedure and accompanied by a supporting map.

#### COLORADO RIVER BASIN

The U. S. Supreme Court Opinion and Decree in *Arizona vs. California*, 373 U. S. 546 (1963) and 376 U. S. 340 (1964), found that the provisions of the Boulder Canyon Project Act, 45 Stat. 1057 (1928) controlled all questions concerning *initial* use of waters from the Colorado River. As pointed out by the U.S. Supreme Court, 373 U. S. at 575, 579, Congress intended to and did, in fact, create its own comprehensive scheme for apportionment of waters from the Colorado River, by giving full and complete authority to the Secretary of the Interior to effectuate the *original* division of waters approved in the Act through the making of contracts for its delivery and then prohibiting anyone from acquiring water without first securing a contract from the Secretary. Permits to appropriate from the State Engineer's Office are still required where the purpose is to gather necessary information for the State Engineer's records and to facilitate the administration of other water resources including effluent waters.

#### ADJUDICATION PROCEEDINGS IN THE STATE OF NEVADA\*

##### ALDER CREEK

Humboldt County — State Decree — 3/1/71.

##### ASH CANYON CREEK

Ormsby County — Civil Decree 1885 — Filed in Kings Canyon Creek under Gregory's Canyon Creek.

##### BAKER-LEHMAN CREEKS

White Pine County — 1952 — State Decree 1950.

##### BARBER CREEK

Douglas County — 1914 — State Decree 1921.

##### BARTLETT CREEK

Humboldt County — 1929 — State Decree 1946.

##### BASSETT CREEK

White Pine County — 1938 — State Decree 1945.

##### BATTLE CREEK

Humboldt County — 1929 — State Decree 1946.

##### BIG CANYON CREEK

Washoe County — State Decree — 3/19/69.

##### BIG SPRINGS & WARM SPRING

Washoe County — State Decree 1948.

##### BIRCH CREEK

Elko County—Pending—Order of Determination 1957.

##### BOTTLE CREEK

Humboldt County — State Decree — 4/1/69.

\*For locations of streams, see map attached to back cover.

BOWERS OVERFLOW

Washoe County — Period for Proofs Closed 7/1/72.

BROWNS CREEK

Washoe County — Period for Proofs Closed 7/1/72.

BRUNEAU RIVER

Elko County — Adjudication Petition received 12/30/60.

BRYAN CREEK

Washoe County — Preliminary Order of Determination 10/29/73.

BUFFALO CREEK

Washoe County — Civil Decree — See 01328.

BUSHEE CREEK

Pershing County — being adjudicated.

CALLOWAY WELL

Nye County — Pending — Proofs 1957.

CANE SPRING

Humboldt County — 1945 — State Decree 1946.

CARRICO CREEK

Lander County 1927 — State Decree 1930.

CARSON RIVER

Douglas, Ormsby, Lyon, Churchill Counties — Federal Court 1903 — Pending.

CHERRY CREEK

(aka LITTLE CHERRY CREEK), PINE CREEK, COTTONWOOD CREEK AND GARDEN CREEK — Nye County — Pending — 1957 — Petition 1957. No case file. Proof 01152 correspondence mentions petition filed in 1957.

CHIATOVICH CREEK

Esmeralda County — State Decree — 7/31/70.

CLEAR CREEK

Pershing and Humboldt Counties — State Decree

CLEAR CREEK

Ormsby and Douglas Counties — Civil Decree 1872. 1919.

COLD SPRING CREEK.

INCL. CANNOVAN SPRINGS AND GAMEN SPRINGS

White Pine County — 1943 — State Decree 1946.

COLONEL MOORE CREEK

Elko County — Pending — Preliminary Order of Determination 1957.

CRAINE CREEK, COVE CREEK, CORRAL CREEK, CENTER CREEK, KNOTT CREEK

Humboldt County — State Decree — 3/1/71.

CRUM & WILSON CREEKS

Lander County — 1925 — State Decree 1928.

CURRENT CREEK

Nye County — 1919 — State Decree 1923.

DAGGETT CREEK (aka Haines Canyon Creek, aka Kingsbury Creek)

Douglas County — Civil Decree 1872. State Decree 1974.

DAVIS CREEK

Washoe County — Period for Proofs closed 7/1/72.

DEADMAN'S CANYON CREEK

Washoe County — Preliminary Order of Determination 11/28/73.

DUCK CREEK

White Pine County — Civil Decree 1886.

DUCKWATER CREEK

Nye County — 1909 — State Decree 1930.

EDEN CREEK

Humboldt County — Pending — Proofs 1915.

EDGEWOOD CREEK

Douglas County — 1929 — State Decree 1958.

EGAN CREEK

White Pine County — 1950 — State Decree 1956.

ESPLIN WELL NO. 1

Nye County — Pending — Proofs 1956.

EVANS CREEK, HUFFORD OR JAKE'S CREEK AND WARM SPRINGS

Humboldt and Elko Counties — Pending — 1916.

FISH HATCHERY SPRING

Washoe County — Period for Proofs Closed 7/1/72.

FRANKTOWN CREEK

Washoe County—1951—State Decree July 11, 1960.

GENOA CREEK

Douglas County — Civil Decree 1881.

GLENBROOK CREEK

Douglas County — 1939 — State Decree 1941.

GOLCONDA CREEK

Pershing County — Order of Determination served on Claimants — 9/3/71.

GOOSE CREEK

Elko County — State Decree — Civil Suit 1923.

HORSE CANYON CREEK

Pershing County — State Decree — 2/16/70.

HORSE SPRINGS

Washoe County — Period for Proofs closed 2/5/73.

HOT CREEK

Nye County—Pending—Field Investigation 9/21/71.

HUMBOLDT RIVER

Elko, Eureka, Lander, Humboldt, Pershing Counties — 1923 — State Decree 1938.

HUNT'S CREEK

Nye County — Order of Determination — 1/25/74.

ILLIPAH CREEK

White Pine County — Civil Decree 1887.

INDIAN OR McNETT CREEK

Esmeralda County — State Decree 1964.

INDIAN SPRINGS CREEK

Humboldt County — Pending — Petition 1929.

JACK'S VALLEY CREEK

Douglas County — Civil Decree — 1889.

JUMBO CREEK

Washoe County — 1946 — State Decree 1947.

KALAMAZOO CREEK

White Pine County — Pending — Exceptions filed to Order of Determination 1951.

K-C CREEK

Elko County — Civil Decree 1930.

KINGS CANYON CREEK

Ormsby County — Civil Decree 1885.

KING'S RIVER

Humboldt County — 1957 — State Decree 1966.

KINGSTON CREEK

Lander County — 1954 — State Decree 1964.

LAST CHANCE CREEK

Nye County — 1951 — State Decree 1957.

LEIDY CREEK (aka Robinson Creek)

Esmeralda County — 1945 — State Decree 1946.

LEWERS CREEK

Washoe County — Period for Proofs closed 7/1/72.

LEONARD CREEK

Humboldt County — State Decree — 3/3/72.

LITTLE HUMBOLDT RIVER

Elko and Humboldt Counties — 1929 — State Decree 1931.

LITTLE ROCKY CANYON CREEK

Pershing County — State Decree 2/16/70.

LOGAN CREEK (aka NORTH LOGAN CREEK)

Douglas County — 1939 — State Decree 1941.

LONG SPRINGS

White Pine County — Pending — Proofs 1915.

LONGSTREET SPRINGS

Nye County — Pending — Petition 1962.

LUTHER CREEK (aka FAIRVIEW CREEK)

Douglas County — Civil Decrees 1874 and 1927.

MAHALA SPRINGS

Washoe County — State Decree 1974.

MANSE SPRINGS

Clark County — 1937 — State Decree 1940.

MATTIER CREEK

White Pine County — adjudication pending.

McAFFIE CREEK

Esmeralda County — State Decree 7/9/73.

McEWEN CREEK

Washoe County — State Decree 1974.

McFAUL CREEK

Douglas County — 1939 — State Decree 1942.

MEADOW VALLEY WASH

Nye County — Pending — Preliminary Order of Determination 1919.

MUDDY RIVER

Clark County — 1919 — State Decree 1926.

MUNCY CREEK

White Pine County — Pending — Waiver of Notices 1940.

MUSGROVE CREEK

Washoe County — Period for Proofs closed 7/1/72.

NEWTON CREEK

Washoe County — 1948 — State Decree 1961.

NIGGER CREEK

White Pine County — Civil Decree 1949.

NORTH CREEK

Washoe County — State Decree 1930.

NORTH AND SOUTH SPRINGS

Nye County — 1937 — State Decree 1938.

NORTH AND SOUTH TWIN RIVERS

Nye County — 1951 — State Decree 1957.

NORTH CANYON CREEK

Douglas & Ormsby Counties — Civil Decree 1930.

ODGER CREEK

White Pine County — Hearing on Preliminary Order of Determination held 12/4/73.

OPHIR CREEK

Washoe County — Period for Proofs closed 7/1/72.

OVERLAND CREEK

Elko County — 1919 — State Decree 1925.

OWYHEE RIVER

Elko County — State adjudication pending — petition 1/28/24.

PAHRANAGAT LAKE

Lincoln County — 1919 — State Decree 1929.

PASS CREEK, BIG CREEK AND BOYD CREEK

Humboldt County — Civil Decree 1935.

PEAVINE CREEK

Nye County — Pending — Exception to Order of Determination 1934.

PERRY AIKEN CREEK (aka SPANISH CREEK)

Esmeralda County — Civil Decree 1916.



- PETE HANSON CREEK (aka SHIPLEY CREEK and HENDERSON CREEK)  
Eureka County — Preliminary Order of Determination filed 9/18/73.
- PETERSON CREEK  
Washoe County — State Decree — 12/15/69.
- PIERMONT CREEK  
White Pine County — Hearing on Order of Determination 12/4/73.
- PINCHOT CREEK  
Esmeralda County — State Decree — 5/2/69.
- PINE CREEK  
Nye County — Pending — Petition 1957 — See CHERRY CREEK.
- PINENUT CREEK  
Douglas County — State Decree 1974.
- PIUTE CREEK  
Humboldt County — 1929 — State Decree 1946.
- POLE CANYON CREEK  
Pershing County — State Decree — 2/16/70.
- QUINN RIVER  
Humboldt County — Civil Decree 1919.
- REBEL CREEK  
Humboldt County — State Decree 11/12/73.
- RICE CREEK  
Elko County — 1919 — State Decree 1922.
- ROCK CREEK  
Humboldt County — Petition filed 3/25/59.
- RODEO CREEK  
Washoe County — 1946 — State Decree 1948.
- SACRAMENTO CANYON CREEK  
Pershing County — State Decree 2/16/70.
- SALMON RIVER (SALMON FALLS CREEK)  
Elko County — 1915 — State Decree 1923 — Agreement.
- SANTA ROSA CREEK  
Humboldt County — State Decree — 9/21/71.
- SCHELL CREEK  
White Pine County — 1934 — State Decree 1938.
- SEIGAL CREEK  
White Pine County — Pending — Proofs 1918.
- SIERRA CREEK  
Douglas County — Civil Decree 1885.
- SILVER CREEK  
Lander County — 1927 — State Decree 1936.
- SILVER CREEK  
White Pine County — Civil Decree 1911.
- SIMPSON CREEK  
Eureka County — Pending — Pendency of Proceedings 1910.
- SIX MILE CREEK  
Elko County — 1919 — State Decree 1925.
- SIX SPRINGS  
White Pine County — Civil Decree 1890.
- SMITH CREEK  
Lander County — Pending — Report of Investigation 1941.
- SOLDIER CREEK  
Humboldt County — 1951 — State Decree 1957.
- SONOMA CREEK  
Pershing County — State Decree — 3/16/71.
- SPRING CANYON CREEK  
Humboldt County — Petition filed 3/25/59.
- STAR CANYON CREEK  
Pershing County — Civil Decree 1927.
- STEELE CREEK (aka WEEKS CREEK)  
Elko County — Pending — To notice and order continuing hearings. No file.
- STEPTOE CREEK  
White Pine County — 1931 — State Decree 1935.
- SWALLOW CREEK  
White Pine County — Pending — Notice of Order and Proceedings 1953.
- THIRD CREEK (aka NORTH CREEK)  
Washoe County — Civil Decree 1892.
- THOUSANDS SPRINGS CREEK  
Elko County — 1925 — State Decree 1929.
- TONY CREEK  
Humboldt County — State Decree — 1929.
- TRAIL CANYON CREEK  
Esmeralda County — State Decree — 5/2/69.
- TRUCKEE RIVER  
Washoe, Lyon and Churchill Counties — Federal Decree 1926 — Agreement.
- TULEDAD CREEK  
Washoe County — State Decree — 11/9/72.
- UNIONVILLE CREEK (aka BUENA VISTA CREEK)  
Pershing County — State Decree — 4/29/71.
- VIRGIN RIVER  
Clark County — 1921 — State Decree 1927.
- WALKER RIVER  
Douglas, Lyon, and Mineral Counties — 1924 — Federal Decree 1936.
- WEAVER CREEK  
White Pine County — Civil Decree 1894.

WHITE RIVER

White Pine County — 1922 — State Decree 1922.

WHITE'S STREAM

Humboldt County — State Decree — 12/12/69.

WILLOW CREEK

Humboldt County — 1956 — State Decree 1966.

WINTERS CREEK

Washoe County — Period for Proofs closed 7/1/72.

WOOD CANYON CREEK

Humboldt County — Petition filed 3/25/59.

WRIGHT CANYON CREEK

Pershing County — State Decree 2/16/70.

## APPENDIX D

### SAMPLE FORMS

**THE STATE OF NEVADA**  
**PROOF OF APPROPRIATION OF WATER FOR IRRIGATION**

Source.....  
Name of natural water source

The water is diverted from its source.....  
Name of ditch, flume or pipe line

at the following point(s).....  
List all points of diversion from this source, appending a sheet if necessary

Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed land, it should be stated

(1) Name of claimant.....

Address....., County of.....

State of.....

(2) The means of diversion employed.....

Dam and ditch, pipe line, flume, etc.

(3) The date of the survey of ditch, canal, or pipe line was.....

(4) The construction of the ditch or other works was begun.....

and completed.....

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom.....

feet, width on top..... feet, depth..... feet, on a grade of.....feet per thousand feet.

(6) The conduit has (has not) been enlarged.

NOTE---If enlargement or extension of ditch was made, supply information under (7) and (8)

(7) The work of enlargement of the ditch or canal was begun.....

and completed.....

(8) The dimensions of the ditch or canal as enlarged are: Width on bottom.....feet, width on

top.....feet, depth.....feet, on a grade of.....feet per thousand feet.

(9) The claimant is (is not) an owner in the above-described conduit.

If claimant is an owner in the conduit, state interest held on this line

(10) The nature of the title to the land for which the water right is claimed is.....

Fee simple, public domain, etc.

(11) Crops of.....  
have been grown upon the land irrigated.

(12) The water has been used for irrigation from.....to.....  
of each year. Day of month Day of month

- [illegible]

(15) The water claimed has (has not) been used for irrigation each and every year since the right was initiated. ~~Strike out one not wanted~~

(17) The claimant's water right was (was not) recorded in the office of the County Recorder of \_\_\_\_\_ County, said record being at page \_\_\_\_\_ of Book \_\_\_\_\_ of \_\_\_\_\_, and being a claim for \_\_\_\_\_ of water for the irrigation of \_\_\_\_\_ acres of land in the following legal subdivisions: \_\_\_\_\_

45

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 104

Remarks:

[illegible]

\*\*\*\*\*

My commission expires.....

4316 

Serial No.....

**APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC  
WATERS OF THE STATE OF NEVADA**

**THIS SPACE FOR OFFICE USE ONLY**

Date of filing in State Engineer's Office.....

Returned to applicant for correction.....

Corrected application filed.....Map filed.....

The applicant.....

.....of.....  
Street and No. or P.O. Box No. City or Town

....., hereby make.... application for permission to appropriate  
State and Zip Code No.  
the public waters of the State of Nevada, as hereinafter stated. (If applicant is a corporation, give date and place of  
incorporation; if a copartnership or association give names of members.) .....

.....  
.....  
.....  
.....

1. The source of the proposed appropriation is.....  
Name of stream, lake, spring, underground or other source.

2. The amount of water applied for is.....second feet.  
One second foot equals 448.83 gallons per minute.

(a) If stored in reservoir give number of acre-feet.....

3. The water to be used for .....  
Irrigation, power, mining, manufacturing, domestic or other use.

4. If use is for:

(a) Irrigation.....  
State number of acres to be irrigated.

(b) Stockwater.....  
State number and kinds of animals to be watered.

(c) Other use (describe fully under "No. 12. Remarks").....

(d) Power:

(1) Horsepower developed.....

(2) Point of return of water to stream.....

5. The water is to be diverted from its source at the following point.....

Describe as being within a 40-acre subdivision of public

survey, and by course and distance to a section corner. If on unsurveyed land, it should be so stated.

6. Place of use.....

Describe by legal subdivision, if on unsurveyed land, it should be so stated.

7. Use will begin about.....and end about.....of each year.

Day and Month

Day and Month

8. Description of proposed works (Under the provisions of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.).....

State manner in which water is to be diverted, whether by dam or other works,

whether through pipes, ditches, flumes, or other conduits.

9. Estimated cost of works.....

10. Estimated time required to construct works.....

11. Estimated time required to complete the application of water to beneficial use.....

12. Remarks: For use other than irrigation or stock watering, state number and type of units to be served or annual consumptive use.

Applicant

By.....

APPLICATION MUST BE SIGNED  
BY THE APPLICANT OR AGENT

Street and No., or P.O. Box No.

City, State, Zip Code No.

2888 (Rev. 11-72)

\$25 FILING FEE MUST ACCOMPANY APPLICATION



Serial No. ....

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER  
OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE  
STATE OF NEVADA HERETOFORE APPROPRIATED**

**THIS SPACE FOR OFFICE USE ONLY**

Date of filing in State Engineer's Office.....

Returned to applicant for correction.....

Corrected application filed..... Map filed.....

The applicant.....

.....of.....  
Street and No. or P.O. Box No. City or Town

.....hereby make.... application for permission to change the  
State and Zip Code No.

of water heretofore appropriated under.....

Identify existing right by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree  
and identify right in Decree.  
.....  
.....

1. The source of water is.....  
Name of stream, lake or other sources.

2. The amount of water to be changed.....  
Second feet, acre-feet.

3. The water to be used for.....  
If for stock state number and kind of animals.

4. The water heretofore used for.....  
If for stock state number and kind of animals.

5. The water is to be diverted at the following point.....  
Describe as being within a 40-acre subdivision of public survey and by course  
and distance to a section corner. If on unsurveyed land, it should be stated.  
.....  
.....

6. The existing point of diversion is located within.....  
If point of diversion is not changed, do not answer.  
.....  
.....

7. Proposed place of use.....  
Describe by legal subdivisions. If for irrigation state number of acres to be irrigated.

8. Existing place of use.....  
Describe by legal subdivisions. If presently used for irrigation, state number of acres irrigated.

9. Use will be from.....to.....of each year.  
Day and Month Day and Month

10. Use has been from.....to.....of each year.  
Day and Month Day and Month

11. Description of proposed works. (Under the provisions of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.).....  
State manner in which water is to be diverted, whether by dam or other works, whether through pipes, ditches, flumes, or other conduits.

12. Estimated cost of works.....

13. Estimated time required to construct works.....

14. Estimated time required to complete the application of water to beneficial use.....

15. Remarks.....

Applicant

By.....

Street and No., or P.O. Box No.

City, State, Zip Code No.

1942 (Rev. 7-68)

**\$30 FILING FEE MUST ACCOMPANY APPLICATION**

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION

NUMBER \_\_\_\_\_, FILED BY \_\_\_\_\_

PROTEST OF \_\_\_\_\_

on \_\_\_\_\_ 19\_\_\_\_, to APPROPRIATE  
THE WATERS OF \_\_\_\_\_

Comes now \_\_\_\_\_

whose post-office address is \_\_\_\_\_

whose occupation is \_\_\_\_\_, and protests

the granting of application number \_\_\_\_\_, filed on

\_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_\_

to appropriate the waters of \_\_\_\_\_

situated in \_\_\_\_\_ County, State of Nevada, for the

following reasons and on the following grounds, to wit:

WHEREFORE protestant prays that the application

be \_\_\_\_\_

(Denied, or issued subject to prior rights, as the case may be)


and that the use of water herein claimed by protestant be confirmed

and that an order be entered establishing said right and for such

other relief as the State Engineer deems just and proper.

2454

Protestant.

 \$10 FILING FEE MUST ACCOMPANY PROTEST.  
PROTEST MUST BE FILED IN DUPLICATE.

STATE OF NEVADA  
COUNTY OF \_\_\_\_\_ } ss.

\_\_\_\_\_, being first duly sworn,  
deposes and says, that he has read the foregoing protest and knows  
the contents thereof and that the same is true of his own knowledge,  
except as to the matters which are therein stated on information and  
belief, and as to those matters he believes it to be true.

\_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
Notary Public.



PROOF OF COMPLETION OF WORK

Permit No.

STATE OF

COUNTY OF

ss.

Comes now....., the.....  
Permittee or Agent

who after being first duly sworn, deposes and says that at least.....dollars (\$.....)  
has been expended in work or improvements performed or made under the conditions provided in Permit No.

....., pertaining to the completion of said works, and at the expense of the permittee.

Said improvements consisted of.....

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

If an underground source, state size and depth of well with casing and make and type of pump and motor.

said work being essential to the actual diversion of the water applied for and in the completion of the work required  
under said permit. Said work completed prior to.....

Point of diversion located within the.....¼.....¼ Sec....., T.....<sup>N.</sup><sub>S.</sub>, R.....<sup>E.</sup><sub>M. D. B. & M.</sub>

WELL LOG FILED Yes ☐  
No ☐

Signed.....

Address.....

Street No. or P.O. Box No.

Subscribed and sworn to before me this.....day of

....., 19.....

City, State, Zip Code No.

Notary Public in and for the County of.....,

State of.....

My commission expires....., 19.....

(One dollar filing fee must accompany this proof)



Permit No.....

## PROOF OF APPLICATION OF WATER TO BENEFICIAL USE.

### DEPOSITION OF PERMITTEE

NOTE—Questions 1 to 12, inclusive, must be answered regardless of the purpose for which your permit for water has been granted. If this proof is made for irrigation purposes, a cultural map showing actual boundaries of land irrigated, together with classes of culture, etc., must accompany same, unless such map has already been filed. (See NRS 533.400, NRS 533.405 and NRS 533.410.)

QUESTION 1. What is your name, occupation, and post office address?

Answer.....

QUESTION 2. Are you acting in behalf of the permittee? If so, state his name, address, and your authority for acting in his behalf.

Answer.....

QUESTION 3. What is the number of the permit under which this proof is made? Answer.....

QUESTION 4. From what source do you obtain your water supply?

Answer.....

QUESTION 5. What is the name of the canal, conduit, or other works by which water is conducted to its place of use?

Answer.....

QUESTION 6. To whom was the permit issued? If not the original permittee, give the succession of title.

Answer.....

If assignments of title are not on file in the office of the State Engineer, the certificate will issue to the original applicant.

QUESTION 7. For what purpose are you using the water for which you are now making proof?

Answer.....

QUESTION 8. How many cubic feet per second of water, or fraction thereof, have you actually diverted and beneficially used for the purpose for which this proof is made?

(Actual measurement of water shall be given. 40 miners' inches equals 1 cubic foot per second. 1 miners' inch equals 11.21 gallons per minute. 448.83 gallons per minute equals 1 cubic foot per second.)

Answer.....

QUESTION 9. State the period during the year when water has been beneficially used.

Answer.....

QUESTION 10. Give date when water measurements were taken, the point at which such measurements were taken and the name and address of persons who made the measurements.

Answer.....

QUESTION 11. Water is diverted from its source at the following point.....  
Describe as being within a 40-acre subdivision of

public survey, and by course and distance to a section corner. If on unsurveyed land, it should be stated.

**IF WATER IS USED FOR IRRIGATION ANSWER THE FOLLOWING:**

QUESTION 12. Upon how many acres have you beneficially used water?.....

QUESTION 13. Give the number of acres in each legal subdivision.

Answer.....acres in the.....of Sec....., T....., R.....E.  
.....acres in the.....of Sec....., T....., R.....E.  
.....acres in the.....of Sec....., T....., R.....E.  
.....acres in the.....of Sec....., T....., R.....E.  
.....acres in the.....of Sec....., T....., R.....E.  
.....acres in the.....of Sec....., T....., R.....E.  
.....acres in the.....of Sec....., T....., R.....E.  
.....acres in the.....of Sec....., T....., R.....E.  
.....acres in the.....of Sec....., T....., R.....E.  
(Enumerate only the land upon which water has been actually used.)

QUESTION 14. Have you installed a headgate and weir at your point of diversion, as required by the terms of your permit? Give approximate dimensions of headgate.

Answer.....

QUESTION 15. Do you use the rotation system for irrigating?

Answer.....

QUESTION 16. What is the character of the soil irrigated?

Answer.....

**IF WATER IS USED FOR STOCK WATERING OR DOMESTIC PURPOSES  
ANSWER THE FOLLOWING:**

QUESTION 17. Give detailed description of works of diversion and manner by which water is stored for beneficial use, embracing approximate dimensions of dam at source, size and length of pipe, and size and number of tanks or troughs. If troughs are not used state exactly how water is stored for beneficial use.

Answer.....

QUESTION 18. Give approximate number and kind of animals watered.

Answer.....

**IF WATER IS USED FOR POWER OR MINING AND MILLING PURPOSES  
ANSWER THE FOLLOWING:**

QUESTION 19. What are the dimensions of the diversion headgate and carrying capacity of the conduit in cubic feet per second? Is water diverted by ditch, pipe or flume?

Answer.....



Answer.....

Answer.....

Answer.....

[illegible]

Signed.....

I hereby certify that the foregoing statements were read to the above subscriber before its signing, and I believe him to be the person he represents himself to be, and that said statements were subscribed and sworn to before me at my office in....., County of....., State of....., on this.....day of....., A.D. 19.....

57

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF PERMIT NO.....

OWNER OF RECORD.....

APPROPRIATE THE WATERS OF.....  
(Name of stream, lake, spring, underground or other source.)

STATE OF.....  
COUNTY OF..... } SS.

APPLICATION FOR  
EXTENSION OF TIME

Comes now....., the.....  
(Permittee or Agent)

under Permit No....., who after being first duly sworn, deposes and says:

That due to.....  
(Give reasons in detail why extension of time is necessary.)

I have been unable to comply with the provisions of said permit.

Wherefore permittee requests an extension of time for.....within which to comply with the  
(Not to exceed 1 year)  
provisions for filing the.....  
(Proof of Commencement, or Completion of Work or Proof of Beneficial Use.)  
of the above numbered permit.

Signed.....

Address.....  
Street No., or P.O. Box No.

Subscribed and sworn to before me this.....day of.....  
....., 19.....  
City, State, Zip Code No.

Notary Public in and for the County of.....,

State of.....

My commission expires....., 19.....

**\$5 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME.  
AN APPLICATION MUST BE FILED FOR EACH SEPARATE PERMIT TO APPROPRIATE WATER.**

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

Application No. \_\_\_\_\_ Filed \_\_\_\_\_

APPLICANT MUST NOT FILL IN ABOVE BLANKS

**APPLICATION FOR APPROVAL OF THE PLANS AND SPECIFICATIONS FOR  
THE CONSTRUCTION, RECONSTRUCTION OR ALTERATION OF A DAM**

This application involves in no way the right to appropriate water  
To secure the right to appropriate water, application should be made to the  
State Engineer on forms which will be furnished upon request.

I, \_\_\_\_\_ of \_\_\_\_\_  
Name of applicant Post office  
County of \_\_\_\_\_ State of \_\_\_\_\_, hereby make application for the approval of the  
plans and specifications for the \_\_\_\_\_ of \_\_\_\_\_ dam.  
Construction, reconstruction, alteration Name of dam

The owner of the proposed dam is \_\_\_\_\_  
Name of owner  
of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_  
Post office

If the owner is a corporation, give name and address of president and secretary—  
\_\_\_\_\_  
\_\_\_\_\_

The applicant is acting for the owner in the legal capacity of \_\_\_\_\_  
Agent, Lessee, Trustee, etc.

**Location of Dam**

1. The source of water to be stored is \_\_\_\_\_ which is a tributary of \_\_\_\_\_,  
Name of Stream Stream  
and the proposed dam to be located within the \_\_\_\_\_ 1/4, Sec. \_\_\_\_\_, Tp. \_\_\_\_\_, R. \_\_\_\_\_ E.,  
in \_\_\_\_\_ County, Nevada.

**Description and Dimensions of Dam**

(If for an alteration, the data given below are for the altered dam)

2. Type of dam \_\_\_\_\_ 3. Length of crest \_\_\_\_\_ ft.  
Concrete arch or gravity, earth, rockfill, etc.
4. Height stream bed to spillway crest \_\_\_\_\_ ft. 5. Height foundation to spillway crest \_\_\_\_\_ ft.
6. Freeboard \_\_\_\_\_ ft. 7. Thickness at top \_\_\_\_\_ ft. 8. Thickness at bottom \_\_\_\_\_ ft.  
Spillway crest to top
9. Slope upstream\* \_\_\_\_\_ 10. Slope downstream\* \_\_\_\_\_ 11. Upstream facing\* \_\_\_\_\_  
\*This information to be supplied for earth or rockfill dams. Concrete or rock paving, etc.
12. Amount of material in dam \_\_\_\_\_ cu. yds. 13. Estimated cost \$ \_\_\_\_\_  
Approximate
14. Spillway data \_\_\_\_\_  
Type, capacity, etc.
15. Outlet data \_\_\_\_\_  
Type, capacity, etc.
16. Elevation of crest of dam \_\_\_\_\_ above \_\_\_\_\_ datum  
Approximate elevation to be given if true elevation not available
17. Area of reservoir at spillway level \_\_\_\_\_ acres. 18. Capacity of reservoir \_\_\_\_\_ ac. ft.

## General Information

19. State the purpose of the dam.....  
Diversion only; storage only; storage and diversion; debris storage, etc.
20. State the use that is to be made of water.....  
Municipal, domestic, irrigation, power, mining and milling, recreation, or stockwatering
21. Engineers.....  
Name and address of Engineer preparing plans
22. If the proposed dam is to be built under Federal supervision, state what department has jurisdiction
23. The maps, plans and specifications accompanying this application are a part thereof.

[SIGNED].....  
Applicant

this..... day of....., 19.....

### APPROVAL OF APPLICATION NO....., INCLUDING THE PLANS AND SPECIFICATIONS

*This is to certify that Application No....., including the plans and specifications  
for the..... dam has been examined and the same is hereby..... approved,  
subject to the following conditions:*

.....

.....

.....

.....

.....

.....

*Witness my hand and seal this..... day  
of....., 19.....*

.....  
State Engineer.



State of Nevada  
WATER PLANNING  
AUTHORITY

IN THE SUPREME COURT OF THE STATE OF NEVADA

J.W. BENTLEY AND MARYANN  
BENTLEY TRUSTEES OF THE  
BENTLEY FAMILY 1995 TRUST; JOY  
SMITH; DANIEL BARDEN; AND  
ELAINE BARDEN,

Appellants

vs.

STATE OF NEVADA, OFFICE OF THE  
STATE ENGINEER; DONALD S. FORRESTER,  
AND KRISTINA M. FORRESTER; HALL  
RANCHES, LLC; THOMAS J. SCYPHERS AND  
KATHLEEN M. SCYPHERS; FRANK SCHARO;  
SHERIDAN CREEK EQUESTRIAN CENTER, LLC;  
AND RONALD R. MITCHELL AND GINGER  
G. MITCHELL,

Respondents.

J.W. BENTLEY; MARYANN BENTLEY,  
TRUSTEES OF THE BENTLEY FAMILY  
1995 TRUST; JOY SMITH; DANIEL D. BARDEN;  
AND ELAINE BARDEN,

Appellants,

vs.

HALL RANCHES, LLC; THOMAS J. SCYPHERS;  
KATHLEEN M. SCYPHERS; FRANK SCHARO;  
SHERIDAN CREEK EQUESTRIAN CENTER, LLC,  
A NEVADA LIMITED LIABILITY COMPANY;  
DONALD S. FORRESTER; KRISTINA M.  
FORRESTER; RONALD R. MITCHELL; AND  
GINGER G. MITCHELL,

Respondents.

Electronically Filed  
CASE NO. 64773  
Apr 03 2015 12:49 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

CASE NO.: 66303

1 J.W. BENTLEY; MARYANN BENTLEY,  
2 TRUSTEES OF THE BENTLEY FAMILY 1995  
3 TRUST; JERALD R. JACKSON, TRUSTEE OF  
4 THE JERALD R. JACKSON 1975 TRUST, AS  
5 AMENDED; AND IRENE M. WINDHOLZ,  
6 TRUSTEE OF THE WINDHOLZ TRUST DATED  
7 AUGUST 11, 1992,

CASE NO.: 66932

Appellants,

vs.

8 THE STATE OF NEVADA STATE ENGINEER;  
9 HALL RANCHES, LLC; THOMAS J. SCYPHERS;  
10 KATHLEEN M. SCYPHERS; FRANK SCHARO;  
11 SHERIDAN CREEK EQUESTRIAN CENTER, LLC;  
12 DONALD S. FORRESTER; KRISTINA M.  
13 FORRESTER; RONALD R. MITCHELL;  
14 AND GINGER G. MITCHELL,

Respondents.

On Appeal from the Ninth Judicial District Court  
of the State of Nevada, in and for Douglas County  
Hon. Nathan Todd Young, District Judge

### REQUEST FOR JUDICIAL NOTICE

DYER, LAWRENCE, FLAHERTY,  
DONALDSON & PRUNTY  
JESSICA C. PRUNTY  
Nevada Bar No. 6926  
2805 Mountain Street  
Carson City, Nevada 89703  
Telephone: (775) 885-1896  
*Attorneys for Appellants Joy Smith,  
Daniel Barden and Elaine Barden*

## REQUEST FOR JUDICIAL NOTICE

Appellants Joy Smith, Daniel Barden and Elaine Barden (“Smith & Barden”) hereby request, pursuant to NRS 47.130 *et seq.* and NRAP 27 that this Court take judicial notice of “Water for Nevada, Special Information Report, Water - Legal and Administrative Aspects,” Division of Water Resources, 1974, a true and accurate copy of which is attached hereto as Exhibit 1.

Under NRS 47.130, this Court may take judicial notice of a fact when that fact is “[c]apable of ready determination by resort to sources whose accuracy cannot reasonably be questioned” so that the fact in question “is not subject to reasonable dispute.” See Sheriff, Clark County v. Kravetz, 96 Nev. 919, 920 (1980). In this regard, the Legislative, Judicial, and Executive branches of the government of the State of Nevada are “sources whose accuracy cannot reasonably be questioned,” and the fact of and content contained in the public records of the government of the State of Nevada “is not subject to reasonable dispute” and may be judicially noticed. NRS 47.130; see Ainsworth v. Combined Ins. Co., 105 Nev. 237, 267 (1989) (taking judicial notice of the public records in state district court proceedings); Jory v. Bennight, 91 Nev. 763, 766 (1975) (taking judicial notice of the public records of the Nevada Real Estate Division indicating that Edward Jory “was the officer licensed as broker on behalf of the corporation”); see also Chas. L. Harney, Inc. v. State, 31 Cal. Rptr. 524, 529 (Ct. App. 1963) (taking judicial notice of the “official records and files of the State Board of Control and of the office of the State Controller”).

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1 Smith and Barden request that this Court take judicial notice of the attached  
2 report as an official record of the Nevada State Engineer, which is a public record  
3 of the Executive branch of the State of Nevada, and the facts and *content* therein  
4 are “not subject to reasonable dispute.” Therefore, this Court’s judicial notice of  
5 these facts and documents is appropriate.

6 RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of April, 2015.

7  
8 DYER, LAWRENCE, FLAHERTY,  
9 DONALDSON & PRUNTY

10  
11 By: /s/ Jessica C. Prunty, Bar No. 6926  
12 Jessica C. Prunty, Bar No. 6926  
13 2805 Mountain Street  
14 Carson City, Nevada 89703  
15 Telephone: (775) 885-1896

16  
17 *Attorneys for Appellants Smith & Barden*  
18  
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28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Dyer, Lawrence, Flaherty, Donaldson & Prunty, and that on the 3<sup>rd</sup> day of April, 2015, I caused a true and correct copy of the within **OPENING BRIEF OF APPELLANTS JOY SMITH, DANIEL BARDEN AND ELAINE BARDEN** to be deposited in the U.S. Mail, first-class postage prepaid, addressed to the persons listed below:

Bryan L. Stockton, Esq.  
Deputy Attorney General  
100 North Carson Street  
Carson City, Nevada 89701

Thomas J. Hall, Esq.  
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P.O. Box 3948  
Reno, Nevada 89520

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Matuska Law Offices, Ltd.  
937 Mica Drive, Suite 16A  
Carson City, Nevada 89705

  
Debora McEachin

**EXHIBIT 1**

**EXHIBIT 1**

# Water for Nevada



SPECIAL INFORMATION REPORT  
WATER — LEGAL AND ADMINISTRATIVE ASPECTS

**State of Nevada  
WATER PLANNING  
REPORT**

WATER



FOR NEVADA

Proposed by the National Health Center  
for the Month of May

ELMO J. DeRICCO  
Director

STATE OF NEVADA

ROLAND D. WESTERGARD  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

201 South Fall Street, Carson City, Nevada 89701

In reply refer to  
No.

Address All Communications to  
the State Engineer, Division  
of Water Resources


TO THE CITIZENS OF THE STATE OF NEVADA

This Planning Report entitled "Special Information Report, Water - Legal and Administrative Aspects" is one of a series of reports being prepared as a part of the development of the State Water Plan. The report is a product of the work of several people on the Division of Water Resources staff. Bruce L. Rice of the Division of Water Resources was responsible for compilation of the information and the final contents of the report.

The report presents, in a non-technical manner, the legal and institutional background which serves as a basis for the procedural and administrative activities of the Division of Water Resources. Among the topics discussed in the report are: adjudication of vested rights, appropriation of public waters, water planning activities, and the various districts and boards with which the Division of Water Resources is involved.

The reader is reminded that this report is informational in nature and is not meant to serve as the basis for any legal action. For more detailed information on the subjects discussed in the report, the reader is referred to the various Nevada Revised Statutes and court proceedings mentioned in the report.

Respectfully,

  
Roland D. Westergard  
State Engineer



SPECIAL INFORMATION REPORT  
WATER —  
LEGAL AND ADMINISTRATIVE ASPECTS

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# SPECIAL INFORMATION REPORT WATER — LEGAL AND ADMINISTRATIVE ASPECTS

## PART I SUMMARY

### HISTORY

A major part of the area that is now the State of Nevada was included in the Territory of Utah, established on September 9, 1850 and the use of water at that time was subject to the laws of the territory. The territory of Nevada was created on March 21, 1861, and for several years after the organization of the Territory there were no statutes concerning water rights. Nevada was admitted to the Union as a State by proclamation of President Lincoln on October 31, 1864.

The state Constitution does not contain any specific provision relating to water resources. It contained a general eminent domain clause which was construed to provide some relief in claims of water rights by due process and by condemnation for irrigation ditch rights-of-way.

During the period when Nevada was a territory and for many years after Nevada became a state, the right to use of water was generally established under the doctrine of prior appropriation. However, in the case of *Van Sickle vs. Haines* (1872), the Supreme Court held that the Common Law doctrine of riparian rights applied when riparian land was acquired from the U.S. Government. But, the doctrine of riparian rights was struck down in 1885 by a Supreme Court decision (*Jones vs. Adams* [1872]) reversing its stand with respect to riparianism,

and the doctrine of appropriation has since been applied.\* The Court concluded that the riparian doctrine did not serve the wants and necessities of the people for either mining or agriculture.

### CASE LAW

Thus the water policy and philosophy of the State of Nevada has been developed by over 100 years of usage beginning about 1849 for irrigation and mining, and is now contained in the Nevada Water Law, Nevada Revised Statutes of 1957, as amended.

Chapters 533 through 544 contain the state water policy, procedure for acquiring a right to use water by adjudication and by appropriation, and provides for the administration for the conservation, regulation and distribution of the public waters of the state above and below the surface of the ground.

\*The principal feature of riparianism is that rights in water arise from, and only from, ownership of land which adjoins or underlies a stream. The right cannot be lost by mere disuse; it cannot be used on other lands; thus if a riparian owner sells a portion of his land (B) so that the new owner owns no land touching the stream, the riparian right on land B is severed, and lost. As among themselves, riparian holders are usually subject to relative reasonable use, without regard to dates of initiation of use. Under the appropriation doctrine a right is obtained by taking water and applying it to a beneficial use. As between competing appropriators, priority in time is determinative.

Nevada Highway Department Photo



Statutes relating to water were enacted by the Nevada legislature as early as 1866. The Act of 1866 allowed any person or persons to divert the waters of any river or stream, and run the same through any ditch or flume, and provided for the right of way through the lands of others. Court decisions provided the guidelines which the lawmakers used to attempt to bring some order out of the chaos created by early mining booms and irrigation development in the semi-arid State of Nevada. A law designed to adjudicate water rights through the courts was tried in Nevada in the early nineties. The law proved a failure. It was demonstrated that the determination of water rights through the courts was not only unsatisfactory, but is a long, expensive, and tedious process. Thus the fundamental idea in creating the office of State Engineer was to avoid this delay and expense.

The basic concept of the present Nevada Water Law was developed from the Act of 1903. The primary purpose of the Act of 1903 creating the office of State Engineer was to provide a method by which the existing rights to water might be defined. The State Engineer was directed to cooperate with the Secretary of Interior in all work of construction, operation, maintenance and management of irrigation works constructed by the Secretary of the Interior in and for the benefit of Nevada, under an Act of Congress approved June 17, 1902 (Reclamation Act). It was clearly seen, at that time, that reclamation work could not proceed unless existing rights to the use of water on such streams as the Carson, Truckee, Walker and Humboldt Rivers were ascertained. The Irrigation Act of 1903, as it was entitled, was approved February 16, 1903 and declared that all natural water courses and natural lakes, and the waters thereof which were not held in private ownership, belong to the public and are subject to appropriation for a beneficial use. It also stated that the right to the use of water so appropriated for irrigation would be appurtenant to the land to be irrigated, and beneficial use would be the basis, the measure and the limit of the right.

The philosophy of the Act of 1903 was amended, clarified, and further expanded by major legislation in the Acts of 1905, 1907, 1909, 1913, 1939, 1967, 1969, 1971, and 1973.

The Act of 1903, while providing for adjudication of all rights to the use of water which had become vested, or were then in process of initiation by the physical act of appropriation, did not provide for rights which would thereafter be initiated. The law of appropriation and use still applied. Whenever a settler desired to appropriate

water, a notice would be posted at the proposed point of diversion, or the diversion would be made without notice. No attempt was made, as a rule, to ascertain the amount of unappropriated water in the source; but he took his chances of being enjoined or sued for damage for depriving a prior appropriator of water. The twenty-second Session of the Legislature enacted an amendatory law, approved March 1, 1905, requiring any person, association or corporation thereafter desiring to appropriate any of the public waters, to file an application for permission to make such appropriation with the State Engineer and making it the duty of the State Engineer to examine the facts regarding water supply in the source applied for and to approve or deny the application in accordance with his findings as to the existence or non-existence of unappropriated water in such source. The 1905 Act did give any interested party the right to protest any application he deemed injurious to his interests.

In the legislative session of 1907, the 1903 and 1905 Acts were repealed and a new and more comprehensive Act was provided. The 1907 legislation provided that "In all measurements of water in this State a cubic foot of water per second of time shall be the standard of measurement", and that "... When the necessity for the use of water does not exist, the right to divert it ceases, and no person shall be permitted to divert or use the waters of a natural watercourse or lake, except at such times as the water is required for a beneficial purpose." Where necessary to transpose miner's inches to c.f.s., one c.f.s. shall be equal to 40 miner's inches.

The 1907 Act also provided for a method to change the point of diversion of existing rights, and for aggrieved parties to bring an action against the State Engineer.

The Act of 1909 amended some provisions of the Act of 1907. The main amendments provided for the maximum quantity of water that may be appropriated for irrigation purposes; for cancellation of applications not properly refiled; for proof of commencement of work; and for appropriate measuring weirs. Also in 1909, the State legislature passed legislation which would coincide with an Act of Congress, known as the Carey Act. A fee system for filing applications was enacted. The fee for filing an application for permission to appropriate water was set at twenty-five dollars, the same as it is today.

The 1913 Act included a law for the conservation of underground water in the State of Nevada. Chapter 140, approved March 22, 1913, provided a new water law, Section 1 to 87, and repealed the water law of February

26, 1907, the amendatory Act of February 20, 1909, together with all other Acts in conflict with the new law. By this Act, underground water was fully recognized. "The waters of all sources of water supply within the boundaries of the State, whether above or beneath the surface of the ground, belong to the public." The Water Law of 1913 is the basis of our present water law. A declaration was made that beneficial use of water is a public use and therefore the right of eminent domain may be exercised. Regulations as to the abandonment of rights was set forth and rotation in the use of water was provided for. A more substantial code for the determination of vested water rights was established and regulations were set forth concerning reservoir permits.

There were many claims that the entire water law of 1913 was unconstitutional, but these fears were laid to rest in the case of *Johannes Anderson, et al vs. William Kearney*, 37 Nev. 314 (1914). The case basically held that the State Engineer, as an administrative body, had the authority to determine the rights of water users to a stream system. His determination is subject to judicial review prior to final adjudication.

The Act of 1915 clarified the 1913 Act stating that all underground waters, except percolating water, are subject to appropriation under the laws of this State relating to the appropriation and use of water.

The Act of 1919 amended the Act of 1913 to include corporations among those who are entitled to appropriated water.

The Act of 1921 clarified some of the wording of the statutes of 1913 which the Nevada Supreme Court had declared unconstitutional. These provisions related to adjudication procedures. Licensing of engineers and surveyors as state water right surveyors by the State Engineer was also provided.

In 1925, the legislature provided for the use of water for watering livestock. This Act is commonly known as the 1925 Stock Watering Act.

The Statutes of 1927 amended to the Section relating to the filing of objections with the Court to the State Engineer's Order of Determination and the hearing of same before the Court. Section 36½ of Chapter 192 provides that following the filing of the Order of Determination in the District Court, the distribution of water by the State Engineer shall at all times be under the supervision and control of the District Court, and said officers and each of them, at all times shall be deemed to be officers of the Court in distributing water under and pursuant to the Order of Determination or under and

pursuant to the decree of the Court.

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

Provisions were enacted whereby well users within a basin could petition the State Engineer to designate the basin. If an artesian basin was designated, the county commissioners could, with the approval of the State Engineer, hire an artesian well supervisor to carry out the provisions of the act. Prior to drilling a well within a designated basin, a permit must be obtained from the office of the State Engineer.

Specifications were enacted to provide for criteria for the construction of wells. Well logs were required to be filed in the State Engineer's office. The log was required to include the depth, thickness, and character of the different strata penetrated.

In 1945, the legislature set forth a procedure whereby the method of payment of water commissioners was made out of a special fund. The water users on the particular stream pay into the fund on a pro rata basis.

In 1947, the legislature authorized the State Engineer to enter into cooperative studies with the State of California and the U.S. Government on matters relating to the waters of Lake Tahoe. This Act was the foundation for the Bi-State Compact, which, at this date, is not fully settled. Also in 1947 the law was amended to provide that all well drillers were to be licensed by the State Engineer.

In 1951, the legislature provided that the State Engineer must approve all dams more than 10 feet in height or with a capacity of 10 acre-feet or more. Also, in 1951, the Columbia Basin Interstate Compact Commission was created.

In 1955, the legislature created the California-Nevada Interstate Compact Commission. The purpose of the bill is to form a compact between Nevada and California whereby there can be made a distribution and use of the waters of Lake Tahoe and the Truckee, Carson and Walker Rivers and their tributaries, and related matters. After 16 years of extensive negotiations, the com-

compact was approved by the Legislatures of California and Nevada. The compact was sent to Congress for approval in 1971. The compact was reintroduced into the House of Representatives on January 3, 1973 and the Senate on January 4, 1973, but as of the date of this publication, no action has been taken on same.

Another amendment, made in 1955, was the lowering of the maximum volume of domestic water from 2,880 gallons per day, to 1,440 gallons per day. This was later raised to 1,800 gallons per day by the 1971 legislature.

The right to issue temporary permits within designated basins was also added in 1955. The statute provides for the revocation of such temporary permits when the applicant can be served by an entity, such as a water district. Under this statute, many temporary permits were issued within the Las Vegas basin, and at this date, many of same are being revoked.

In 1961, the legislature passed a bill which gave the State Engineer the authority to repair or seal a defective well. If the State Engineer orders the owner to repair the well, and the owner fails to do so within fifteen days, the State Engineer may cause the well to be repaired or sealed. The cost of the repair is to be paid out of the water distribution fund, subject to reimbursement by the well owner and the cost shall remain a lien on the property until paid.

In 1967 the legislature passed twelve amendments to the Nevada water law. Among the more important are as follows:

Water measurements, as required for filing Proof of Beneficial Use, must be taken by a State water right surveyor or an official or employee of the State Engineer's office.

The forfeiture provision concerning a failure to place an adjudicated right, or a permitted right to underground water to beneficial use within five successive years was amended. This provision shows the legislative intent that water be kept in reasonably continuous beneficial use; if not, the water right is forfeited. The law was also amended to require an appropriator of ground water to obtain a permit in a basin *not* designated before any legal diversion of water can be made. The Act became effective April 15, 1967.

The 1969 legislature provided for development of a comprehensive water resource plan for the State of Nevada. NRS 532.165 requires the State Engineer to conduct the necessary studies and inventories to develop a comprehensive water resource plan for the State of Nevada. The State Engineer shall also review and eval-

uate proposals by federal, state and local agencies for flood control and water development projects to insure that such proposals are compatible with the State water resource plan and are in compliance with Nevada water laws.

The legislature also provided, in 1969, that water used for recreational purposes is a beneficial use of water.

In 1969, the California-Nevada Interstate Compact was ratified by the Legislature. As mentioned above, this matter is now before the U.S. Congress.

The 1971 legislature enacted several amendments or new bills to the water law. Among the more important are as follows.

The law was clarified with respect to the appropriation of sewage effluent under the reservoir-secondary permit procedure. Domestic use was increased from 1,440 gallons per day to 1,800 gallons per day and the legislature amended the wording of the California-Nevada Interstate Compact to conform to the legislation as enacted by the California Legislature.

Also in 1971 an Act was passed amending NRS 116.040, 117.027 and 278.420 to require all subdivision plats or maps in the State to be subject to confirmation by the State Engineer as to water quantity. No city or town or county legislative authority shall approve or accept for filing any map or plat not conforming to this requirement. The Act was effective July 1, 1971.

The 1973 legislature amended NRS 534.035 to make the establishment of ground water boards discretionary upon the State Engineer. The act also provides that the State Engineer may dissolve a ground water board if he determines that the future activities of the board are likely to be insubstantial. In accordance with this provision, the Las Vegas Valley Ground Water Board was dissolved on July 24, 1973.

A channel clearance, surveying and monumenting fund in the amount of \$50,000 was established in 1973. The purpose of the fund is to aid local governments in the clearing, surveying and monumenting of navigable rivers.

Also, in 1973, the Legislature amended NRS 533.370, making it discretionary upon the State Engineer whether or not to issue a permit to appropriate water when the use will be to generate energy to be used outside the state.

The 1973 legislature amended NRS 116.040, 117.027 and 278.420 pertaining to subdivisions. Under the new act, subdivision plats and condominium plans are sub-



ject to review as to water quantity by the State Engineer. A copy of the review is furnished to the developer who in turn must furnish a copy to each buyer before the sale is completed.

In the early years of the territory and the State, the application and use of water under the riparian doctrine on mining claims where title was vested in the federal government proved unsatisfactory, resulting in continuous litigation and conflict. The courts tried to provide orderly development of the water resources by decisions applying the riparian doctrine. Generally, they did not suit the conditions prevailing in the State. But court decisions did influence the legislature to enact laws to govern the regulation of water. These statutory provisions have been developed and expanded into the present Nevada water law (See the Appendix for key court decisions on water).

### **APPROPRIATION OF PUBLIC WATERS**

NRS 533.325 through 533.435 inclusive, provide the complete procedure for appropriation of the public waters of the State whether above or beneath the surface of the ground. Application for a permit to appropriate water must be made on a form furnished by the Division of Water Resources.

### **BENEFICIAL USE**

NRS 533.035 states that "Beneficial use shall be the basis, the measure, and the limit of the right to the use of water." In other words, the cornerstone of the State Water Law is Beneficial Use. Under NRS 534.120, the State Engineer is authorized to designate preferred uses of water within designated ground water basins within the following uses: domestic, municipal, quasi-municipal, industrial, irrigation, mining and stockwatering. Under NRS 533.400 the proof of beneficial use deposition submitted to the State Engineer shall include answers to all pertinent questions contained on a form provided by the Division of Water Resources.

### **EMINENT DOMAIN**

NRS 533.050 declares the beneficial use of water a public use. Any person may exercise the right of eminent domain to condemn all lands and other property or rights required to build, maintain, and use any works for the lawful diversion, conveyance and storage of waters.

Eminent domain is a private action done between the parties and not through the State Engineer's Office.

### **PRESCRIPTIVE RIGHTS PROHIBITED**

NRS 533.060, (3). No prescriptive rights (i.e., rights established by tradition or usage) to the use of such water, or any of the public water appropriated, can be acquired by adverse use or adverse possession for any period of time whatsoever. But the right to appropriate any of such water shall be initiated by first applying to the State Engineer for a permit to appropriate it as provided in this chapter and not otherwise. The Supreme Court of Nevada in Case No. 3533 rendered a decision dated January 28, 1949 to the effect that a water right could be obtained by adverse use. An amendment was added to the law in 1949 in order to prevent the acquiring of water right by adverse possession subsequent to March 1949.

### **STATE WATER RIGHT SURVEYORS**

NRS 533.080 provides for the appointment of state water right surveyors to prepare all maps, surveys and measurements of water required under the provisions of this chapter. Any registered engineer or land surveyor, qualified and registered in the State of Nevada, may apply to the State Engineer for appointment as a state water right surveyor. State water right surveyors are paid by their employers, not by the State of Nevada.

### **ASSIGNMENT OF WATER RIGHTS**

NRS 533.385. Any application to appropriate water or permit issued by the State Engineer can be assigned to another person only if that person is authorized under statute to acquire it in the first instance. No such assignment is binding, except between the parties to it, unless filed for record in the office of the State Engineer.

### **LOSS OF WATER RIGHTS**

Surface waters. NRS 533.060, (2) provides that if the owner or owners of any ditch, canal, reservoir, or other means of diverting any of the public water fail to use that water for beneficial purposes during any five successive years, the right to so use it shall be deemed as having been abandoned. The owner or owners shall thereupon forfeit all water rights, easements and privileges associated with its use. Others may then appropri-

ate these waters for beneficial use as if such ditch, canal, reservoir or other means of diversion had never been constructed. Any qualified person may appropriate any such water for beneficial use.

Ground water. NRS 534.090, Section 1, provides that if a holder of any right (regardless of either its nature or the time it became effective) fails for five successive years to use beneficially all or any part of the underground water, he shall forfeit the right to the use of that water to the extent of such nonuse.

NRS 534.090, Section 2, provides that a right to use underground water, vested or otherwise, may also be lost by abandonment. When an application is made to appropriate water from the same source, the State Engineer will investigate that source to see if there is a prior right. If he believes as a result of that examination that an abandonment has taken place, he shall so state in his ruling approving the new application.

### APPEALS

NRS 533.540 provides that anyone aggrieved by an order or decision of the State Engineer may appeal it. This is done by initiating a court proceeding in the proper district court within thirty (30) days of the State Engineer's action. Upon such a court proceeding the decision of the State Engineer is *prima facie* correct and the burden of proof is upon the attacking party. Appeals from the district court are taken within 60 days from entry of judgment, to the Supreme Court as in other civil cases.

### GROUND WATER

NRS 534.010 through 534.230, inclusive, provides for the conservation and distribution of underground waters within the boundaries of the State of Nevada. The Act of 1939 (Chapter 534 under the Nevada Revised Statutes of 1957) was the first legislation specifically setting out the procedure for the regulation and administration of underground waters. It authorizes the State Engineer to designate ground water basins, to establish preferred uses of water within such basins, and to limit withdrawals. Under NRS 534.120, he may issue temporary permits to appropriate ground water and may revoke them when water can be served by a municipality or water district.

### LICENSED WELL DRILLERS

Chapter 534 further provides that well drillers must

apply each year to the State Engineer for licensing. Well drillers are also required to be licensed by the State Contractor's Board. And all water wells, including domestic wells must be drilled by a licensed well driller.

### DOMESTIC WELLS EXCEPTED

NRS 534.180 provides that nothing in Chapter 534 applies to obtaining permits for developing and using for domestic purposes underground water from a well where the draught does not exceed a daily maximum of 1,800 gallons, except for providing any information required by the State Engineer. The term "domestic use" as herein applied extends to one (1) single family dwelling, the watering of a family garden, lawn, and the watering of domestic animals.

### DAMS AND OTHER OBSTRUCTIONS

NRS 535.010 through 535.120, inclusive, provide for the construction, reconstruction and alteration of dams upon application and approval of plans and specifications by the State Engineer. The State Engineer has authority to inspect dams and other obstructions to safeguard life and property.

### DITCHES AND CANALS

NRS 536.010 through 536.120, inclusive, provides for the regulation and maintenance of ditches, canals, flumes and other conduits by the State Engineer.

### NAVIGABLE BODIES OF WATER

NRS 537.010 through 537.030, inclusive, declared the Nevada portion of the Colorado River, the Virgin River and Winnemucca Lake navigable and title to lands below the high water mark of both the Colorado River and the Virgin River and title to the bed of Winnemucca Lake be held by the state. (See Appendix — *Key Court Decisions on Water — Navigability — State Engineer vs. Cowles Brothers, Inc.* No. 6186, Dec. 18, 1970).

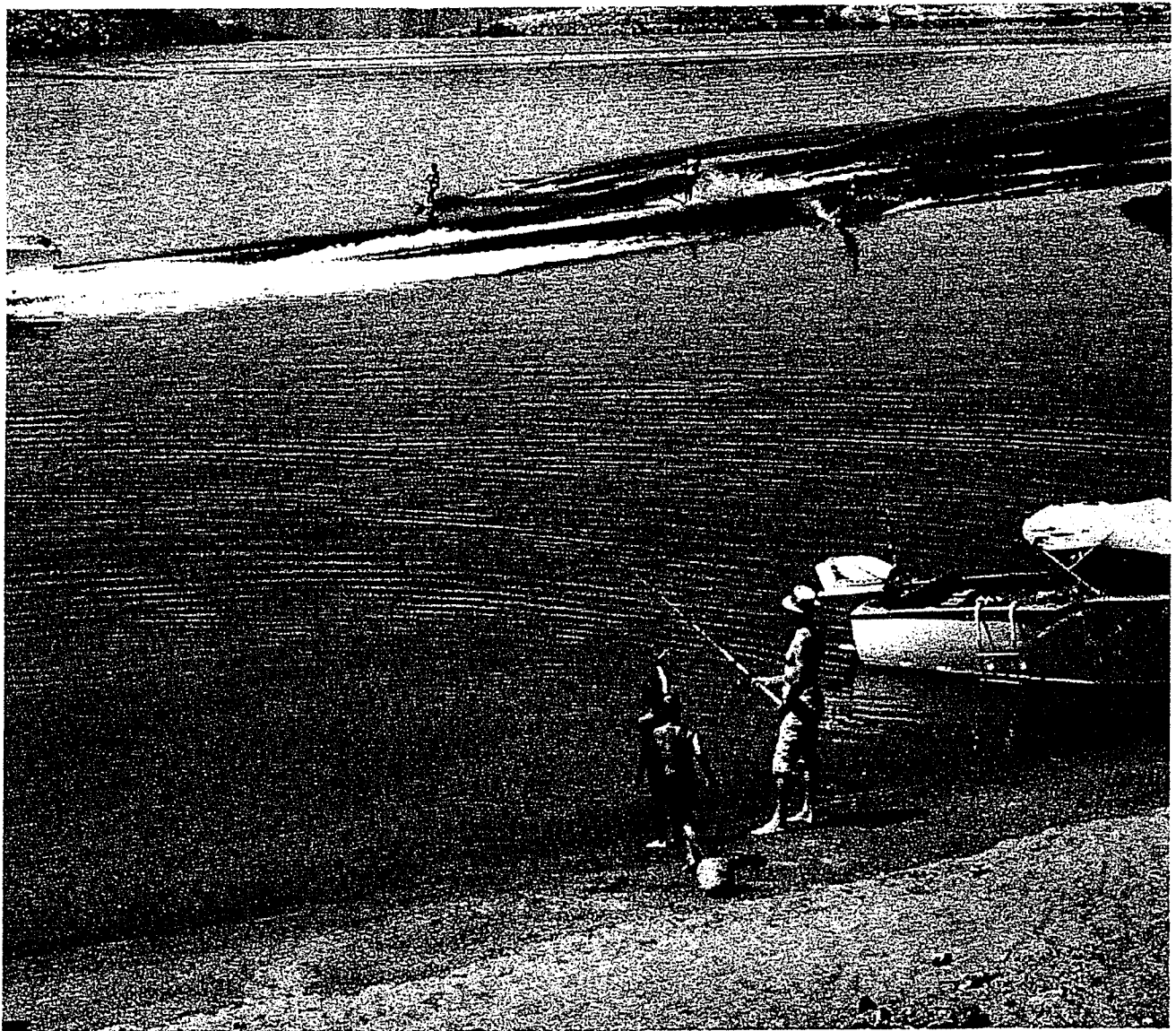
### INTERBASIN TRANSFERS

The present law does not prohibit the interbasin transfer of surface or underground water between basins within the State.

### AREA OF ORIGIN

Nevada Water Law does not specifically contain any

provision whereby an "area or watershed of origin" is protected from diversion of its water resources to an area outside its drainage basin. An application may be denied by the State Engineer, however, if in his opinion it tends to be detrimental to the public welfare or interest.



## PART II

### WATER RIGHT PROCEDURES AND POLICIES IN NEVADA

#### *ADJUDICATION PROCEDURES*

In an arid state like Nevada water is so scarce — and precious — that it must be strictly controlled and regulated if it is to be used most effectively. The agency for exercising this authority is the Division of Water Resources (DWR). The Division of Water Resources is used synonymously with the Office of the State Engineer as the State Engineer is the executive head of the Division. It operates under a complex body of laws which has grown over the past 100 years — laws which apply to every conceivable consumptive and non-consumptive use of water.

The majority of these laws, as well as interpretations, court decisions effecting them, etc., are outlined in some detail in Part III of this booklet. This section — Part II — is designed to give a general explanation of how the State Engineer applies those laws and interpretations to the practical business of regulating the distribution and use of water through the system of rights.

This explanation, based on the DWR's present policy and interpretation of the statutes, will not answer all the questions bound to arise in such a complex matter. But any potential water user or other interested person can have such questions answered by contacting the DWR offices in Carson City, Las Vegas, or Elko.

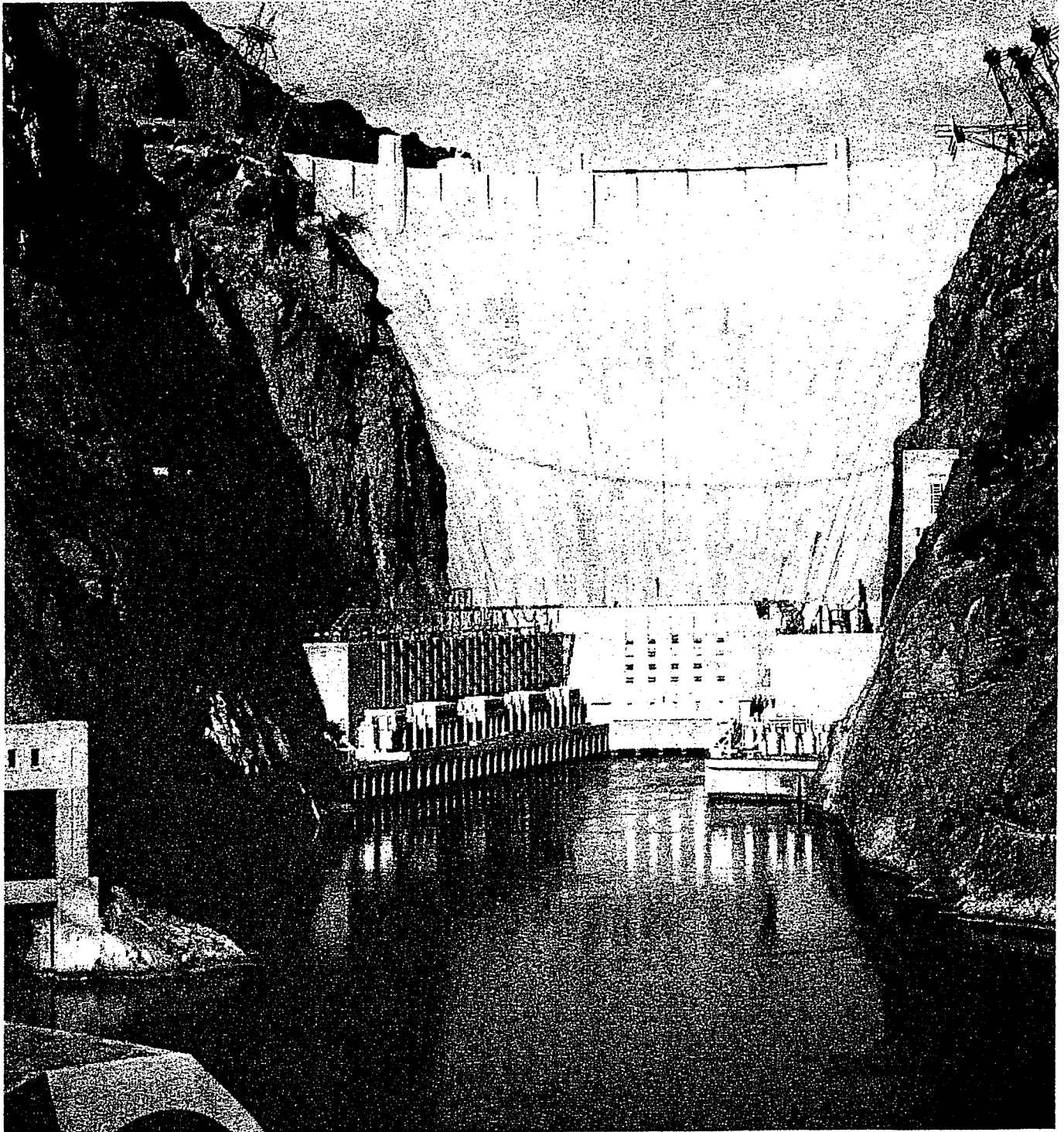
Since the statutes make no exception, everyone

wishing to use any water on public, private, or federal land, can legally do so only by complying with the statutory procedure. This includes all individuals, corporations, state or federal agencies.

#### *SUMMARY OF ADJUDICATION PROCEDURE ON VESTED RIGHTS*

Surface water rights initiated by applying water to beneficial use prior to March 1, 1905, and which have been perpetuated or continuously used through the years are known as vested water rights. The State Engineer encourages any claimant to a vested water right to file such claim for record. This is done by filing a proof of appropriation of water in this office. Such a proof must be prepared on a special form furnished by the State Engineer's office, and must be accompanied by the statutory filing fee of ten dollars (\$10) for each proof and it is advisable to submit a supporting map prepared from a survey by a licensed State Water Right Surveyor. The filing of proofs of appropriation has never been made mandatory except when a stream system is being adjudicated and an order has been entered by the State Engineer for all claimants to file proofs of appropriation and accompanying maps. Many claimants take the precaution of filing a claim of their vested right even when no court action has yet been undertaken,

U. S. Bureau of Reclamation Photo



since the process of adjudicating all streams in this state is continuing.

The magnitude and extent of vested water rights on a stream system are determined through an adjudication proceedings. The primary purposes of a water right adjudication is to legally determine the nature and extent of these vested rights and to provide systematical state control over the distribution of water under these rights.

As previously discussed, by legislative Act in 1903 water laws were adopted primarily for the purpose of providing a method of determination and regulation of existing water rights. However, laws enacted from and since March 1, 1905, provide the exclusive method of subsequently initiating and perfecting a water right by filing an application with the State Engineer for permission to appropriate and apply water to beneficial use.

The 1939 Ground Water Act (Stats. 1939, Chap. 178) defined vested rights as applied to water from wells. Such vested right is a right to the use of underground water acquired from an artesian well or from a definable aquifer prior to March 22, 1913, and an underground water right on percolating water, the course and boundaries of which are incapable of determination, acquired prior to March 25, 1939. Any claimant of a vested underground water right may petition the State Engineer to adjudicate such rights. If upon investigation the State Engineer finds the facts and conditions so justify, an order is entered granting said petition. In such order the State Engineer designates the area within which such determination is to be made. Following the designation of such area the State Engineer proceeds to adjudicate such right as provided for in the general water law of Nevada and hereinafter summarized.

The law providing for adjudication proceedings is a part of the Nevada Water Law, as set forth in NRS 533.090 through 533.320.

The law provides that any water user on a stream system may petition the State Engineer to begin an adjudication of the water rights, or without such petition, the State Engineer may initiate such proceedings on any stream. The various steps followed in the adjudication proceedings are herewith briefly summarized:

1. The State Engineer enters an order granting said petition.

2. The State Engineer causes notice of pendency of proceedings to be published in a newspaper of general circulation in the county wherein the source is located once a week for four consecutive weeks.

3. A field investigation of the stream system is made by a member(s) of the State Engineer's staff.

4. A notice and order for taking proofs are published in a local newspaper in the county where the stream is located. Such publication shall run for 4 consecutive weeks. Said notice sets forth the dates of commencement and completion of taking proofs. The date for commencement of taking of proofs must be at least fifteen days after the date of final publication. At least thirty days prior to the date set for taking proofs notice is sent by registered mail to all of the claimants of record setting forth said dates for commencement and completion of taking proofs.

5. The period for taking proofs may not be less than sixty days.

6. Following the period for taking proofs the State Engineer prepares an abstract of claims and preliminary order of determination. A notice and order setting time and place of inspection, together with an abstract of claims and the preliminary order of determination are sent by registered mail to each claimant. Such notice must be sent at least thirty days prior to the date set for the beginning of the inspection period.

7. The period for inspection of proofs must be at least twenty days. The period for filing objections to the preliminary order of determination must be at least thirty days from the first day of inspection.

8. The State Engineer shall fix a time and place for the hearing of objections to the preliminary order of determination. Said notice of such time and place is served on each claimant by registered mail. The time set for hearing objections shall be not less than thirty days, nor more than sixty days, from the date said notice is served.

9. Period for hearing objections.

10. The State Engineer prepares the final order of determination and files same with the district court, together with affidavit of compliance with jurisdictional requisites, and all other evidence in connection with the adjudication proceedings.

11. The State Engineer, upon filing of a certified copy of the order of determination with the clerk of court, procures an order setting the time and place for hearing of exceptions to the order of determination.

12. The State Engineer forwards by registered mail to each party in interest a certified copy of the order setting time and place for hearing objections and causes said order to be published once a week for four consecutive weeks in a newspaper of general circulation in

the county within which the source is located.

13. The State Engineer files proof of such service with the clerk of the court.

14. Court hearing of exceptions to the order of determination.

15. Entering of findings of fact, conclusions of law and decree by district judge.

The time required to adjudicate a stream is at least a year and a half if no delay is had in the regular proceedings.

Upon completion of adjudication proceedings the State Engineer issues to each person represented in the Decree a certificate setting forth the magnitude and extent of his water right, except that no certificate need be issued when printed copies of any decree of final determination lists the individual rights determined therein.

## PERMIT TO APPROPRIATE

### THE APPLICATION

To acquire a new water right, an application on a form supplied by the Division of Water Resources must be filed with the State Engineer. The application, by law, must be supported by a map prepared in prescribed form by a Water Right Surveyor (a Registered Land Surveyor or Registered Professional Engineer duly licensed as a Water Right Surveyor by the State Engineer). The supporting map must show the point of diversion and place of use within the proper legal subdivisions. These map locations must coincide with the physical locations, so that all interested parties will have accurate information as to the proposed establishment of a water right.

Since the Water Right Surveyor has had the opportunity to become familiar with problems relating to the acquisition of a water right, he can usually answer many questions which arise. A complete list of licensed Water Right Surveyors is available upon request from the DWR.

Once the application form, map and filing fee of \$25.00 have been received by the DWR office in Carson City, the application is indexed and processed. As required by law, the division sends a summary copy of the application to a newspaper of general circulation in the county where the proposed point of diversion is located. This notice is published once a week in the newspaper for five consecutive weeks. For 30 days following the last date of publication, any interested person may file a protest with the State Engineer. The protest should contain reasons why the State Engineer should deny the application.

After 30 days from the last date of publication, the application becomes ready for action. The State Engineer then makes a determination whether to grant or deny the application. That action must take place within one year unless the applicant (or both applicant and protestant in protested instances) requests in writing that action be withheld; or unless the proposed point of diversion is in an area where water studies are being made; or unless court actions are pending.

It usually takes about 120 days from the date of filing for the application to be ready for action, if no unusual problems are encountered.

### THE PERMIT

Subject to availability of supply and existing rights, water may be appropriated for any beneficial use. Where there is unappropriated water in the source, and where the proposed use or change does not tend to impair the value of existing rights, or to be otherwise detrimental to the public interest, the State Engineer is required by statute to approve the application.

The general policy of the State Engineer is to limit groundwater withdrawals from a basin to the average annual recharge to the ground water basin or its "perennial yield." "Perennial yield" of a ground water basin may be defined as the maximum amount of natural discharge that can be salvaged each year over the long term by pumping without bringing about some undesired result. An example of an undesirable result, would be a decline in the static water level beyond a reasonable limit.

However, in basins where an outside source of supply is assured, the State Engineer may allow withdrawals in excess of the perennial yield through the designation of the basin and the issuance of temporary permits subject to revocation at a later date when water becomes available from an outside source. The Las Vegas Artesian Basin is the only designated ground water basin in which "temporary" permits have been issued and the State Engineer is presently revoking those permits as Colorado River water becomes available.

Ground water basins designated by the State Engineer as of January 1, 1974 are shown in the Appendix.

A permit to appropriate water grants the right to appropriate a certain amount of water from a particular source for a certain purpose and to be used at a definite location. In other words, the consent of the state is given in a manner provided by law to acquire waters and gives the holder of the permit only a partial or incomplete

right. This can become a legal and complete appropriation only upon: (1) completion of the works of diversion; (2) the placing of the water to beneficial use; and (3) filing the proofs required. Such a right may be lost to the holder of the permit if he fails to meet the statutory requirements.

The basis and limit of use of water is beneficial use. However, each applicant gets his permit only to make a specific use of a specific quantity of water — a determination made on the basis of estimates of similar use already existing in the area. Under the permit, the water must be put to use as authorized, and proof of that use must be made to the State Engineer within the time limits specified on the permit. In the case of extenuating circumstances such as litigation or large projects requiring long periods of time for planning, financing, and construction, extensions of time beyond ten years have been granted by the State Engineer. The exact amount of time depends on the manner of use and the amount of water to be used.

When the State Engineer issues a permit he establishes the terms of the permit and they are noted upon a copy of the approved application. These terms are required by law, and consist of general provisions stating that the permit is subject to all prior rights on the source, measuring device requirements and any special limitations or regulations which may exist on the source. It also states the daily diversion and yearly amount of water that may be used.

The permit also shows the times required for filing proof of commencement, proof of completion, and proof of beneficial use, and the date the permit is issued. Perhaps most important of all is the signature of the State Engineer: He is the only person in the state authorized to issue permits to appropriate any waters of the state. (See Attorney General's Opinion No. 107 regarding Colorado River water in the Appendix).

## GENERAL TERMS ON PERMIT

### Prior Rights

Since the basis of the water law in Nevada is the prior appropriation doctrine, all rights are issued subject to any prior rights on the same source as the point of diversion. Note this: *The date of priority is the date the original application was received by the State Engineer at the Division of Water Resources office in Carson City.* All permits bearing an earlier date are "senior" and all permits bearing a later date are "junior."

### Measuring Devices

The statutes require that suitable measuring devices be installed at or near the point of diversion.

### Flowing Wells

Proposed points of diversion from underground sources in artesian basins must have valves to control flowing wells when they are not in use. Thus, waste is prevented.

### Wells Drilled Near Rivers

In cases where a well is drilled in a river plain the permit terms usually contain the provision that "No perforations shall be put in the casing until after the well is completed and the log available for study. Perforations shall not start less than 100 feet from the surface unless the log shows a satisfactory confining formation nearer the surface."

### Amount of Diversion and Yearly Use

The amount of allowable diversion in cubic feet per second (c.f.s.) is also set out in the permit terms. This amount depends on what the applicant requests, and what the State Engineer finds is necessary for the use sought in the application. Generally, the applicant is allowed the diversion requested in his application to provide a sufficient head of water for distribution, but is limited to a duty in the total quantity of water to be used. The amount of water the permit holder will be allowed to divert annually (i.e. the duty) is listed in acre-feet per acre for irrigation permits, or total acre-feet per year, or gallons per year on permits for other purposes. The State Engineer determines this duty from records showing the actual amounts needed in the same geographical area for already permitted uses of the same type. Or, if the permit is for water to be used on ground subject to a court decree, the duty allowed by the court will be used.

When the water appropriated from a point of diversion is going to be used for an area already supplied with water from other points of diversion, the duty allowed will be limited to the amount necessary to fulfill reasonably the purpose of the use from all sources.

For example, an owner has a parcel of land having a yearly duty of four acre-feet per acre of land irrigated. He also has permits to divert up to four acre-feet per acre from each of two or more other points of diversion for that parcel. But, he still is limited to a combined total of four acre-feet per acre from any and all sources.

Note, too, that every point of diversion except wells used for "domestic" purposes, as domestic is defined in



NRS 534.010, must have a permit, even though it may be used to serve the same land or purpose as another point of diversion. This is based in part on NRS 533.330 which states that "No application shall be for water of more than one source, to be used for more than one purpose, but individual domestic use may be included in any application with the other use named."

### **Proofs**

In several Nevada Supreme Court cases prior to the enactment of the Water Law, it was established that the date of priority of an appropriation "related back" to the beginning of the works of diversion for the appropriation. This rule became known as the Doctrine of Relation. It was also established that in order for an appropriator to maintain this early priority, he had to proceed with the appropriation and place the water to beneficial use within a reasonable time period, consistent with the magnitude of the project.

These principles were perpetuated by the legislature with the enactment of the Water Law. The date of priority of subsequent appropriations is set as the date of filing of the application with the State Engineer. In order to show that he is proceeding to perfect his water right in a reasonable manner (with due diligence), the permittee must file a Proof of Commencement of Work, a Proof of Completion of Work and a Proof of Beneficial Use with the State Engineer, all within time limits specified on the permit.

### **Proof of Commencement**

The required date for filing the proof of commencement is normally six months after the date on which the permit is issued, except under special circumstances. This proof, like the Proof of Completion and Proof of Beneficial use, may be filed any time after the permit is issued. But it must be filed, unless a request for extension of time is granted, on the date the proof is due, as shown on the permit, or within 30 days thereafter.

The Division of Water Resources procedure, required by statute, is to send a notice by certified mail to the applicant on the day the proof is due, advising him that his permit is in poor standing and that it will be cancelled unless the proof is filed, or extension of time requested, within 30 days after the date of the letter (see below for details).

The statutes require that the permit be cancelled immediately upon expiration of the 30-day grace period if no proof or request for extension is filed in the DWR

office in Carson City, or branch offices in Elko or Las Vegas, by 5 p.m. on the 30th day.

This same procedure applies to all the proofs — commencement, completion and beneficial use. All proofs are made on a form provided by the DWR. Each basically contains the permit number, permit holder's name, a space in which the work done is described, and notarization.

In order to file proof of commencement, actual work on the works of diversion must have begun some time before filing the proof. On surface streams this means starting work on the dam and/or ditch; on underground sources it means setting up the well rig and beginning drilling of the well.

Sometimes this work may not only have actually started prior to the due date for filing, but even may be completed. But regardless of that, it must be emphasized that the proof is an affidavit that the work described thereon has been done. Thus it always must be filed on the proper form, even though work of commencement may have started long before and possibly may be finished by the actual due date. This is also true of the other proofs. It is a statutory requirement that cannot be dispensed with.

The filing fee for each proof is \$1.00.

### **Proof of Completion**

Proof of completion is normally due one and a half years after the date the permit is issued. Before this proof can be filed the actual works of diversion must be completed — dam and/or ditches on a surface source; well, pump and motor on an underground source. Again, this proof may be filed any time after the permit is issued — provided the work is actually complete. And it must be filed within 30 days after the due date shown on the permit and/or certified notice.

### **Proof of Beneficial Use**

The proof of beneficial use is the final proof required by the terms of the permit. The filing date depends on the amount of work that the permit holder contemplated when he filed his application.

For example: On irrigation permits, the due date depends on the amount of land the permit holder made application to irrigate. The more land to be irrigated, the longer the time granted for filing the proof. The same criteria hold for permits for other purposes — i.e., more extensive work would have more time for filing proof of beneficial use since at the time of filing the water must

actually have been used in the manner for which the permit was granted.

It is important to remember that generally an application is filed before any work has started. Thus the filing requirements are established in relation to this fact. Where the application is made for water already in use — such as to replace a cancelled permit, etc. — different and/or shorter times may be set, as the case requires.

The physical conditions must exist as stated. Thus: When a permit holder or his authorized agent files proof of beneficial use, he must state under oath that the amount of water used, and the manner and place of use, are as described on the form.

When the permit is for irrigation purposes, a cultural map prepared by a licensed water right surveyor, must accompany the form. The cultural map shows the kinds of crops and their acreages. A water right surveyor must also measure the amount of water being diverted, and the name of the surveyor, the date and amount of flow must be entered in the proper place on the Proof of Beneficial Use form.

The map and measurement are required by statute. They are basically for the permit holder's protection in case the validity of the appropriation and the placing of water to beneficial use is challenged.

A permit holder may place less water on less land than granted on the permit. But when this occurs, the water right is then limited to that which was actually put to beneficial use. If the permittee has filed his Proof of Beneficial use and then wants to expand to his originally permitted acreage, or use the water for it at a later date, he must obtain another permit.

Once the proofs have all been filed and the other terms of the permit complied with, the State Engineer prepares a certificate describing the use to be made of the water as shown on the Proof of Beneficial use. Upon payment of the recording fee, the State Engineer records the certificate in the proper county and in the office of the Division of Water Resources, with a copy going to the permit holder.

The date of priority of the certificate is the date of the original filing of the application in the DWR office in Carson City.

#### **EXTENSION OF TIME**

The State Engineer may grant extensions of time for not more than one year for filing a proof, if the request for extension is based on proper circumstances. Requests must be filed before the time for filing the proof

expires, and are not considered if filed prior to 30 days before the due date of the proof.

The criteria for granting extensions is: (1) court action or other problems incidental to the project making continuance of work under the permit impracticable; or (2) when the permit holder has been proceeding with due diligence but is unable to complete the necessary work in time to file the proof.

"Due diligence" does not require unusual or extraordinary efforts, but only that which is usual, ordinary and reasonable with men engaged in like enterprises who seek speedy accomplishment of their designs.

#### **PROTESTS**

Any interested person may protest the granting of an application within 30 days after the last date of publication. When an application is protested, and the reasons for protest appear to have merit, the DWR may hold a formal field investigation. All interested parties are notified to meet with a representative of the DWR, and are given a chance to state their position.

If the State Engineer feels he cannot reach a proper decision on the matter based on the information acquired at the field investigation, he may hold a hearing where witnesses testify under oath and a transcript is kept. It is optional with the applicant or protestant whether or not he shall be represented by "counsel." The protestant to an application shall be considered as the plaintiff and will be requested to first present his evidence as to why the application should not be granted. The witnesses will be examined orally by and before the State Engineer. Hearings will be conducted in such manner as the State Engineer deems most suitable to the particular case and technical rules of evidence are not applied.

The costs of the transcripts of the testimony are paid by the applicant and the protestant.

#### **APPEALS**

Should anyone feel he has been aggrieved by any order or decision of the State Engineer, he may appeal it in the District Court of the county in which the order or decision applies.

On decreed stream systems, the court having jurisdiction at the time the decree was entered has jurisdiction over matters relating to that stream.

The appeal must be started within 30 days following rendition of the State Engineer's order or decision. Notice of the appeal must be served personally or by certified mail on the State Engineer at his office in the State Capital, and a similar notice must be served personally

or by certified mail on those affected by the appeal.

The State Engineer's decision is *prima facie* correct, and the burden of proof is on the party attacking the decision.

If a stay of the decision or order is requested, the appellant must post bond in an amount fixed by the court, within five days following service of notice of the appeal.

Appeal from judgment of the District Court on the matter may be taken to the State Supreme Court provided that notice of appeal is served and filed within 60 days of entry of final judgment.

#### APPLICATION TO CHANGE

As previously stated, the point of diversion and place and manner of use of an existing right (permitted, certificated, vested) may be changed subject to certain conditions.

The first condition is that the proposed change must not impair existing rights or be detrimental to the public interest.

No application to change the point of diversion from one source to a totally different source can be granted, for instance, ground water to surface water. The statutes do not bar transfers of place of use where return flow is an integral part of the appropriation of water among users of the source within the natural basin.

The form for the application to change is provided by the DWR and is similar to the application to appropriate.

When a permit is issued upon the application to change it is granted subject to all the terms and conditions under which the original right was granted. The statutes also require that new proofs of commencement, completion and beneficial use be filed under the permit to change — even when the application to change is really to show the correct point of diversion, or place of use, and even though the works of diversion and culture were existing when the permit was granted.

These problems of correction sometimes occur when the permit holder changes his mind about the proper location for a well, after an application is filed or permit is issued.

All applications to change must be supported by an application map, prepared by a licensed water right surveyor, showing the old point of diversion and/or place of use, and the new point of diversion and/or place of use. If the application to change is for irrigation purposes, a cultural map, prepared by a licensed water

right surveyor, must accompany and support the proof of beneficial use.

If the terms of the permit to change are complied with, the new right will bear the same date of priority as the old right.

But if the terms of the permit to change are not complied with, and the permit is cancelled, the right reverts to the old right if it was a certificated or determined vested right. If the old right was merely a permit and had not been perfected, the entire right is lost — if the terms of the original permit cannot be complied with within the prescribed time limits on the original permit.

The holder of a water right may change only a portion of it if he desires, as long as the conditions of the desired change meet all of previously stated requirements for applications to change.

#### ASSIGNABILITY OF WATER RIGHTS

Once a permit is granted, the water must be used on the land and for the purpose described in the permit.

A water right is a property right and is protected as such. It can be severed only with the consent of the owner of record as shown in the files in the DWR office.

Generally, when land is sold all water rights appurtenant to the property described in the deed transfer to the buyer. By statute, this transfer of water rights is binding only between the parties until a copy of the instrument of transfer, certified by the county recorder, is filed with the State Engineer. Upon the proper filing of the deed in the State Engineer's Office, the assignment of the water right is made a matter of record.

The water right may be severed from the land only with the permission of the owner of record. This can be done by transferring the right without the land, or specifically reserving the water right when conveying the land, or by filing application to change the place of use.

#### DAMS

Any person or entity wishing to build or reconstruct a dam which impounds more than 10 acre-feet or which will rise more than 10 feet from the channel bottom to the crest on the downstream side, must make out and file a dam application on a form provided by the DWR at least 30 days before construction is to begin. This application must be accompanied and supported by three prints of the plans and specifications prepared and signed by a Nevada Registered Professional Engineer.

In addition, if the applicant has no valid water right

which will be used in conjunction with the waters stored in the reservoir, he must file an application for permission to store the amount of water he will impound. This form is available from the DWR.

When the State Engineer is satisfied that the proposed construction meets proper standards, he notifies the applicant of his approval. The statutes prohibit construction and use of any dam before that official approval — except dams built by the Bureau of Reclamation or the United States Army Corps of Engineers. However, these agencies are still required to file duplicate plans and specifications with the State Engineer.

A publication which contains instructions and sample drawings to assist an applicant in the preparation of the application and plans and specifications for a dam is available in the DWR at Carson City.

### **WELL DRILLERS AND WELLS**

NRS 534.140 provides that every well driller, before engaging in the physical drilling of a well for development of water, shall annually make application to the State Engineer for a license to drill. A fee of \$25.00 shall accompany each application for a well driller's license and a fee of \$10 shall be paid each year for renewal thereof. In addition, every well driller who is the owner of a well drilling rig, or who has a well-drilling rig under lease or rental or who has a contract to purchase a well-drilling rig, shall obtain a license as a well driller from the State Contractors Board. All water wells, including domestic wells, must be drilled by a licensed driller.

All drillers are required to submit "intention to drill" cards before starting the well, and a well log within 30 days of its completion. These forms are furnished by the DWR.

When a well is drilled for human consumption the well must be drilled at least four (4) inches in diameter larger than the well casing for a depth of 50 feet and this 2 inch annular void filled with concrete to the ground level to prevent contamination.

### **ROTATION**

A unique feature permitted in Chapter 533 of the Nevada Water Law is the principle of rotation to bring about a more economical use of the available water supply. An example of rotation is when users on a stream agree that when the natural flow has reached a minimum, they can combine their rights to develop a larger head and rotate this larger head among the individual

users on an agreed upon schedule. The practice can give larger heads for shorter periods of time, with resultant increases in irrigation efficiency and lower operating costs.

### **RECIPROCAL AGREEMENTS**

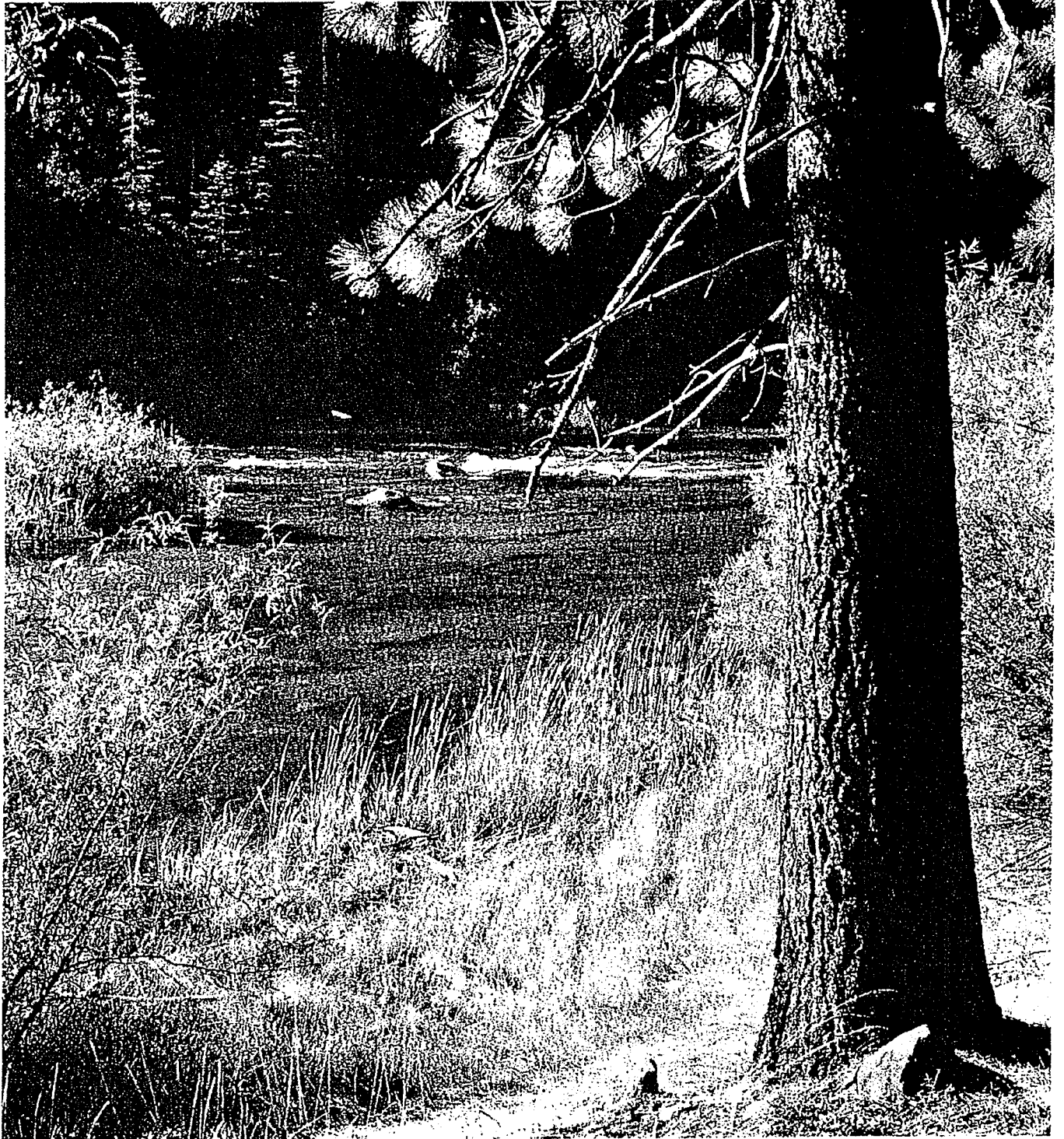
Sections 533.515 and 533.520 of the Nevada Water Law authorize permits granted to divert water outside the state to be used in Nevada, or water diverted in Nevada to be used in another state provided the other state grants the same rights. However, once water has been appropriated and beneficially used in Nevada it cannot be changed or transferred beyond the borders of Nevada.

### **APPROPRIATION OF EFFLUENT**

Permits to appropriate water as effluent from sewage treatment plants have been granted by the State Engineer under Section 440 of Chapter 533 of the Nevada Revised Statutes. This Section provides for primary and secondary permits to store water in a reservoir. The holder of the primary permit may store water in a reservoir, and is not required to show a beneficial use. The person applying for a secondary permit must show that an agreement has been entered into with the holder of the primary permit for the use of the stored water. The holder of the secondary permit is required to show beneficial use and will receive a certificate of appropriation.

The policy of issuing a primary and a secondary permit has been applied to applications to appropriate water as effluent from sewage treatment plants throughout the state. Usually the municipality building the treatment plant will make application and receive the primary permit. The municipality will then sell or distribute the effluent to one or more applicants for a secondary permit by issuance of an agreement as evidence to the State Engineer.

Philip Hyde



## PART III

### FUNCTIONS AND ADMINISTRATION

The primary responsibility of the Division of Water Resources is administration of the Nevada Water Law. Some of the functions included in this role are:

1. Distribution of water in accordance with court decrees.
2. Adjudication of claims of vested water rights.
3. Development of a comprehensive water plan for the state and the review and evaluation of proposals by Federal, state and local agencies for flood control and water development projects to insure compatibility with the plan and compliance with Nevada water laws.
4. Control over the appropriation of public waters.
5. Review of water availability for all subdivisions prior to recordation.
6. To insure that only safe impoundment structures are constructed and that they remain safe to operate.

The following section describes some of these functions in more detail.

#### FUNCTIONS

##### WATER DISTRIBUTION

###### *Surface Water*

The State Engineer has primary responsibility for distribution of all water in Nevada except Federally de-

creed Stream Systems. Stream systems which have been adjudicated are distributed in accordance with the decree by water commissioners. These water commissioners are appointed by the State Engineer, subject to confirmation by the court, and are supervised by the State Engineer through the Supervising Water Commissioner.

In areas where an irrigation district has been formed, the water is distributed within the district by their personnel. On interstate streams, the Federal Water Master is designated by the court having jurisdiction and distributes the water under the federal decree.

In the case of intrastate streams where distribution is required, the State Engineer is required to set up a distribution budget. All costs of distribution (water commissioner's wages, transportation, stream measurement, and related items) are included in the budget. In most cases, the Court decree specifies what acre-foot duty applies to various parcels of land included in the decree. The particular stream budgets are prepared, based on the total acre-feet owned by each user so that each will be assessed their just and proportionate share.

The Supervising Water Commissioner hires, subject to Court and State Engineer approval, and places his commissioners according to anticipated need for distribution of the amount of water available for the coming water season. The water commissioner is responsible

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for diverting the proper head of water from the stream to each user when the said users are in priority and need water. He also determines the priority to be served by the amount of water in the stream.

Stream flow is measured and recorded at gauging stations established where needed along the course of the stream. This gives the flow record for any particular date as well as recording total flow.

Some of these gauging stations are maintained in cooperation with the U.S. Geological Survey. State gauging stations have also been established in some areas in order to facilitate proper distribution. The state stations are maintained and serviced by the water commissioner in that area, who keeps a record of daily diversion of each user in order to make sure that everyone receives his share of water.

On stream systems where irrigation districts have been formed, the State Engineer (through the supervising water commissioner) is responsible for insuring that water is distributed according to the terms of the Court decree. He acts as arbitrator when disputes arise between individual members of the district. Actual diversion of water to users within the district's boundaries is made by ditch riders under supervision of the district secretary.

Since the Humboldt River is the largest system presently requiring distribution, the supervising water commissioner's office is in Elko. Other stream systems now under distribution: Little Humboldt River, Quinn River, Duckwater, Currant Creek, Pahrnagat Valley, Virgin River, Muddy River, Kingston Creek, Buena Vista Creek, and Clear Creek.

Stream systems which in the past have been subject to distribution are: Salmon Falls Creek, White River, Thousand Springs, Baker-Lehman and Bassett Creeks.

On interstate streams that require distribution, the Federal Water Master distributes water according to priorities. Water is diverted from the main stream under the water master's supervision into ditches owned by water companies made up of the various water users. The water companies provide their own distribution among the individual users of the company ditch.

Water in federally decreed streams, which is in excess of that allocated in the Federal Decree, can be appropriated in the same manner as other waters within this state. Changes in the point of diversion, place of use and manner of use of rights established in a Federal Decree are also processed through the State Engineer's office. Stream systems in Nevada under federal decree

are the Truckee, Walker, Carson and Colorado rivers.

The water level in Lake Tahoe is regulated in accordance with the Truckee River Agreement. When a situation arises that is not covered by the agreement, the Truckee Basin Water Committee (composed of Sierra Pacific Power Co., Truckee-Carson Irrigation District, Washoe County Water Conservation District, the U.S. Bureau of Reclamation and the Federal Water Master) has power to decide what action should be taken.

### *Ground Water*

The State Engineer may designate underground water basins which are being depleted and may declare preferred uses in such designated basins. There is no statutory order of preference.

A ground water board may be established in the designated basin to advise the State Engineer in his administration of the water law; however, here and in all matters pertaining to the use of water in Nevada, the State Engineer's decision is final, subject only to judicial review (i.e., appeal to the proper district court).

No well can be started in designated areas until a permit is granted. Wells for domestic purposes (limited to 1,800 gal. of water per day for one household, family lawn, garden and domestic animals) may be drilled without a permit; they must meet the requirements pertinent to all wells drilled in Nevada (i.e., all wells must be drilled by a properly licensed well driller who must comply with standards set up by the DWR and any information required by the State Engineer must be furnished). However, the State Engineer may prohibit the drilling of wells for domestic use in areas within designated basins where water can be furnished by an entity such as a water district or municipality presently engaged in furnishing water.

The State Engineer may also, in designated areas, issue temporary permits (NRS 534.120-3 [a]). The revocation of "temporary" permits is presently underway in the Las Vegas Artesian Basin as a part of the program to reduce the overdraft on the ground water basin.

In areas other than fully appropriated or designated basins, a well may be drilled without first making application. However, before any use of water (other than domestic) is made from any well, the owner must obtain a permit.

Due to increasing withdrawals from underground basins, the State Engineer has instituted a greatly expanded program of distribution and control in the de-



veloped ground water basins in the state.

The State Engineer's office measures static water levels, pumping levels and well discharges throughout the year. Also, in order to determine the annual withdrawals from the underground source, yearly inventories are taken in each ground basin where significant development has occurred.

In agriculture areas, the types of crops and total acreage are recorded. This establishes both the yearly diversion and the total amount of water needed for each type crop in each basin; thus adding to the basic data needed for the administration of the use of water in the state.

The Las Vegas branch office of the DWR also makes an inventory of water used for all purposes in the Las Vegas Artesian Basin, and the Pahrump Artesian Basin.

While making trips through the various basins, the field men also check well drillers to insure compliance with the Nevada water law and the State Engineer's rules and regulations; and help well drillers and water users with problems that arise concerning well drilling and water rights.

## ADJUDICATION

### *Types of Decrees*

Water in the adjudicated stream systems of Nevada is distributed in accordance with civil, state or federal decrees.

*Civil decrees* result from court decisions in disputes between water users before the water law statutes were passed.

*State decrees* are the decisions in the adjudication procedure set up by the statutes.

*Federal decrees* are the result of cases brought in federal court because waters of more than one state are involved.

All of the large and many of the smaller stream systems within Nevada have either been adjudicated or are in the process of adjudication. The largest stream system on which there is no decree or pending adjudication is the Reese River system.

A description of the court decrees on the larger systems is presented in Appendix A. A complete list of all the stream or river systems which are either adjudicated or in the process of adjudication, at the present time, may be found in Appendix C. A map showing the location of adjudicated streams is attached to the back cover.

## STATE WATER PLAN

The State Water Planning Program was authorized by the 1969 Nevada Legislature by virtue of an amendment to Chapter 532 of the Nevada Revised Statutes and an appropriation to the Division of Water Resources for a planning section within the Division. The need for the program stems from the fact that future development of the economy of Nevada and the well-being of its citizens cannot be separated from the manner of development of: (1) the water resources presently available to the state; and (2) the water resources which may be available in the future as a result of technological advances and importation of water.

The State Water Plan is multi objective in nature, developing alternative plans emphasizing three objectives: Environmental Quality, Economic Efficiency and Area Development. The primary goal of the State Water Plan is to provide a general plan within which the most effective union of these three objectives can be achieved.

Five procedural steps are being followed to establish a basis upon which the State Water Plan is to be developed and implemented:

1. An inventory of the water supplies presently available to the state, including a determination of how the water resources are being used.
2. An appraisal of present water and land use together with a determination of land suitability, including soil analysis and classification.
3. Projections of future water requirements for the following uses including a determination of the subsequent economic, social and environmental benefits derived from development:
  - a. Agriculture, Livestock and Forestry
  - b. Fish and Wildlife
  - c. Power
  - d. Mining
  - e. Municipal (Population) and Industrial
  - f. Recreation
4. A determination of alternate solutions (plans) to present and future water resource needs and problems.
5. Presentation of recommended developments or plans to the Nevada Legislature for implementation

Early attention in the planning process is directed towards meeting the needs of those areas of the state which presently are experiencing water shortages, and

those areas which will be water deficient in the near future.

The following Planning Reports have been published as a part of the development of the State Water Plan:

Planning Report No. 1 —

*Guidelines for Nevada Water Planning*

Planning Report No. 2 —

*Estimated Water Use in Nevada*

Planning Report No. 3 —

*Nevada's Water Resources*

Planning Report No. 4 —

*Forecasts for the Future — Mining*

Planning Report No. 5 —

*Forecasts for the Future — Population*

Special Planning Reports:

a. *Reconnaissance Soil Survey Railroad Valley*

b. *Water Supply for the Future in Southern Nevada*

c. *Hydrologic Atlas for Nevada*

d. *The Future Role of Desalting in Nevada*

e. *Reconnaissance Soil Survey Dixie Valley*

f. *Input-Output Economic Models*

Planning Report No. 6 —

*Forecasts for the Future — Fish and Wildlife.*

Planning Report No. 7 —

*Water-Related Recreation in Nevada — Present and Future.*

Planning Report No. 8 —

*Forecasts for the Future — Agriculture*

Planning Report No. 9 —

*Forecasts for the Future — Electric Energy*

## ADMINISTRATION

In addition to the administration of water rights and development of a State Water Plan, the Nevada Water Law also provides for a number of districts, boards, and commissions. This section is devoted to a description of these entities.

### *Irrigation Districts*

Nevada Revised Statutes, Chapter 539 provides the authority for the formation of an irrigation district by petition of a majority of land owners within the proposed district without regard to county boundaries. Irrigation districts are granted broad powers under authority of Chapter 529 to:

1. Exercise the right of eminent domain.
2. Acquire property by purchase.
3. Distribute, sell or lease water.

4. Reject bids or award contracts for proposed work.
5. Issue and sell funding bonds.
6. Generate, transmit or sell electricity.
7. Levy assessments.
8. Form improvements districts.
9. Make agreements with districts of adjoining states.

### *Drainage Districts*

Nevada Revised Statutes, Chapter 540 provides the authority to organize a drainage district by petition of a majority of the land owners within the proposed district, without regard to county boundaries. A drainage district is administered by a board of supervisors appointed by the county commissioners of the county having the largest land area of the district located within the county. Under the authority of Chapter 540 the board of supervisors of a drainage district have the power to:

1. Condemn property.
2. Acquire property by purchase.
3. Plan a system of canals, drains or drain ditches on lands proposed to be drained.
4. Reject bids or award contracts for proposed works.
5. Issue and sell fundings bonds.
6. Submit assessments to county commissioners.
7. Merge or consolidate with an irrigation district.

### *Water Conservancy Districts*

Nevada Revised Statutes, Chapter 541 vests district courts with the power to establish water conservancy districts. But it does not grant the district courts jurisdiction to settle questions of priority of appropriation of water for irrigation purposes from the same stream or its tributaries.

A water conservancy district may be formed if at least 20 percent of the owners of land within the proposed district file a petition with the clerk of the district court. The court appoints a board of directors with broad powers for the conservation and development of water and land resources. The board has the right to:

1. Perpetual succession.
2. Acquire all water, waterworks, water rights and sources of water supply and real and personal property.
3. Exercise eminent domain.
4. Construct and maintain works across any stream or watercourse in accordance with state law.
5. Contract with the United States or any agency to

construct, preserve, operate and maintain tunnels, drains, pipelines, reservoirs, basins, diversion canals and works, dams and powerplants; also to acquire and sell or dispose of perpetual rights to the use of water and electrical energy from such works.

6. Distribute water on the basis of beneficial use and levy assessments.
7. Fix rates for equitable sale or lease of water not allotted to lands in the district.
8. Enter contracts for personal services.
9. Adopt plans and specifications for construction and operation of works.
10. Appropriate and acquire water and water rights to develop, store and transport water; subscribe for, purchase and acquire stock in canal companies, water companies, and water users associations; provide, sell, lease and deliver water for municipal and domestic purposes, irrigation, power, milling, manufacturing, mining, metallurgical and any and all other beneficial uses, and to derive revenue and benefits therefrom; fix terms and rates thereof.
11. Generate electrical energy and contract for the generation, distribution and sale of such energy.
12. Invest surplus money in the district treasury.
13. Borrow money and incur indebtedness.
14. Adopt laws not in conflict with the constitution and laws of the state.

#### *Watershed Protection and Flood Prevention Districts*

Under NRS, Chapter 542, 10 percent of the property owners within a proposed district can petition the county commissioners to create a watershed protection and flood prevention district not to exceed 750,000 acres. Such a district has the powers of a public, quasi-municipal corporation to:

1. Cooperate with the State of Nevada and any agencies of the United States or any public or private corporations in the investigation or construction of any improvements for controlling flood or storm waters, or for the protection of life or property, or for the conservation of water to beneficial use within the district.
2. Prevent damage to watersheds, and to further conservation, development, utilization and disposal of water.
3. Acquire property necessary to exercise power

granted to the district by purchase or condemnation.

4. Borrow money from the flood control revolving fund in the state treasury.

#### *Flood Control Districts*

NRS, Chapter 543 gives county commissioners the authority to establish flood control districts in any county having a population of 100,000 or more. The commissioners can organize a district by adoption of an ordinance.

NRS, 543.020. Declaration of policy of the State of Nevada to cooperate with federal, state and local public agencies, and public districts of the state, in preventing loss of life and property, disruption of commerce, interruption of transportation and communication and waste of water resulting from floods, and in furthering the conservation, development, utilization and disposal of water. A board of directors appointed by the county commissioners govern the district and have power to:

1. Acquire, construct, maintain and operate projects, improvements and facilities to control flood and storm waters.
2. Conserve such waters for beneficial and useful purposes.
3. Prevent waste of water or diminution of the water supply in the district or prevent exportation of water therefrom.
4. Exercise the right of eminent domain.
5. Borrow money and issue bonds.
6. Levy and collect taxes.

There are three methods provided by the legislature to establish and maintain flood control projects: (1) The Watershed Protection and Flood Prevention District Act; (NRS, Chapter 542); (2) the Flood Control District Act; (NRS, Chapter 543); and (3) an act which permits participation by the State of Nevada and its counties, cities and public districts with the U.S. in flood control projects.

The Watershed Protection and Flood Prevention District Act provides the mechanics for establishing an entity with powers of condemnation, to receive federal assistance, and to borrow money from the flood control revolving fund. It also allows for the levy of a special tax for its operation. Districts established under this act must be in a watershed area, must not exceed 750,000 acres, and works of improvement must not include any single structure which provides more than 5,000 acre-feet of total capacity.

The Flood Control District Act allows for the estab-

lishment of a district by the county commissioners in contiguous areas in any county having a population of 100,000 or more. The commissioners constitute the district's board of directors, and as such may acquire, construct, improve, extend, maintain, and operate improvements and facilities for the control not only of flood and storm waters within the district, but those which originate outside the district and flow into the district. The district is empowered to levy taxes on lands within its boundaries.

The Director of the State Department of Conservation and Natural Resources is authorized by legislative act to give all assurances and perform any other acts required by the Secretary of the Army and the U.S. Congress regarding flood control projects. The director must give assurance to the Secretary of the Army that the State of Nevada has acquired the necessary rights-of-way and easements and has the ability and responsibility of maintaining the constructed project.

The director is responsible for the removal or relocation of public utilities or the condemnation of facilities within the project.

A revolving fund has been established for these purposes, and the director must determine which counties, cities and public districts benefit by such projects and also determine the apportionment of benefits for the repayment of expended funds to the revolving fund.

In lieu of a legislative act, the Secretary of the Army may accept these assurances from the county commissioners of the county or counties in which the project is located.

#### *Weather Modification Research*

NRS, Chapter 544 provides the authority for the State Department of Conservation and Natural Resources to conduct weather modification research programs. The director of the department is authorized to:

1. Establish advisory committees concerning legislation, policies, administration and research.
2. Establish by regulation or order a standard to govern the extent of the research project.
3. Conduct such studies and investigations deemed necessary.
4. Appoint and fix compensation of personnel including specialists and consultants.
5. Cooperate with public or private agencies.
6. Represent the state at any and all meetings, pro-

cedures or negotiations for interstate compacts relating to weather modification and control.

7. Act for and represent the state, counties, cities and private or public agencies in contracting for performance of weather modification or cloud seeding operations.

#### *Advisory Boards*

NRS, Chapter 534 provides for the appointment of two advisory boards which are unique in ground water basin management in Nevada:

1. Ground Water Board. In each designated area, a ground water advisory board may be established by order of the State Engineer if he determines it is necessary. The board consists of residents of the area appointed by the Governor and serves in an advisory capacity to the State Engineer with respect to new applications and applications to change within the designated basin.

The 1973 Legislature added the provision that the "State Engineer may dissolve the ground water board by order if he determines that the future activities of the board are likely to be insubstantial." In accordance with this provision, the Las Vegas Valley Ground Water Board was dissolved on July 24, 1973.

2. Well Drillers' Advisory Board. Appointed by the State Engineer, the board reviews all applications for well driller's licenses and makes their recommendation to the State Engineer for approval or denial.