IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 75917

MINERAL COUNTY; AND WALKER LAKE WORKING GROUP,

Appellants,

vs.

LYON COUNTY; CENTENNIAL LIVESTOCK; BRIDGEPORT RANCHERS; SCHROEDER GROUP; WALKER RIVER IRRIGATION DISTRICT; STATE OF NEVADA DEPARTMENT OF WILDLIFE; AND COUNTY OF MONO, CALIFORNIA,

Respondents.

ON CERTIFICATION FROM THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

ANSWERING BRIEF OF RESPONDENT WALKER RIVER IRRIGATION DISTRICT

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the Walker River Irrigation District is an irrigation district organized under Chapter 539 of the Nevada Revised Statutes. It is not a corporation and has no parent corporation. Gordon H. DePaoli, Dale E. Ferguson and Domenico R. DePaoli of Woodburn and Wedge have

appeared for the Walker River Irrigation District in this case and are the only attorneys expected to appear in this Court. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Respectfully submitted,

April 12, 2019

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GLOSSARY

CFS	Cubic feet per second
District	Walker River Irrigation District
NDOW	Nevada Department of Wildlife
NFWF	National Fish and Wildlife Foundation
TDS	Total dissolved solids
Tribe	Walker River Paiute Tribe
WBRP	Walker Basin Restoration Program

STATEMENT OF ISSUES

The Court of Appeals for the Ninth Circuit certified the following two questions:

> 1. Does the public trust doctrine apply to rights already adjudicated and settled under the doctrine of prior appropriation and, if so, to what extent?
>
> 2. If the public trust doctrine applies and allows for reallocation of rights settled under the doctrine of prior appropriation, does the abrogation of such adjudicated or vested rights constitute a "taking" under the Nevada Constitution requiring payment of just compensation?

The Walker River Irrigation District ("District") understands the second question to ask guidance on whether a reallocation may "abrogate" water rights without a violation of relevant provisions of the Nevada Constitution. In order to provide that guidance, and recognizing that courts, particularly a federal court, have no resources for payment of just compensation, the District would rephrase the second question as follows:

> 2. Assuming the public trust doctrine applies and allows for the reallocation of fully perfected water rights, would a reallocation which abrogates those rights violate the Nevada Constitution?

STATEMENT OF THE CASE

A. Adjudication of the Waters of the Walker River.

1. *Rickey Land and Cattle Co. v. Miller and Lux*.

In 1902, Miller and Lux Company, a large Nevada user of Walker River water, brought an action in the Nevada federal court against Thomas Rickey, a large California user of water, and others to restrain them from diverting upstream waters to its detriment. Rickey appeared, answered and conveyed his lands to a corporation, which then filed two actions in California against Miller and Lux and others on the same issues. Ultimately, it was decided that the Nevada action should proceed because it was the first action filed. *Rickey Land and Cattle Co. v. Miller and Lux*, 218 U.S. 258, 262 (1910). The Nevada action resulted in the entry of the "Rickey Decree" in 1919. *See, Pacific Livestock Co. v. Thomas Rickey, et al.*, In Equity No. 731, Final Decree (D. Nev. 1919).

2. The Walker River Action.

In 1924, because it had not been a party to the *Rickey* action, the United States commenced a new action, the Walker River Action, asserting an implied reserved water right for the Walker River Indian Reservation ("Reservation"). *See*, *United States v. Walker River Irrig. Dist.*, 11 F.Supp. 158, 159 (D. Nev. 1935). The action also named other water users who had not been parties to the *Rickey*

action. After several years of hearings before a special master, the district court made findings and entered a decree in 1936.

The United States appealed with respect to the district court's conclusion that the rights for the Reservation had to be "adjudged, measured, and administered in accordance with the laws of appropriation as established by the state of Nevada." *Walker River*, 11 F.Supp. at 167. On appeal, the court found that there was a federal implied reservation of water under *Winters v. United States*, 207 U.S. 564 (1908), to the extent reasonably necessary to supply the needs of the Indians. *United States v. Walker River Irrig. Dist*, 104 F.2d 334, 339-40 (9th Cir. 1939). The reserved water right was quantified for 2,100 acres with a flow rate of 26.25 cubic feet per second for 180 days during the irrigation season and an 1859 priority date. *Id.* at 340. The district court accepted a stipulation of the parties to amend the Decree to be consistent with that decision. ER 1397-1399.[1] Thus, the Decree recognizes water rights on the Walker River established under the common and statutory law of Nevada and California and under the federal implied reservation of water doctrine. RE 1382-1390; 1396-1398.

B. Mineral County's Intervention and Its Amended Complaint.

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[1] "ER" refers to the Excerpts of Record filed by Mineral County. "SER" refers to the Supplemental Excerpts of Record filed by the Walker River Irrigation District ("District").

In 1990, the California State Water Resources Control Board issued three orders with respect to the District's water right licenses for Bridgeport and Topaz Reservoirs. The District challenged those orders as contrary to, inconsistent with and interfering with the administration of water rights under the Decree. That matter was eventually settled. ER 115.

Before it was settled, the Walker River Paiute Tribe ("Tribe") and the United States filed "counterclaims" seeking recognition of additional federal reserved rights from the Walker River for the Reservation. ER 115-116. Thereafter, Mineral County moved to intervene in that proceeding, and later filed revised documents in support of intervention. ER 116; ER 1115-1196.

The district court ordered Mineral County to serve its motion, proposed amended complaint and related documents on persons and entities holding water rights under the Decree and subsequent appropriators. SER 55-59. It also ordered that no answers were required until it decided the motion to intervene. SER 58.

Eventually, the district court decided to proceed with briefing and a hearing on the motion to intervene before Mineral County completed service. SER 16-19. On September 23, 2013, the court orally granted Mineral County's motion to intervene. ER 728, lns. 9-21. A proposed order was submitted, but it does not appear that it was ever entered. ER 687-691.

Mineral County's Amended Complaint seeks to modify the Decree and reallocate the waters of the Walker River so that at least 127,000 acre feet per year reaches Walker Lake. ER 1145-1146. The prayer for relief asks the court to order the State of Nevada "to grant a certificate to Mineral County for the benefit of Walker Lake in the amount of 127,000 acre feet per year." ER 1146. The legal basis for the claim is the "doctrine of the maintenance of the public trust."[2] ER 1146-1147.

C. The Amended Counterclaims of the Tribe and United States.

In 1997, the Tribe and the United States filed First Amended Counterclaims. The Amended Counterclaims assert claims for water from the Walker River for Weber Reservoir, an on-Reservation reservoir, and for lands added to the Reservation after 1936. The Amended Counterclaims also include a claim for ground water "underlying and adjacent to the lands of the Reservation" based upon the federal implied reservation of water doctrine. The United States' Amended Counterclaim adds eight additional claims for relief, including claims for surface

[2] In effect, the County asserts a right to act as "trustee" of the public trust in Nevada, at least with respect to Walker Lake. In light of *Lawrence v. Clark County*, 254 P.3d 606 (2011), where a legislative grant to a county of trust land was set aside, the county's authority to so act is questionable.

and ground water, for various other Indian tribes, Indian individuals and other federal properties in the Basin. *See*, *United States v. Walker River Irrigation District*, 890 F.3d 1161 (9th Cir. 2018). Those claims are now pending on their merits before the district court.

D. Dismissal by the District Court.

After granting the Motion to Intervene, the district court directed the filing of motions related to its subject matter jurisdiction over Mineral County's Amended Complaint. *See*, ER 783, lns. 11-14; ER 665, ln. 17 – 666, ln. 25. The District moved to dismiss the Amended Complaint on the ground that it did not arise under the Constitution, laws or treaties of the United States, and was not one over which the district court had continuing jurisdiction. ER 578-579; 587-590. In the alternative, the District asked the district court to stay its exercise of jurisdiction until after Mineral County obtained a final decision ultimately from this Court on: (1) whether a county has standing to bring a public trust claim; (2) whether administrative remedies must be exhausted before a public trust claim may be brought; and (3) the relationship between the public trust doctrine and the Nevada water rights system. ER 578-579; 590-596.

The district court ruled that Mineral County was not a sovereign, and that because no statute expressly granted it standing, it did not have standing to bring the

claim. ER 116-118. Although it did not couch its conclusions under the standing rubric of redressability, the district court recognized that Mineral County's ability to obtain redress was subject to the political discretion of Nevada's legislature. ER 128-129.

Despite the fact that its decision on standing deprived it of jurisdiction to do anything more, the district court considered the merits of Mineral County's claim. ER 118. It went on to rule that the Takings Clauses of the United States and Nevada Constitutions would prevent it from modifying the Decree in the way Mineral County requested. ER 118; 124-129. It also concluded that Nevada's public trust doctrine did not mandate a taking of existing water rights for Walker Lake. ER 124-126. The district court dismissed the Amended Complaint. ER 130.

E. The Ninth Circuit Orders.

The Court of Appeals concluded that the district court erred in holding Mineral County did not have standing. *Mono County (sic) v. Walker River Irrigation Dist.*, 735 Fed. Appx. 271, 273-74 (2018). It certified the questions set forth in the Statement of Issues to this Court.

STATEMENT OF FACTS

A. Introduction.

No answers were ever filed in response to the Amended Complaint. In addition, the record below does not include any evidence of facts relevant to the claim made in the Amended Complaint, or to the precise manner in which Mineral County would have the district court modify the Decree. However, the important issues which are before this Court require some factual context beyond the status of Walker Lake.

The principal bases for Mineral County's claim are that Walker Lake is a navigable lake to which Nevada obtained title on becoming a state in 1864,[3] and that as a result of upstream diversions of water, its size and water quality have decreased significantly with resulting impacts on the Lake and on the flora and fauna which have historically depended upon it. The Walker River – Walker Lake story is really the story of all of Western Nevada.

The lifeblood of Western Nevada flows in three interstate rivers which rise in the Sierra Nevada in California, the Truckee, the Carson and the Walker. Each has had its share of litigation over water, and each is the subject of a final decree issued by the United States District Court for the District of Nevada. *See, Nevada v. United States*, 463 U.S. 110 (1983); *United States v. Alpine Land & Reservoir*

[3] There is a substantial, unanswered, and perhaps unanswerable question as to Nevada's title to the Lake. *See*, 28-30, *infra*.

Co., 697 F.2d 851 (9th Cir), cert. den., 464 U.S. 863 (1983); *United States v. Walker River Irrig. Dist.*, 104 F.2d 334 (9th Cir. 1939). Each river system is administered under those decrees. Virtually every facet of life in Western Nevada depends on water from those rivers. The Reno-Sparks metropolitan area of 500,000 people depends on the Truckee, as does Fernley. Gardnerville, Minden, Carson City and Dayton depend on the Carson, and the nation's first Reclamation Project, the Newlands Project, and Fallon depend upon both the Truckee and the Carson. Mason and Smith Valleys and their communities of Yerington, Wellington and Smith, depend upon the Walker.

The terminus of each of those rivers includes natural resources which have changed significantly since the 19th century, Pyramid and Winnemucca Lakes on the Truckee, Lahontan Valley wetlands on the Carson, and Walker Lake on the Walker. Although the litigation here involves only the Walker River and Walker Lake, the Court's decision on the issues will have far reaching implications for all three rivers and indeed for all of Nevada.

In the 19th century, Pyramid Lake and Winnemucca Lake had surface elevations estimated at 3,867 and 3,855 feet above sea level, respectively. *See*, G. Hardman & C. Venstrom, *A 100-Year Record of Truckee River Runoff Estimated From Changes in Levels and Volumes of Pyramid and Winnemucca Lakes* at 73

(1941). Winnemucca Lake no longer exists. By 1971, Pyramid Lake's surface elevation had declined to about 3,794 feet above sea level, its surface area had decreased, and its salinity had increased significantly. *See, Pyramid Lake Task Force - Final Report* at 3 (1971). Historically, the Truckee and Carson Rivers supported expansive wetlands of 113,000 acres. As a result of the development of Western Nevada, those wetlands had been reduced to about 15,000 acres by 1987. *See*, *United States Senate Report No. 101-555* at 16 (1990).

The situation in Southern Nevada is not significantly different. In the 19th century and the early part of the last century, Las Vegas Valley, "the meadows," was a desert oasis. Its aquifer system recharged and discharged between 25,000 and 35,000 acre feet annually. Between 1912 and 1944, groundwater levels in the Valley declined at an average rate of about 1 foot per year. Between 1944 and 1963, some areas of the Valley experienced declines of more than 90 feet. Portions of the Valley have subsided by more than five feet. *See*, M. Povelko, et al., *Gambling With Water in the Desert*, U.S. Geological Survey at 50-57.

Nevada could not have grown and prospered from a population of approximately 42,000 people in 1870 to approximately 3,060,000 people today, and it cannot continue to grow and prosper without diversion of water from its rivers and underground sources pursuant to reliable water rights as allowed and protected by

Nevada's water law. Those diversions necessarily have affected and will continue to affect the condition of natural resources which depend upon the water sources being diverted.

B. The Walker River Irrigation District.

The District was formed under Nevada's Irrigation District Act. *See, In Re Walker River Irrigation District*, 195 P. 327 (Nev. 1921). There are approximately 80,000 acres of land within District boundaries with appurtenant water rights. Horton, Gary, Walker River Chronology at I-3 (1996) (hereinafter "Horton").[4] That land is located in Mason Valley, Smith Valley, and along the East Walker River in Nevada. *Id.* The District owns, operates and holds California water rights for Bridgeport Reservoir, an on stream reservoir on the East Walker River and entirely within California, and Topaz Reservoir, an off stream reservoir adjacent to the West Walker River, located partly in California and partly in Nevada. *Id.* at I-7 – I-8.

The development of water for irrigation and other uses within the Walker River Basin provides significant economic, environmental and recreational benefits upstream of Walker Lake. The lands within the District are the principal agricultural area in Lyon County, and, on a per acre basis, are the most productive

[4] This Chronology can be found at images.water.nv.gov/images/publications/River%20Chronologies/Walker%20River%20Chronology.pdf .

agricultural area in Nevada. *See,* Horton at I-12 – I-13. Those lands provide extensive habitat and food for wildlife. The District's reservoirs, Bridgeport and Topaz, are prime recreation areas in Mono County, California and Douglas County, Nevada.

The Nevada Department of Wildlife's ("NDOW") Mason Valley Fish Hatchery and Wildlife Area is located within the District. NDOW is one of the largest water right holders in the District. During the irrigation season, the Wildlife Area obtains water primarily from the Walker River. It supports an abundance of fish and wildlife that contribute significantly to the biological diversity of western Nevada. *See,* Nevada Department of Wildlife Online Publications, *Mason Valley Wildlife Area*, http://www.ndow.org/about/pubs/wma/wma_mason.pdf. The Mason Valley Fish Hatchery produces fish for planting in streams, rivers and lakes throughout Nevada.

C. Water for Walker Lake.

The natural flow of water to Walker Lake was not cut off during the 20th century.[5] *See*, MC Br. at 8.[6] It does fluctuate depending upon precipitation in the

[5] Over geologic time, Walker Lake has dried up on several occasions. *See,* Horton at II-1 – II-3.

[6] References in this Brief to "MC Br.," "Professors' Br." and "Sierra Br." are to the opening brief of Mineral County and to the amicus briefs of the Professors, and the Sierra Club and Natural Resources Defense Council, respectively.

Walker River Basin. For example, the flow from the Walker River into Walker Lake in 1983, a very wet year, was estimated at 575,870 acre feet. *See,* Horton at III-15 (1996). On the other hand, there may be no surface flow from the Walker River into Walker Lake in very dry years. *Id*. at I-14. The estimated average annual inflow into Walker Lake from all sources is about 104,000 acre feet, most of which is from the Walker River. During 2011, the elevation of Walker Lake had a net increase of 2.28 feet and inflow from the Walker River of 244,760 acre feet. Walker Lake, like the rest of the Walker River Basin, has suffered as a result of droughts, including from 2012 to 2016. However, in 2017, its elevation had a net increase of 12 feet.

The continued flow of water into Walker Lake during wet years is now protected under Nevada's water law. NDOW holds Permit No. 25792 and Certificate No. 10860 for 795.2 cfs not to exceed 575,870 acre feet per year with a priority of September 17, 1970 for the benefit of Walker Lake.

The authority to change existing water rights under Nevada's water law is also providing benefits to Walker Lake and other natural resources in Nevada. Existing Walker River irrigation water rights recognized by the Decree are being acquired and changed to benefit Walker Lake through an existing and well-funded program. Through a series of public laws, Congress established and funded the Walker Basin Restoration Program ("WBRP") "for the primary purpose of

restoring and maintaining Walker Lake," and to protect "agricultural, environmental and habitat interests" in the Walker Basin consistent with that purpose. *See*, Public Law 111-85, Sec. 208(a)(1); (b)(1); 123 Stat. 2858-2859 (Oct. 28, 2009). It has designated the National Fish and Wildlife Foundation ("NFWF") to administer the WBRP.[7] The total program budget is $264,000,000, including $185,000,000 for acquisitions. NFWF estimates that the funding is sufficient to acquire the existing surface water rights needed to reach its objective of stabilizing Walker Lake with an average TDS level of between 10,000 mg/L and 12,000 mg/L.

To date, through the use of that funding, NFWF has acquired 108.08 cfs of natural flow water rights recognized by the Decree and appurtenant to approximately 9,624 acres of irrigated land and 12,367 acre feet of stored water rights.[8] NFWF estimates that it has now acquired up to 45.5% of the water needed to meet its objective.[9] NFWF has successfully completed the first of what will be many applications to change those water rights under applicable law to flow instream to Walker Lake. *See, United States v. United States Board of Water Commissioners*, 893 F.3d 578 (9th Cir. 2018). It recently filed three additional change applications.

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[7] The WBRP website is www.walkerbasin.org/wbrp.
[8] *See,* https://www.walkerbasin.org/wbrp
[9] *See*, https://www/walkerbasin.org/newsandupdates (November 1, 2018 Release).

In addition, NFWF and the District have entered into an agreement to implement a demonstration program involving the lease of stored water for the benefit of Walker Lake as authorized by Sec. 208(b)(1)(B) of P.L. 111-85.

SUMMARY OF THE ARGUMENT

The public trust doctrine is a restraint on a state's ability to alienate the bed and banks of navigable bodies of water to which the state obtained title at statehood. It also prevents the state from abdicating its authority to regulate the use of such lands for the benefit of the public interest.

Here, Nevada has not granted any rights in Walker Lake or to lands presently or formerly submerged by it. It has granted rights to use water which are fully perfected and being used in accordance with the grant.

With the exception of California, based on the common law, and Hawaii, based on specific and unique statutory and constitutional provisions, no state has applied the public trust doctrine directly to the right to use water or to require a reallocation of fully perfected water rights for the benefit of navigable bodies of water or otherwise. In fact, some legislatures have acted to prohibit the application of the doctrine to appropriative water rights. Nevada's public trust doctrine is and should continue to be limited to lands submerged by state owned navigable bodies of water and to the conveyance and regulation of the use of such lands. It should

not be applied to the right to use water.

A broader application of the public trust doctrine would restrain a state's alienation of a public natural resource in a manner that abdicates its authority to regulate that resource and to require its use for the benefit of the state and its people. To the extent that water is such a resource, Nevada's alienation of the right to use it is fully consistent with the public trust doctrine and this Court's requirement that the alienation of a trust resource be for a public purpose, for fair consideration and in a manner which preserves the resource for the use of present and future generations.

Nevada's grant of the right to use water had several public purposes. One was to encourage the beneficial use of water for the economic benefit of the State. Another was to bring the use and distribution of water into the control of the State. The law does not grant title to water, but rather grants the right to use water subject to adequate state control, limiting that use as to amount, place and purpose, and to changes therein. Water may only be used for a State recognized beneficial use, and if not needed for such a use, cannot be diverted. Non-use may result in a loss of the right to use water. By not providing for involuntary modifications of perfected rights, the water law recognized that if water rights were to be used for the economic development of the State, they had to be reliable. Those are all

public purposes. Fair consideration for the right to use water was and continues to be provided by the investment of labor, capital and other resources by past, present and future Nevadans in the development of those water resources for the benefit of Nevada and its people.

Nevada's water law preserves the use and enjoyment of Nevada's water for present and future generations. By providing only for a right to use water for a beneficial purpose as defined by the State, it ensures that water must be used for those purposes, and if not so used, is available for such beneficial use by others. It allows and protects the right to use water for environmental values. The law allows existing rights to be voluntarily changed to new uses, including natural resource uses, and it requires applications for new appropriations and changes to existing appropriations to be denied based upon detriment to the public interest. Those provisions have and are allowing water used for irrigation to be changed to new uses, including municipal use, and for use for the restoration and preservation of natural resources such as Walker Lake.

If Nevada's water law is found deficient under the public trust doctrine because it does not provide for the involuntary reallocation of perfected water rights, and must be altered, the alteration must come from the Legislature in the first instance. The issues raised by such a requirement cannot be addressed by a

single judge or administrative agency with no objective criteria for its exercise. The Legislature is best equipped to provide the necessary criteria so that the issues are addressed comprehensively and in a manner that can be applied uniformly throughout the State.

Abrogation of a fully perfected water rights in the name of the public trust would violate the Due Process and Takings provisions of the Nevada Constitution. In all except very wet years, Mineral County's requested relief would prohibit any use of water from the Walker River under junior priority water rights, and limited use of senior priority water rights. In some years, no water rights could be used at all.

Given the fact that the property right itself is the right to divert and use water, the relief Mineral County seeks here, an order prohibiting that diversion and use, is in effect a physical invasion of it, and a categorical physical taking under Nevada law. Even if it is not a physical taking, it is a categorical regulatory taking. The order which Mineral County seeks would effectively prevent the owners of the water rights from using all or part of their water rights, thus depriving them of all economic beneficial uses of them.

There is nothing in Nevada law, including the public trust doctrine, which conditions an owner's right to use water in a way that allows the State to prohibit

its approved and existing use. Public trust cases from other jurisdictions do not support a conclusion that the doctrine allows the prohibition of an existing use of land subject to the doctrine. Nevada's public trust doctrine neither allows, nor requires, such a deprivation of the right to use water, and any such deprivation would violate Nevada's Constitution. It is relief which no court may grant consistent with due process, and if granted by the Legislature, would require just compensation.

ARGUMENT

I. The Public Trust Doctrine.

Mineral County contends that water resources, like Walker Lake, the Walker River and tributaries are property of the public at large and therefore the public trust doctrine imposes a duty on the state to regulate them to protect that interest. *See*, MC Br. at 14. Similarly, the Sierra Club argues that because the public trust doctrine applies to navigable waters and lands beneath them, it must also apply to water associated with them. Sierra Br. at 4. The Professors argue that the state cannot grant water rights "in derogation of the public's interest in trust resources, which include navigable Walker Lake." Professors' Br. at 7.

Thus, under their view, the resource to be protected by the doctrine is always a state-owned navigable body of water and that any use of water which impacts

such a navigable body is subject to the doctrine. That is not how the doctrine has been applied in the United States, and it is not how it should be applied here.

The case most often cited for the public trust doctrine in the United States is *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387 (1892), which involved a dispute over submerged lands underlying the Chicago harbor in Lake Michigan. In 1869, the Illinois legislature enacted the Lake Front Act, purporting to transfer title to the Illinois Central Railroad of submerged lands from the Chicago shoreline for a distance of one mile out on Lake Michigan. Four years later, the legislature repealed the Lake Front Act and asserted that the repeal returned the parties to the pre-Lake Front Act legal conditions. *Id*. at 449-452.

Central to the Supreme Court's decision was that the original grant had been made to the Railroad with no obligation to improve the land for the public benefit of the harbor in Chicago. Therefore, it concluded that the original grant could be revoked by the legislature because in those circumstances it was an "abdication of the general control of the state over lands under the navigable waters of an entire harbor" which was not consistent with the obligation of the state to preserve such waters for navigation purposes. Nevertheless, even in that situation, the Court recognized that "there may be expenses incurred in improvements made under such grant, which the state ought to pay." *Illinois Central*, 146 U.S. at 452-455. Thus, under *Illinois*

Central, the public trust doctrine acts as a restraint on a state's ability to alienate the bed and banks of navigable bodies of water in a manner which abdicates its authority to regulate them and require their use for the benefit of the public interest.

At times, courts have referred to the federal body of law pursuant to which states acquired title to land underlying navigable bodies of water as the "American public trust doctrine." However, that body of law involves nothing more than whether or not a state has legal title to such lands under the Federal Equal Footing Doctrine. *See*, *Philips Petroleum Co. v. Mississippi*, 484 U.S. 469, 478-479 (1988). It does not establish a "Federal" public trust doctrine which limits a state's authority with respect to the regulation and disposition of such lands. *PPL Montana, LLC, v. Montana*, 565 U.S. 576 (2012). The public trust doctrine is a matter of state law. While Equal Footing cases have noted that states take title to the navigable waters and their beds in trust for the public, the contours of that public trust do not depend upon the United States Constitution. The states have the power to determine the scope of the public trust over such waters within their borders. *PPL Montana,* 565 U.S. at 603-604.

Contrary to the conclusion Mineral County would have the Court draw, the public trust doctrine has not been applied by a "great majority of states in the West" to limit or affect existing rights to use water which may be directly or

indirectly affecting navigable bodies of water. The only judicial decision allowing modification of rights to use water based solely on the common law public trust doctrine is *National Audubon Society v. Superior Court*, 658 P.2d 709 (Cal. 1983). In that case, there was a single appropriator of water, the Los Angeles Department of Water and Power, which, pursuant to its appropriations, was diverting water away from Mono Lake and into its Owens Valley aqueduct. The court concluded that the scenic beauty and ecological value uses of Mono Lake, a navigable lake, were impaired. *Id*. at 711.

In *National Audubon*, the plaintiffs argued that under the public trust doctrine the appropriative water rights in California had been acquired and were being used unlawfully. On the other hand, the Los Angeles Department of Water and Power argued that the public trust doctrine had been subsumed and absorbed into the appropriative water rights system. The court held that the public trust doctrine and the appropriative water rights system were parts of an integrated system of water law, and that the requirements of both were to be accommodated by making use of the pertinent principles of each. Thus, it concluded that the state had the power to grant rights to use water even though that use did not "promote and may unavoidably harm the trust uses at the source stream." 658 P.2d at 727. However, it said that the state had a duty to avoid unnecessary and unjustified harm to trust interests, and that even

after approving an appropriation under those considerations, the state could reconsider the appropriation and reallocate water. It ruled that either a court or the State Water Resources Control Board could make those decisions. *Id.* at 732.

From California's perspective, the resource to be protected by the public trust doctrine is always a navigable water, in *National Audubon*, Mono Lake. In California, the doctrine also protects navigable waters from harm by diversion of water from non-navigable tributaries and from diversions of underground water. *See*, *Environmental Law Foundation v. State Water Resources Central Board*, 237 Cal. Rptr. 3d. 393, 402 (Cal. App. 2018).

Mineral County also relies on *In Re Water Use Permit Applications*, 9 P.3d 409 (Haw. 2000), as supporting the notion that the common law public trust doctrine may require the reallocation of fully perfected water rights. However, that case involved significant and specific statutory and constitutional provisions.

It involved a designation of five aquifer systems as "groundwater management areas" under Hawaii Revised Statutes § 174C-41(a), which required all existing users to apply for water use permits within one year of the designation to the Hawaii Water Commission. 9 P.3d at 423-424. In that case, the Hawaii Supreme Court rejected the assertion that the common law public trust doctrine had been abolished by statute, and instead determined that the doctrine had been

engrafted into its Water Code, and more importantly, into the Hawaii Constitution by the provisions of Article XI, Section 1, which mandate that "for the benefit of present and future generations, the state and its political subdivisions shall protect and conserve . . . all natural resources, including . . . water . . . and shall promote the development and utilization of these resources . . . in a manner consistent with their conservation." 9 P.3d at 444. No other appropriative water law state has applied the public trust doctrine directly to the right to use water or to require a reallocation of fully perfected rights to use water, for the benefit of navigable bodies of water or otherwise.

The other cases on which Mineral County relies (MC Br. at 16-17) either did not involve the right to divert and use water at all, or merely involved a conflict between recreation on or within water bodies and rights of owners of the land beneath those water bodies. *See*, *e.g., Kootenai Environmental Alliance v. Panhandle Yacht Club,* 671 P.2d 1085 (Ida. 1983) (grant of land lease for dock in navigable lake); *Montana Coalition for Stream Access, Inc. v. Curran*, 682 P.2d 163 (1984) (recreational use of state owned waters); *Morse v. Or. Div. of State Lands*, 581 P.2d 520 (Or. 1978) (landfill project in estuary); *Conatser v. Johnson*, 194 P.3d 897 (Ut. 2008) (recreational use of state owned waters); *National Parks and Conservation Ass'n. v. Bd. Of State Lands*, 869 P.2d 909 (Ut. 1993) (exchange

of school trust land); *Rettkowski v. Dept. of Ecology*, 858 P.2d 232 (Wash. 1993) (public trust doctrine not relevant to issues before the court); *United Plainsmen Ass'n v. North Dakota State Water Conserve. Comm.,* 247 N.W.2d 457 (1976) (action to enjoin issuance of future water right permits pending completion of comprehensive plan for conservation and development of state's natural resources); *Pullen v. Ulmer*, 923 P.2d 54 (Alaska 1996) (public trust responsibilities imposed by state constitution compel conclusion that fish in their natural state are property of the state).[10]

Legislatures in some prior appropriation states have acted to limit the applicability of the public trust doctrine to appropriative water rights. For example, Utah has expressly recognized the public's interest in water is subject to all existing rights to use water. *See,* Utah Code Ann. § 73-1-1. Montana enacted statutes establishing that appropriated water rights trump the public interest in the waters of the state, including environmental protections and public use rights. Montana Code Ann. §§ 75-5-705, 75-7-104, 85-1-111. Idaho has codified the doctrine and strictly limited its application by stating that it does not apply to the appropriation or use of water. Idaho Code Ann. §§ 58-1201 - 58-1203.

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[10] *Vander Bloeman v. Wisc. Dept. of Nat. Resources*, 551 N.W.2d 869 (Wis. App. 1996) is an unpublished decision which has no precedential value, and in any event, does not support the relief Mineral County seeks.

II. Nevada's Public Trust Doctrine Does Not Apply to Fully Perfected Appropriative Water Rights.

Although *Lawrence v. Clark County*, 254 P.3d 606 (Nev. 2011) expressly adopts the public trust doctrine, it did not involve the right to use water. Initially, this Court outlined its approach to the issue before it, the conveyance of title to previously submerged lands of the Colorado River. It first discussed the origins and development of the public trust doctrine in the United States with a focus on *Illinois Central*. *Id.* at 607-609. Next, it examined *State v. Cowles Brothers, Inc.,* 478 P.2d 159 (Nev. 1970) and *State v. Bunkowski*, 503 P.2d 1231 (Nev. 1972), both of which involved Nevada's title to submerged or formerly submerged lands. Finally, it said it would provide "Nevada's public trust doctrine framework under which [it would decide] whether the formerly submerged land is alienable." It recognized that "resolution of disputes over title to public trust land" was "a matter of state law." *Lawrence*, 254 P.3d at 615. It ultimately adopted a three prong test for determining whether a dispensation of public trust property was valid. *Id*. at 616.

Admittedly, *Lawrence* quotes extensively from the concurring opinion in *Mineral County v. State Department of Conservation and Natural Resources*, 20 P.3d 800 (Nev. 2001). In that case, five of the seven Justices expressly determined that the issues considered in that concurring opinion were to be left "for another

day." 20 P.3d at 807. In essence, the two-Justice concurring opinion was akin to a dissent from the determination of Justice Young and four other justices that the issues were not appropriate for consideration in that case. That "concurring opinion" was not Nevada's adoption of the rationale of *National Audubon*. It merely expressed a view which five Justices of the Supreme Court declined to address. *Lawrence* itself is not an adoption of the California approach in *National Audubon* as it relates to appropriative water rights. That issue was not before the Court.

Nevada's public trust doctrine should be limited to the State's conveyance of lands under navigable waters and to regulation of the use of such lands. Nevada's water law and Nevada's ownership of lands beneath navigable waters have evolved under completely separate circumstances and legal regimes. They are not and never have been an "integrated system of water law" as referenced in *National Audubon*. There is no reason to apply the doctrine to fully perfected appropriative water rights and especially not in the manner adopted by California in *National Audubon*. The rationale of *Illinois Central* does not apply here. Nevada has not granted permanent ownership of water flowing naturally without any obligation on the part of the owner to use it beneficially, or at all, for the benefit of the state. *See*, pages 30-32, *infra*. It was the grant of ownership of the submerged lands in

Lake Michigan with no obligation to improve them for the benefit of navigation which resulted in application of the doctrine to justify the legislature's repeal of the grant there.

III. If Nevada's Public Trust Doctrine Applies Here, It Applies to the Manner in Which the Legislature Has Dispensed the Right to Use Water, and That Dispensation Does Not Violate It.

A. Introduction.

If the public trust doctrine is to be applied to water, it should be to the manner in which the Legislature has dispensed the right to use water, and not to such rights once they have become fully perfected. A fully perfected water right is one which has been fixed, established and utilized in accordance with Nevada's water law. The rights here are such rights. They have been formally adjudicated and their respective relationship to water rights from the same source have been determined. They are rights which this Court has recognized as property and protected against a taking without just compensation by both the United States and Nevada Constitutions. *See*, *Dermody v. City of Reno*, 931 P.2d 1354, 1358 (Nev. 1997); *Carson City v. Lompa*, 501 P.2d 662 (Nev. 1972); *see also, In Re Application of Filippini*, 202 P.2d 535, 537 (Nev. 1949). We do not suggest that such rights are immune from regulation. However, that regulation must come from the Legislature and must be reasonable.

If the public trust doctrine applies to dispensation of the right to use water, the extent of that application should be analyzed under *Lawrence*, and not the California approach in *National Audubon*. The California approach fails to recognize that the right to use water, not Mono Lake, had been granted by its legislature. Thus, in order to boot strap its decision into the *Illinois Central* rationale, California identified the resource as a navigable body of water and owned by the state as a result of the Equal Footing Doctrine. *National Audubon*, 658 P.2d at 719; *Environmental Law Foundation v. State Water Resources Control Board*, 237 Cal. Rptr. 3d 393, 402 (Cal. App. 2018). That approach ignores the fact that the use of water impacts many of the same water dependent resources referenced in *National Audubon*, regardless of whether those resources are within or without a navigable water body.

Under this analysis, whether Nevada owns the submerged land beneath Walker Lake should not be determinative of the application of the Nevada public trust doctrine to the right to use water. However, if it is determinative, that ownership here is uncertain and cannot be decided in the pending litigation or perhaps any other litigation. The United States has the power to reserve submerged lands under federal control for an appropriate public purpose, thereby defeating a future state's equal footing title. *United States v. Alaska*, 521 U.S. 1,

33 (1997). Establishment of an Indian reservation is a public purpose. *See, United States v. Montana*, 450 U.S. 544, 556 (1981); *United States v. Alaska*, 521 U.S. at 38-39. The purpose of the reservation is a critical factor in determining federal intent to defeat equal footing title. *United States v. Alaska*, 521 U.S. at 39. Federal intent to defeat such title is found where fishing is necessary for Indians' subsistence. *Id.* at 39. *See also, Idaho v. United States*, 533 U.S. 262, 274 (2001) (a right to control the lake bed and adjacent waters was traditionally important to the tribe which continued to depend on fishing).

From 1859, five years before Nevada was admitted to the Union, to 1906, when it was ceded to the United States, Walker Lake was part of the Walker River Indian Reservation. *See, Northern Paiute Nation v. United States*, 8 Cl. Ct. 470, 472-475 (1985). The Pyramid Lake and Walker River Indian Reservations have parallel histories. Both were set aside and confirmed by the same executive actions for essentially the same reasons. Both Reservations "embraced but a small portion of land suited for agricultural purposes, yet it [was] believed that there [would] be a sufficiency for the sustenance of the . . . tribes of Indians, in connection with the fish they may obtain from Pyramid and Walker Lakes . . . ." *United States v. Walker River Irrig. Dist.*, 104 F.2d 334, 338-39 (9th Cir. 1939).

Whether the details of the reservation of Walker Lake and its ultimate

cessation back to the United States will defeat Nevada's Equal Footing claim to it is not before the Court, and cannot be decided by it. Not only is it clear that there is a substantial question as to that title, it is questionable as to whether that issue can ever be conclusively resolved. The Quiet Title Act, 28 U.S.C. §§ 1346(f) and 2409a, is the exclusive means by which the United States' title to real property may be challenged. *Block v. North Dakota*, 461 U.S. 273, 286 (1983). Where the claim of the United States is based upon the trust or restricted status of Indian land, the Quiet Title Act renders it immune from suit.[11] *Alaska v. Babbit*, 182 F.3d 672, 675 (9th Cir. 1999).

B. Nevada's Water Law.

Nevada has not granted any rights to Walker Lake or the lands presently or formerly submerged by it. It has granted rights to the use of water. The analysis here should be of the Legislature's grant of that right to use water, and whether that grant meets the requirements of *Lawrence*.

Nevada has no constitutional provision addressing the use of water. Until the beginning of the last century, the right to use water was controlled by the

[11] It is worth noting that in 1993, the Nevada legislature enacted Chapter 496 of the Laws of Nevada permanently relinquishing "any right, title or other interest the state may have in the bed and banks of the portion of the Truckee River . . . and Pyramid Lake within the boundaries of the Pyramid Lake Indian Reservation . . . ." 1993 Stats. of Nev. at 2046-2047.

common law as established by this Court. *See, Walsh v. Wallace*, 67 P. 914 (Nev. 1902); *Gotelli v. Cardelli*, 69 P. 8 (Nev. 1902). In 1913, the Nevada Legislature repealed all prior acts concerning water, and enacted a comprehensive water law. The Water Law of 1913 included some 90 sections, several of which are particularly relevant here.[12]

Section 1 declared that the "water supply within the boundaries of the state, whether above or beneath the ground belong to the public." NRS § 533.025. Section 2 provided that "**subject to existing rights**, all such water may be appropriated for beneficial use as provided in this act and **not otherwise**." NRS § 533.030(1). [Emphasis added]. Section 3 made "beneficial use" the basis, the measure and the limit of the right. NRS § 533.035. Section 5 provided that "when the necessity for the use of water does not exist, the right to divert it ceases." NRS § 533.045. Section 6 declared "beneficial use" as a "public use." NRS § 533.050. Section 8 provided for the permanent loss of the right to use water through non-use. NRS § 533.060. Section 81 prohibited the waste of water. NRS § 533.460. Section 59 provided that **new** appropriations and changes to existing appropriations could not be made without first obtaining a permit from the Nevada State Engineer. NRS § 533.325. [Emphasis added]. Section 63 of the law

[12] The Addendum to this Brief includes the entire 1913 Water Law.

provided, among other things that it was the duty of the State Engineer to refuse to issue a permit where the use of the water "threatens to prove detrimental to the public interests." NRS § 533.370(2). Lastly, Section 84 of the act provided that "nothing in this act contained shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this act where appropriations have been initiated in accordance with law prior to the approval of this act. NRS § 533.085.

Those provisions are in stark contrast to the grant of the Illinois legislature in *Illinois Central* where public lands needed for a harbor and navigation were granted absolutely and permanently with no obligation to use them for that or any other purpose. Here, only the right to use water was granted, and only for a recognized beneficial use. If not needed for that use, it cannot be diverted, and if not used at all for a significant period of time, the right to use may be lost and become available for appropriation by others.

Although it has been amended many times since 1913, the basic structure, policy and procedures adopted in Nevada's comprehensive water law in 1913 remain in place today. Many of those amendments relate to the right to use water to benefit and protect natural resource values. In 1969, the Legislature amended NRS § 533.030 to expressly state that use of water for " any recreational purpose,"

which includes wildlife use, is a beneficial use. 1969 Nev. Stat. 141; NRS § 533.030(2). Pursuant to that statute the State Engineer has authorized the appropriation of water for wildlife at Walker Lake, Pyramid Lake and Blue Lake. This Court has confirmed the validity of such *in situ* appropriations for public recreational purposes, including for wildlife. *See, State v. State Engineer*, 766 P.2d 263 (1988).

Some of the amendments relate to protection of the finality of those rights and to preserving their availability for use as areas of Nevada transition from agricultural to urban uses. For example, in 1921, the Legislature amended the 1913 Act to provide that court decrees entered in adjudications would be "final and conclusive upon all persons and rights lawfully embraced" therein and could be modified only for increasing or decreasing the duty of water within three years of the entry thereof. NRS § 533.210. In 1999, recognizing the importance of existing agricultural water rights to the continued development of Nevada's growing metropolitan areas, the Legislature repealed a portion of NRS § 533.060 which allowed for loss of a surface water right by forfeiture. In addition, it provided that a surface water right appurtenant to land formerly used for agriculture could not be lost by abandonment if the water right is "appurtenant to land that has been converted to urban use; or has been dedicated to or acquired by a water purveyor,

public utility or public body for municipal use." NRS 533.060(3). Those are strong legislative statements that the public interest requires that existing agricultural rights to use water remain available as a part of the future municipal supply.

C. Nevada's Water Law Meets the *Lawrence* Test.

The legislative dispensation of the right to use water meets the three prong test set forth in *Lawrence* for reviewing legislative dispensations of public trust property: "(1) whether the dispensation was made for a public purpose, (2) whether the state received fair consideration in exchange for the dispensation, and (3) whether the dispensation satisfies the state's special obligation to maintain the trust for the use and enjoyment of present and future generations." *Lawrence*, 254 P.3d at 616. *Lawrence* also ruled that when the legislature has found that a given dispensation is in the public's interest, the legislative determination will be afforded deference. *Id.* at 617. Nevada's comprehensive water law and its dispensation of the right to use water satisfies the *Lawrence* test, and thus does not violate the public trust doctrine.

1. The Public Purposes.

The legislative dispensation of the right to use water was made for a public purpose. It is apparent from reading Nevada's 1913 Water Law and from the

almost contemporaneous decisions of this Court interpreting and applying it, that the Nevada Legislature had several public purposes for enacting it.

First, the Legislature brought the use and distribution of water into the control of the state, and in doing so, encouraged the use of such water for the economic benefit of the state. *Ormsby County v. Kearney*, 142 P. 803, 805 (Nev. 1914). That purpose is not served if fully perfected water rights may be involuntarily reallocated. Second, it brought order to a process which was uncertain and indefinite and which frequently involved long and expensive litigation. *Vineyard Land & Stock Co. v. Dist. Ct.*, 171 P. 166, 168 (Nev. 1918). Those purposes are turned upside down by a policy which allows for the involuntary reallocation of existing water rights. Third, when considering new appropriations and changes to existing and future rights, it directed that the State Engineer consider the public interest.

In 1913, when the Legislature required that new appropriations and changes to new and existing appropriations be measured against the public interest, it was aware that in all parts of Nevada there were existing rights to use water established under prior law. It might have chosen to subject those existing rights to the public interest test. It did not do so. Instead, it stated that such rights would not be "impaired or affected by the provisions" of that act. NRS § 533.085(1). In effect,

the Legislature deemed those existing rights to use water to in fact be in the "public interest" and should not be impaired. *See, Ormsby County*, 142 P. at 810. It also might have chosen to subject existing and subsequently established rights to use water to periodic review under the public interest test. Again, it did not do so. Instead, it provided a process for voluntary changes to those rights to meet evolving needs and values and subjected those voluntary changes to the public interest test when the change is requested.

The leading case confirming these purposes and policies is *Ormsby County v. Kearney*, 142 P. 803 (Nev. 1914). In *Ormsby County*, the court described the law as being "manifestly designed to be a comprehensive statute covering the water law of this state." The court also said "the public welfare is very greatly interested in the largest economical use of the waters of the state for agricultural, mining, power, and other purposes." *Id.* at 805.

The law brought the use and distribution of water into the control of the state. It did not grant title to water, but rather only the right to use water subject to adequate state control limiting that use as to amount, place and purpose and to changes therein. Those are public purposes. The principal public purpose was to encourage private investment in the development and beneficial use of Nevada's water for the economic benefit of the state. When considering new appropriations

and changes to existing and future rights, the State Engineer was directed to consider the public interest.

In order to meet the public purpose of encouraging the use of water for the economic benefit of the state, the Legislature recognized that once a right to use water was perfected, it needed to be protected so that it could be relied upon in the development of the state. In addition, if the right was not so used, it could not be diverted, and might be permanently lost. Those, too, are public purposes.

2. Fair Consideration.

Nevada did and continues to receive fair consideration for the grant of rights to use Nevada's water. That consideration was, is, and will continue to be the investment of labor and capital by the past, present and future generations of Nevadans who develop those water resources and place them to beneficial use for the benefit of the people and economy of Nevada.

3. Protection for the Use and Enjoyment of Present and Future Generations.

In *Lawrence*, the court found that the third consideration was specific to grants related to navigable waterways, which is not the case here. *Lawrence*, 254 P.3d at 616. Nevertheless, Nevada's dispensation of the right to use water satisfies the obligation to protect the use of water for present and future generations in many of the same ways and for the same reasons that the dispensation was for a

public purpose. First, it provides only for a right to use water. Second, it only allows that use for a beneficial purpose as defined by the State. Third, it prohibits waste. Fourth, non-use may result in a loss of the right. Thus, the law ensures that Nevada's water must be used for the benefit of the State and its present and future generations.

In addition, the rights to use water for natural resource values are accorded the same protection against involuntary reallocation to other uses as are rights to use water for other uses. Importantly, the law provides a process which allows for changes to water rights through which the rights to use water established more than a century ago may be changed to meet the new uses and new values of present and future generations. Those provisions have benefitted and are continuing to benefit Walker Lake. They have also allowed former irrigation rights to become a principal source of supply for municipal use in urban areas, like the Reno-Sparks metropolitan area. *See*, 12-14, *supra*.

Those provisions are providing similar benefits to other natural resources in Nevada. The Pyramid Lake Paiute Tribe now holds a water right for the benefit of Pyramid Lake. See, Nev. State Eng. Ruling No. 4683 (1998). Similarly, changes to water rights established in the 19th century for irrigation are taking place elsewhere in Nevada to meet 21st century values of sustaining wetlands for wildlife and recreation

and repairing damage to threatened and endangered species of fish and the ecosystems on which they depend. Water rights have been acquired from willing sellers and changed to sustain wetlands fed by the Carson River in the Lahontan Valley. *See, United States v. Alpine Land & Reservoir Co.*, 341 F.3d 1172 (9th Cir. 2003). In order to resolve water quality litigation, Reno, Sparks, Washoe County, the Pyramid Lake Paiute Tribe and the United States entered into an agreement to acquire and change Truckee River irrigation rights, including those being diverted to outside of the Truckee River Basin, to improve, maintain and preserve water quality in the lower Truckee River and Pyramid Lake for purposes of fish and wildlife. *See,* Nev. State Engineer Ruling No. 5760 (2007).

The Nevada Legislature has struck an appropriate balance between use of water for beneficial purposes away from streams and lakes and use of water for beneficial purposes within streams and lakes. Its actions are not an abdication of state authority over the use of water, but rather an exercise of it.

The Legislature did not provide for the involuntary reallocation of perfected water rights. It made court decrees final and conclusive. *See*, NRS § 533.210. The State Engineer is required to carry out his duties in a manner which does not conflict with those decrees. *See*, NRS 533.0245; § 533.3703(2)(a). It had good reasons for not providing for an involuntary reallocation of perfected water rights. For the driest

state in the nation to develop and evolve for the benefit of its people, perfected rights to use water must be reliable. Instead of involuntary reallocation, the Legislature provided for voluntary changes to water rights to meet evolving needs and values. That is consistent with the obligation to protect the right to use water for present and future generations.

IV. If Nevada's Public Trust Doctrine Applies to the Right to Use Water and Also Requires Provisions for Involuntary Reallocation of Fully Perfected Water Rights, Those Provisions Must Come From the Nevada Legislature in the First Instance.

The most significant problem with California's *National Audubon* approach is that it vests the decision of whether there should be reallocation of fully perfected water rights and the extent of that reallocation in the hands of either a single judge or an administrative agency with virtually no objective criteria to control its exercise. It also authorizes, indeed mandates, unlimited reconsideration of any reallocation decision. *National Audubon*, 658 P.2d at 727-729. All of this is to be done, with no criteria for deciding what level of restoration and protection is appropriate or required, whether it is necessary, and with no criteria for considering whether it is feasible.

If the choice made by the Legislature with respect to the involuntary reallocation of perfected water rights is found to be wanting by the judiciary and must be altered, under *Lawrence*, the alteration must come from the Legislature, in

the first instance. *Lawrence*, 254 P.3d at 616-617. In *In Re Filippini*, 202 P.2d 535 (1949), this Court was confronted with deciding whether the 1913 Water Law overruled a prior decision that a right to use water could be established by prescription. *Id.* at 537-539. Ultimately, the court concluded that it would not read "into the law provisions which are not there," and that it would not "read into the law something that [it did] not find stated there even by implication." *Id*. at 539.

Filippini was followed in *Pyramid Lake Paiute Tribe v. Washoe Co.*, 918 P.2d 697 (Nev. 1996). There, confronted with a dissent based upon the public trust, the Court again refused to adopt provisions in Nevada's water law which simply were not there. Moreover, on the question of which branch of government should write new provisions into that law and depart from long recognized water policy, the Court said "the Legislature – not this court – must signal a departure from such a long-recognized Nevada water policy." 918 P.2d at 701.

If this Court concludes that Nevada's water law violates the public trust doctrine because it includes no provision for the involuntary reallocation of perfected water rights, it should also recognize that the Legislature is best equipped to address if and when fully perfected water rights should be reallocated, and how. The issues raised by such a requirement cannot be properly addressed by a court or administrative agency with the simple instruction from *National Audubon* to

"consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests." *National Audubon*, 658 P.2d at 712. The Legislature can address these issues in a comprehensive way and in a manner which includes appropriate standards to be considered by the State Engineer and the courts, and which can be applied uniformly throughout Nevada.

The issues include which resources should be protected, the condition of the resource which justifies consideration for reallocation of water rights and the condition to which the resource should be restored. The Legislature can direct how and to what extent voluntary efforts at restoration like those which are taking place here should be considered.

The Legislature can address the criteria to be considered to determine feasibility, including impacts on the persons and entities whose rights to use water are modified. It can provide guidance for situations, like here, where there are hundreds of individual water users whose livelihoods depend upon their right to use water and who are without alternative water sources. The suggestions that there is some simple solution here that will preserve much or all economic value of these water rights (Professors Br. at 16), that involuntary reallocation will have no destabilizing effect on Nevada's water rights system (Sierra Br. at 21), and that

there will be a "variety of different strategies to find replacement water (Sierra Br. at 26) are nonsense. This is a far different situation than the single user with alternative water sources as was present in *National Audubon*. The impact on Walker River water users will be devastating. *See*, 47-48, *infra*. It is the Legislature which should make such judgments and provide compensation for any required reallocation.

The feasibility of reallocation of existing water rights involves more than just the persons whose rights are reallocated. The very existence of an irrigation district depends on affordable assessments which can be spread over all of the water righted lands in the district. Programs like the Walker Basin Restoration Program, the Lahontan Valley wetlands program and the Lower Truckee River water quality program require that assessments related to changed water rights continue to be paid by the owners of the changed water rights. Involuntary reallocation includes no such requirement. If some users no longer have viable operations because of loss of water, and cannot pay assessments, an entire district is at risk. Involuntary reallocation also presents the prospect of dust and noxious weed issues on formerly irrigated land. The WBRP provides for restoration of such land to its natural state with native vegetation.[13]

[13] *See*, www.walkerbasin.org/land-stewardship.

The Legislature can address how other environmental, recreational and commercial interests which rely on the water involved should be considered and addressed. The development of water for irrigation and other uses within the Walker River Basin has also resulted in significant economic, environmental and recreational benefits upstream of Walker Lake. *See*, 10-11, *supra*.

The Legislature can also consider and perhaps direct alternative approaches to providing additional water, such as enacting conserved or saved water statutes, and allowing saved water to be used for instream purposes in tandem with programs like the lease program which the District already is pursuing. The Legislature can address how climate change should be considered both with respect to the resource to be protected and the resource to be used to provide the protection.[14]

The Legislature can also address how issues related to interstate water sources should be considered. The Walker River, like the other rivers in Western Nevada, is an interstate stream system, with water rights based on California law,

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[14] Nevada law requires consideration of the best available science in rendering decisions about available surface water resources in Nevada. *See*, NRS § 533.024(1)(c). The science of climate change establishes much warmer temperatures, much higher evaporation rates and much more stress on water supplies in the future. *See*, USGCRP, 2018: Fourth National Climate Assessment, Vol. II, Impacts, Risks and Adaptation in the United States, at 14; 33-34; 148-152.

Nevada law and federal law and which are used in two states and on federal reservations. Here, significant claims for additional water based upon federal law are being made. All of the water rights are administered based upon priority. There is no binding interstate allocation on the Walker River.

Imposing unilateral reductions in off-stream use of water rights based on Nevada law in Nevada will create administrative chaos. For example, under the Decree, the most junior water rights on the system are the California water rights for Bridgeport and Topaz Reservoirs, creating the potential here for serious adverse impacts to those water bodies. On interstate stream systems, a binding interstate allocation based upon the relevant water law of the states involved and relevant federal law is the best and probably only vehicle to balance water use among the states and federal reservations on the stream system and among all beneficial uses and all environmental values.

V. Modification of the Decree As Requested by Mineral County Would Violate the Nevada Constitution.

A. Introduction.

The District has rephrased the Ninth Circuit's second question as follows:

> 2. Assuming the public trust doctrine applies and allows for the reallocation of fully perfected water rights, would a reallocation which abrogates those rights violate the Nevada Constitution?

If the Court agrees with the District's analysis and answer to the first question, this

question need not be answered. However, if the Court's answer to the first question is one which adopts California's *National Audubon* approach, an answer to this question is needed, even though *National Audubon* expressly states that it does not require any reallocation of water at all. *See, National Audubon*, 658 P.2d at 732.

The need for an answer to the second question stems from the district court's conclusion that "even assuming . . . the Court has jurisdiction under the Decree to grant Mineral County the relief it requests . . . the Takings Clause would prevent the Court from modifying the Decree in the way Mineral County requests." ER 118. The second question asks, assuming the public trust doctrine allows for a reallocation of perfected water rights, may that reallocation "abrogate" them without requiring payment of just compensation, for which a federal court has no purse.

By rephrasing the question as the District suggests, the Court may answer it without addressing the issue of whether a judicial decision can effect a taking, and whether the taking issue is ripe for consideration here. *See*, MC Br. at 44-55. The question assumes the complete abrogation of a water right, and asks whether that would violate the Nevada Constitution.

In order to provide more water from the Walker River to Walker Lake than

it will otherwise receive, owners of perfected water rights would have to be prohibited directly or indirectly from diverting and using some or all of their water rights. Mineral County asks for modification of the Decree to sustain Walker Lake's natural recurring fish population. ER 1143. It seeks a minimum of 127,000 acre feet every year into Walker Lake. ER 1146. It has never stated specifically whether that result would be achieved indirectly by modifying all rights to water, or directly by making all river flows unavailable for diversion until 127,000 acre feet had reached Walker Lake in a year. In either case, the magnitude of that requested relief and its abrogation of fully perfected water rights can be seen from historic river flows and in WBRP's projections of acquisitions required to reach and sustain a long term average TDS level in Walker Lake of between 10,000 mg/L and 12,000 mg/L.

Depending on the period of record considered, the average annual flow of the Walker River into Nevada is approximately 285,000 acre feet per year. *See*, Horton at I-10. That average includes wet year flows, including nearly 800,000 acre feet in 1983, and dry year flows, including approximately 80,000 acre feet in 1977. *Id.* at I-11. Except in very wet years, Mineral County's requested relief would prohibit any use of water under junior priority water rights held by numerous owners, and limited use of senior priority water rights. In many years,

that relief would prohibit all owners of water rights from using any water at all from their water rights. Many water rights would be effectively extinguished.

The extent of that extinguishment is also reflected in the WBRP. WBRP's long-term water quality goal for Walker Lake is an average TDS level of between 10,000 mg/L and 12,000 mg/L, for a put and take Lahontan cutthroat trout fishery. To date, the WBRP has acquired 108.08 cfs of natural flow water rights recognized by the Decree and appurtenant to approximately 9,624 acres of irrigated land and 12,367 acre feet of stored water rights. The WBRP estimates that it has now acquired up to 45.5% of the water needed to meet that objective. A simple mathematical calculation shows that in order to meet its TDS objective, 21,152 acres out of about 45,420 acres in Nevada with natural flow water rights under the Decree would no longer receive any water.[15]

Nevada law recognizes that the usufructuary right in water is a property right which is protected against taking without just compensation by both the United States and Nevada Constitutions. *See, e.g., Dermody v. City of Reno*, 931 P.2d 1354, 1358 (Nev. 1997); *Carson City v. Lompa*, 501 P.2d 662 (Nev. 1972); *see also, United States v. Gerlach Livestock Co.*, 339 U.S. 725 (1950); *Dugan v. Rank*,

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[15] Of the approximately 79,790 acres of irrigated land in the District, about 34,370 acres have only rights to stored water from the District's reservoirs.

372 U.S. 609 (1963). It is also a property right of which an owner may not be deprived without due process, irrespective of whether a judicial taking is recognized. *See*, 59-60, *infra*. In answering this question about Nevada's Constitution, the Court may look to federal law for guidance. *Reinkemeyer v. Safeco Ins. Co. of America*, 16 P.3d 1069, 1072 (Nev. 2001).

Mineral County asks the district court to prohibit the diversion and use of water and to require it to remain in the natural channel. Given the fact that the property right itself is the right to divert and use the water, an act which prohibits that diversion and use is, in effect, a physical invasion of it – a taking.

In *International Paper Co. v. United States*, 282 U.S. 399 (1931), the United States ordered Niagara Power to stop the delivery of water leased by Niagara to International Paper. It did not take over either Niagara Power or International Paper, nor did it itself physically direct the flow of water. It merely ordered Niagara Power to stop International Paper from diverting water to its mill. The fact that the order of the United States caused the water to be diverted away from International Paper's property constituted a physical taking. The court said International Paper's "right was to use the water; and when all the water that it used was withdrawn from [its] mill and turned elsewhere by government requisition for the production of power, it is hard to see what more the Government

could do to take the use." 282 U.S. at 407. The modifications to the Decree which Mineral County seeks here would be no less a direct appropriation of water which each water owner has a right to divert and use.

Similarly, even if there is no physical taking here, there is nevertheless a categorical (*per se*) regulatory taking as defined by the Supreme court in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). *Lucas* found it unnecessary to delve into the case specific inquiry called for by *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 125 (1978), and found categorical treatment appropriate.

Although there was no physical invasion of Lucas's property, legislation had the direct effect of barring Lucas from building any permanent habitable structures on his land. 505 U.S. at 1007. The court found that there was a categorical or *per se* regulatory taking requiring compensation, unless it could be shown that the proscribed use interests were not part of Lucas's title to begin with. *See*, *Lucas*, 505 U.S. at 1028; 1032. Only in that circumstance could South Carolina proscribe such beneficial uses. *Id.* at 1032.

This Court followed the rationale of *Lucas* in *McCarran International Airport v. Sisolak*, 137 P.3d 1110 (Nev. 2006), and in *Tien Fu Hsu v. County of Clark*, 173 P.3d 724 (Nev. 2007), but without making specific reference to the

Lucas decision, and instead relying on the decision in *Penn Central Transportation Co.* In those two cases, this Court found a *per se* regulatory taking resulting from ordinances which "exclude the owners from using their property and, instead allow aircraft to exclusively use the airspace . . . ." *Sisolak,* 137 P.3d at 1124; *Tien Fu Hsu*, 173 P.3d at 731-732.

The modification to the Decree which Mineral County seeks would result in the abrogation of water rights by effectively excluding water users owning water rights from diverting and using water under them when they are in priority for diversion and use. That not only deprives those owners of all economically beneficial uses of their water rights, it will render the land on which the water is used valueless, or nearly so. It would constitute a *per se* regulatory taking under Nevada law.

Thus, the second question asks whether such a modification is permissible under the Nevada Constitution. It should be interpreted by the Court in that way, and not limited to whether just compensation is required so as not to become embroiled in the judicial taking issue discussed below. Neither Nevada's water law, nor its public trust doctrine, allows the state to prohibit the approved existing use of these water rights, and to do so would violate either or both the Due Process and Takings provisions of the Nevada Constitution. *C.f., Reinkemeyer v. Safeco*

Ins. Co. of America, 16 P.3d 1069, 1073 (Nev. 2001) (regulation fixing prices which does not guarantee fair and reasonable rate of return violates Due Process and Takings clauses of Nevada Constitution).

B. There Is No Background Principle of Nevada Law Which Allows for the Complete Prohibition of the Existing Use of a Water Right.

In order to circumvent those constitutional mandates, Mineral County and the Professors contend that under Nevada law, rights to use water are conditioned so as to allow the state to prohibit their exercise in the name of the public trust. That condition, they argue, is in effect a background principle which is part of the title to the water right. The cases on which they rely do not so hold.

The District recognizes that water rights are subject to "reasonable" regulation by the state. That does not mean, however, that the owner of a water right may be prohibited from the authorized exercise of that water right whenever the state contends water is needed for a public trust purpose. The state may not exercise its police power in a manner which divests vested rights. *See*, *Town of Eureka v. State Engineer*, 826 P.2d 948, 950-951 (Nev. 1992).

The right to use water in Nevada is a matter of legislative grant. Even water rights established under the common law are now subject to the statutory provisions. As has been shown above, the Legislature has established when and how a recognized right to use water may be used and lost. It has included no

provision to prohibit the exercise of a water right when it is in priority for exercise.

The fact that the exercise of water rights depends upon the availability of water and that the state, because there is insufficient supply of water to satisfy all users, must curtail junior uses in favor of senior uses as was the case in *Kobobel v. State*, 249 P.3d 1127, 1135-1139 (Colo. 2011), does not mean that water rights may be curtailed for any or no reason when water is available for such use. It certainly does not mean that in the absence of legislative action a court may in effect impose a drought on an entire river system.

The Professors argue that since a state may limit in state water rights in order to meet its obligations to another state under a binding interstate compact without a taking, a court imposed "public trust drought" should also be permissible. *See,* Professors Br. at 19. They rely on *Hinderlider v. La Plata River and Cherry Creek Ditch Co.*, 304 U.S. 92 (1938), and *Hill v. State*, 894 N.W.2d 208 (Neb. 2017). That argument ignores the fact that a state's share of an interstate river does not include water from the share of the other state. *See, Wyoming v. Colorado*, 259 U.S. 419, 466 (1922) ("The river throughout its course in both states is but a single stream, wherein each state has an interest which should be respected by the other.")

Hinderlider merely stands for the proposition that a Colorado decree could

not confer a water right upon a ditch company in excess of Colorado's share of water of the stream as established by an interstate compact between Colorado and New Mexico and ratified by Congress. That is nothing more than a regulation or curtailment based upon the priority between the two states. *Hill* is in accord with *Hinderlider* in holding that a compact is federal law, the supreme law in the state, and the state's allocation of water is subject to the terms of the compact. An appropriator's right to use water under state law is therefore also subject to the superior obligation of the state to ensure compliance with an interstate compact.

In essence, Mineral County and its supporting amici argue that so long as the state is acting in the name of the "public trust," any regulation of the right to use water is always reasonable and constitutionally permissible. *See, e.g.*, MC Br. at 32 (water rights "are not vested property rights against the state's reasonable regulation consistent with its public trust duties"); MC Br. at 43 (application of public trust doctrine "does not take away, reallocate, or abrogate any property right to which a water right holder ever was entitled"); Professors Br. at 18 (curtailing use of water rights merely makes explicit the limitations that have always been inherent in the water right"); Sierra Br. at 29-30 (application of the public trust doctrine to constrain the exercise of water rights is an application of existing law).

In addition, Mineral County argues that the conditional nature of water

rights would allow for such regulation. MC Br. at 35. The Professors make a similar argument. *See*, Law Prof. Br. at 10. They argue that the title to the rights to use water here is impressed with a limit imposed by the public trust doctrine which would allow Nevada to prohibit any use of those water rights for their existing lawful beneficial use, even when water is available for that use. That argument, while perhaps appealing, simply states a conclusory rule which begs the question of what exactly are those limits, and from where do they originate. It is designed to support the legal fiction that under Nevada's water law a right to use water has always been subject to confiscation by the state for "trust purposes."

In support of this argument, Mineral County and the Professors rely on *National Audubon* and *In Re Water Use Permit Applications.* We have explained why neither case should be followed here. *See*, 21-23; 28, *supra*. *National Audubon* did not directly involve any claim of taking. *In Re Water Use Permit Applications* involved Hawaii's statutory law which, in certain circumstances, required existing users to apply for new permits while still being allowed to exercise existing rights to use water while the applications were processed. Moreover, the party claiming a taking there had not "established any entitlement to water under the traditional scope of the common law rule of correlative rights" and had its application for a permit dismissed for non-compliance with the statutory

conditions. 9 P.3d at 492.

Mineral County and the Professors also rely on cases which involved principles directly related to ownership of land to which the state had obtained title at statehood under the Equal Footing Doctrine. None of those cases involved the right to use water, and none support a conclusion that inherent in the title to such lands is a limit allowing a prohibition of all use of such lands, most importantly, a prohibition of their current or existing use. Rather, the cases involve an effort to obtain a new or additional use and whether the denial of such new or additional use resulted in a taking, or involve situations where existing state law did not recognize a property interest in the right being claimed.

Nothing in *Stop the Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection*, 560 U.S. 702 (2010), suggests that the public trust doctrine allows a state to divest an owner of property in which the owner has a present and existing interest. There the property owner contended Florida had taken a right to future accretions and the right to have littoral property touch the water through its filling of its own seabed. However, under Florida law, if the state's filling of its seabed exposes land seaward of littoral property that had been previously submerged, the exposed land belongs to the state, even if it interrupts the littoral owners contact with the water. Thereafter there can be no accretions to

the owner's land because it no longer abuts the water. No property was taken.

Esplanade Properties, LLC v. City of Seattle, 307 F.3d 978 (9th Cir. 2002), involved the denial of permits to construct residential housing on and over tidelands. The homes were to be constructed on platforms supported by pilings. Esplanade contended that the denial of the requested permits resulted in the inverse condemnation of his property. 307 F.3d at 981. The denial did not prohibit the existing uses of that property, as is requested here. The court merely concluded that the public trust doctrine prohibited the project Esplanade proposed. 307 F.3d at 986.

In *Wilson v. Commonwealth*, 597 N.E.2d 43 (Mass. 1992), an alleged regulatory taking claim was made based upon the loss of property eroded by the ocean, and the property owner's inability to obtain permits to erect protective barriers before their homes were completely destroyed by the sea. Nevertheless, in that case, the court allowed a taking claim to proceed on the basis that but for improper delays in agency proceedings, permits for protective barriers would have been granted in time to prevent total destruction of the plaintiffs' properties. Similarly, *McQueen v. South Carolina Coastal Council*, 580 S.E.2d 116 (S.C. 2003), also does not apply here. In that case, the lots in question had already reverted to tidelands and as a result, there was no right to backfill those lands and

no need to compensate for the denial of permits for such backfilling.

Glass v. Goeckel, 703 N.W.2d 58 (Mich. 2005), simply involved whether a private landowner held title to wherever the water's edge happened to be at any time, and could prohibit someone from walking on land below the ordinary high water mark of Lake Huron when that land was not submerged. The Court concluded that the "public trust" allowed the public to walk within the boundaries of the land owned by the state even when it was not submerged. 703 N.W.2d at 74.

Rith Energy, Inc. v. United States, 44 Fed. Cl. 108 (1999), is an example of what the Supreme Court meant in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), where it said that South Carolina could only avoid a taking by identifying "background principles of nuisance and property law that prohibited the uses." In *Rith*, a mining plan permit was rejected by the government under the Surface Mining Control and Reclamation Act of 1977. The permit was denied because there was high probability to produce acid mine drainage into an aquifer, and there was no plan in place to prevent hydrologic damage. In *Rith*, the court found that under Tennessee's law, such a surface mining operation would have constituted an enjoinable nuisance under state law, and therefore, denial of a permit was not a taking.

What Mineral County and the Professors contend here is that the public trust doctrine allows a governmental body to prohibit all use of an existing water right for its approved place and manner of use.[16] They point to no principle of Nevada's law of nuisance which suggests that the exercise of a water right in conformance with its beneficial use in a non-wasteful manner constitutes an enjoinable nuisance. A regulation or decree which completely prohibits the exercise of that water right for those purposes, when water is available and when it is in priority, would, in fact, violate the Due Process and Takings clauses of the Nevada Constitution.

C. A Court May Not Grant the Relief Mineral County Seeks Here.

As established above, the relief requested would be a taking. *See*, 49-51, *supra*. However, in order to answer the second question, this Court need not be drawn into the debate over whether a judicial decision can result in a taking under the Nevada Constitution. Whatever the ultimate outcome of that debate, it is clear that the Due Process provisions of Article I, § 8 (5) of the Nevada Constitution would invalidate any judicial relief which, if taken by the legislative or executive branches of government, would be a taking and require compensation. *See,*

[16] The Professors suggest that what Mineral County seeks here is no different than Nevada's rejection of the riparian doctrine in 1889. However, the rejection of the riparian doctrine did not deprive a riparian owner of the right to use water. It merely meant that the user's right to water would be recognized and allowed under the doctrine of prior appropriation.

Reinkemeyer, 16 P.3d at 1073; *see also, Stop the Beach*, 560 U.S. at 735 ("the Due Process Clause, in both its substantive and procedural aspects, is a central limitation upon the exercise of judicial power. And this court has long recognized that property regulations can be invalidated under the Due Process Clause." Kennedy, J. concurring in the judgment). Any other result would mean that courts may do what the Nevada Constitution prohibits the other branches of government from doing.

In short, the answer to the rephrased question is that judicial relief abrogating a fully perfected water right would violate the Nevada Constitution. Importantly, however, both Mineral County and the Professors argue that the theory of judicial takings should not be embraced because it raises "separation of powers" issues. *See*, MC Br. at 45-46; Professors Br. at 22-23. They rely on Justice Kennedy's point that "the power to select what property to condemn and the responsibility to ensure the taking makes financial sense from the State's point of view . . . are matters for the political branches—the legislatures and the executive – not the Courts." *Stop the Beach*, 560 U.S. at 735.

They are right. That is why, if the public trust doctrine requires that fully perfected water rights be subject to involuntary modification for purposes of protecting natural resource and environmental values, the provisions related to

such modification must come from the Legislature, not the Courts. Only the Legislature can address the relevant issues in a comprehensive manner, including providing compensation when required. *See*, 40-45, *supra*.

CONCLUSION

The Court should advise the Ninth Circuit that Nevada's public trust doctrine does not apply fully perfected water rights. Alternatively, it should tell it that the Nevada Legislature's grant of the right to use water is fully consistent with and does not violate the doctrine. If there is any reason to answer the second question, the answer should be that the abrogation of fully perfected water rights in the name of the public trust would violate the Nevada Constitution.

Respectfully submitted,

April 12, 2019

WOODBURN AND WEDGE

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman 14 point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, and contains 13,898 words, according to the count of Microsoft Word.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: April 12, 2019. WOODBURN AND WEDGE

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ADDENDUM

ADDENDUM
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NRS 533.0245 State Engineer prohibited from carrying out duties in conflict with certain decrees, orders, compacts or agreements. The State Engineer shall not carry out his or her duties pursuant to this chapter in a manner that conflicts with any applicable provision of a decree or order issued by a state or federal court, an interstate compact or an agreement to which this State is a party for the interstate allocation of water pursuant to an act of Congress.

(Added to NRS by 2007, 2016)

NRS 533.025 Water belongs to public. The water of all sources of water supply within the boundaries of the State whether above or beneath the surface of the ground, belongs to the public.

[1:140:1913; 1919 RL p. 3225; NCL § 7890]

NRS 533.030 Appropriation for beneficial use; use for recreational purpose, developed shortage supply or intentionally created surplus declared beneficial; limitations and exceptions.

1. Subject to existing rights, and except as otherwise provided in this section and NRS 533.027, all water may be appropriated for beneficial use as provided in this chapter and not otherwise.

2. The use of water, from any stream system as provided in this chapter and from underground water as provided in NRS 534.080, for any recreational purpose, or the use of water from the Muddy River or the Virgin River to create any developed shortage supply or intentionally created surplus, is hereby declared to be a beneficial use. As used in this subsection:

(a) "Developed shortage supply" has the meaning ascribed to it in Volume 73 of the Federal Register at page 19884, April 11, 2008, and any subsequent amendment thereto.

(b) "Intentionally created surplus" has the meaning ascribed to it in Volume 73 of the Federal Register at page 19884, April 11, 2008, and any subsequent amendment thereto.

3. Except as otherwise provided in subsection 4, in any county whose population is 700,000 or more:

(a) The board of county commissioners may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any artificially created lake or stream located within the unincorporated areas of the county.

(b) The governing body of a city may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any artificially created lake or stream located within the boundaries of the city.

4. In any county whose population is 700,000 or more, the provisions of subsection 1 and of any ordinance adopted pursuant to subsection 3 do not apply to:

(a) Water stored in an artificially created reservoir for use in flood control, in meeting peak water demands or for purposes relating to the treatment of sewage;

(b) Water used in a mining reclamation project; or

(c) A body of water located in a recreational facility that is open to the public and owned or operated by the United States or the State of Nevada.

[2:140:1913; 1919 RL p. 3225; NCL § 7891] — (NRS A 1969, 141; 1981, 658; 1985, 1301; 1989, 535, 1444; 1995, 2659; 2009, 643; 2011, 1293; 2017, 1432)

NRS 533.035 Beneficial use: Basis, measure and limit of right to use. Beneficial use shall be the basis, the measure and the limit of the right to the use of water.

[3:140:1913; 1919 RL p. 3225; NCL § 7892]

NRS 533.045 Right to divert ceases when necessity for use does not exist. 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 this State except at such times as the water is required for a beneficial purpose.

[5:140:1913; 1919 RL p. 3226; NCL § 7894]

NRS 533.050 Beneficial use of water declared a public use; eminent domain. The beneficial use of water is hereby declared a public use, and any person may exercise the right of eminent domain to condemn all lands and other property or rights required for the construction, use and maintenance of any works for the lawful diversion, conveyance and storage of waters.

[6:140:1913; 1919 RL p. 3226; NCL § 7895]

NRS 533.060 Right to use limited to amount necessary; loss or abandonment of rights; no acquisition of prescriptive right; reservation of rights by State.

1. Rights to the use of water must be limited and restricted to as much as may be necessary, when reasonably and economically used for irrigation and other beneficial purposes, irrespective of the carrying capacity of the ditch. The balance of the water not so appropriated must be allowed to flow in the natural stream from which the ditch draws its supply of water, and must not be considered as having been appropriated thereby.

2. Rights to the use of surface water shall not be deemed to be lost or otherwise forfeited for the failure to use the water therefrom for a beneficial purpose.

3. A surface water right that is appurtenant to land formerly used primarily for agricultural purposes is not subject to a determination of abandonment if the surface water right:

(a) Is appurtenant to land that has been converted to urban use; or

(b) Has been dedicated to or acquired by a water purveyor, public utility or public body for municipal use.

4. In a determination of whether a right to use surface water has been abandoned, a presumption that the right to use the surface water has not been abandoned is created upon the submission of records, photographs, receipts, contracts, affidavits or any other proof of the occurrence of any of the following events or actions within a 10-year period immediately preceding any claim that the right to use the water has been abandoned:

(a) The delivery of water;

(b) The payment of any costs of maintenance and other operational costs incurred in delivering the water;

(c) The payment of any costs for capital improvements, including works of diversion and irrigation; or

(d) The actual performance of maintenance related to the delivery of the water.

5. A prescriptive right to the use of the water or any of the public water appropriated or unappropriated may not be acquired by adverse possession. Any such right to appropriate any of the water must be initiated by applying to the State Engineer for a permit to appropriate the water as provided in this chapter.

6. The State of Nevada reserves for its own present and future use all rights to the use and diversion of water acquired pursuant to chapter 462, Statutes of Nevada 1963, or otherwise existing within the watersheds of Marlette Lake, Franktown Creek and Hobart Creek and not lawfully appropriated on April 26, 1963, by any person other than the Marlette Lake Company. Such a right must not be appropriated by any person without the express consent of the Legislature.

[8:140:1913; A 1917, 353; 1949, 102; 1943 NCL § 7897] — (NRS A 1979, 1161; 1999, 2631)

NRS 533.085 Vested rights to water not impaired.

1. Nothing contained in this chapter shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this chapter where appropriations have been initiated in accordance with law prior to March 22, 1913.

2. Any and all appropriations based upon applications and permits on file in the Office of the State Engineer on March 22, 1913, shall be perfected in accordance with the laws in force at the time of their filing.

[84:140:1913; 1919 RL p. 3247; NCL § 7970]

NRS 533.210 Finality of decree; application for modification within 3 years after entry; limitations on modification; notice of application.

1. The decree entered by the court, as provided by NRS 533.185, shall be final and shall be conclusive upon all persons and rights lawfully embraced within the adjudication; but the State Engineer or any party or adjudicated claimant upon any stream or stream system affected by such decree may, at any time within 3 years from the entry thereof, apply to the court for a modification of the decree, insofar only as the decree fixed the duty of water, and upon the hearing of such motion the court may modify such decree increasing or decreasing the duty of water, consistent with good husbandry, and consistent with the principle that actual and beneficial use shall be the measure and limit of the right.

2. Notice of application shall be given as in civil cases.

[36a:140:1913; added 1921, 171; NCL § 7924]

NRS 533.325 Application to State Engineer for permit. Except as otherwise provided in NRS 533.027, any person who wishes to appropriate any of the public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, shall, before performing any work in connection with such appropriation, change in place of diversion or change in manner or place of use, apply to the State Engineer for a permit to do so.

[Part 59:140:1913; A 1919, 71; 1951, 132] — (NRS A 1991, 859; 2017, 1433)

NRS 533.370 Approval or rejection of application by State Engineer: Conditions; exceptions; considerations; procedure.

1. Except as otherwise provided in this section and NRS 533.345, 533.371, 533.372 and 533.503, the State Engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use if:

(a) The application is accompanied by the prescribed fees;

(b) The proposed use or change, if within an irrigation district, does not adversely affect the cost of water for other holders of water rights in the district or lessen the efficiency of the district in its delivery or use of water; and

(c) The applicant provides proof satisfactory to the State Engineer of the applicant's:

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

(2) Financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.

2. Except as otherwise provided in subsection 10, where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells as set forth in NRS 533.024, or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit. If a previous application for a similar use of water within the same basin has been rejected on those grounds, the new application may be denied without publication.

3. In addition to the criteria set forth in subsections 1 and 2, in determining whether an application for an interbasin transfer of groundwater must be rejected pursuant to this section, the State Engineer shall consider:

(a) Whether the applicant has justified the need to import the water from another basin;

(b) If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;

(c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;

(d) Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and

(e) Any other factor the State Engineer determines to be relevant.

4. Except as otherwise provided in this subsection and subsections 6 and 10 and NRS 533.365, the State Engineer shall approve or reject each application within 2 years after the final date for filing a protest. The State Engineer may postpone action:

(a) Upon written authorization to do so by the applicant.

(b) If an application is protested.

(c) If the purpose for which the application was made is municipal use.

(d) In areas where studies of water supplies have been determined to be necessary by the State Engineer pursuant to NRS 533.368.

(e) Where court actions or adjudications are pending, which may affect the outcome of the application.

(f) In areas in which adjudication of vested water rights is deemed necessary by the State Engineer.

(g) On an application for a permit to change a vested water right in a basin where vested water rights have not been adjudicated.

(h) Where authorized entry to any land needed to use the water for which the application is submitted is required from a governmental agency.

(i) On an application for which the State Engineer has required additional information pursuant to NRS 533.375.

5. If the State Engineer does not act upon an application in accordance with subsections 4 and 6, the application remains active until approved or rejected by the State Engineer.

6. Except as otherwise provided in this subsection and subsection 10, the State Engineer shall approve or reject, within 6 months after the final date for filing a protest, an application filed to change the point of diversion of water already appropriated when the existing and proposed points of diversion are on the same property for which the water has already been appropriated under the existing water right or the proposed point of diversion is on real property that is proven to be owned by the applicant and is contiguous to the place

of use of the existing water right. The State Engineer may postpone action on the application pursuant to subsection 4.

7. If the State Engineer has not approved, rejected or held a hearing on an application within 7 years after the final date for filing a protest, the State Engineer shall cause notice of the application to be republished pursuant to NRS 533.360 immediately preceding the time at which the State Engineer is ready to approve or reject the application. The cost of the republication must be paid by the applicant. After such republication, a protest may be filed in accordance with NRS 533.365.

8. If a hearing is held regarding an application, the decision of the State Engineer must be in writing and include findings of fact, conclusions of law and a statement of the underlying facts supporting the findings of fact. The written decision may take the form of a transcription of an oral ruling. The rejection or approval of an application must be endorsed on a copy of the original application, and a record must be made of the endorsement in the records of the State Engineer. The copy of the application so endorsed must be returned to the applicant. Except as otherwise provided in subsection 11, if the application is approved, the applicant may, on receipt thereof, proceed with the construction of the necessary works and take all steps required to apply the water to beneficial use and to perfect the proposed appropriation. If the application is rejected, the applicant may take no steps toward the prosecution of the proposed work or the diversion and use of the public water while the rejection continues in force.

9. If a person is the successor in interest of an owner of a water right or an owner of real property upon which a domestic well is located and if the former owner of the water right or real property on which a domestic well is located had previously filed a written protest against the granting of an application, the successor in interest must be allowed to pursue that protest in the same manner as if the successor in interest were the former owner whose interest he or she succeeded. If the successor in interest wishes to pursue the protest, the successor in interest must notify the State Engineer in a timely manner on a form provided by the State Engineer.

10. The provisions of subsections 1 to 9, inclusive, do not apply to an application for an environmental permit or a temporary permit issued pursuant to NRS 533.436 or 533.504.

11. The provisions of subsection 8 do not authorize the recipient of an approved application to use any state land administered by the Division of State Lands of the State Department of Conservation and Natural Resources without the appropriate authorization for that use from the State Land Registrar.

12. As used in this section, "domestic well" has the meaning ascribed to it in NRS 534.350.

[63:140:1913; A 1945, 87; 1947, 777; 1949, 102; 1943 NCL § 7948] — (NRS A 1959, 554; 1973, 865, 1603; 1977, 1171; 1981, 209, 359; 1989, 319; 1991, 759, 1369; 1993, 1459, 2082, 2349; 1995, 319, 697, 2523; 1999, 1045; 2001, 552; 2003, 2980; 2005, 2561; 2007, 2017; 2009, 597; 2011, 758, 1566; 2013, 499, 3679)

NRS 533.3703 Consideration of consumptive use of water right and proposed beneficial use of water.

1. The State Engineer may consider the consumptive use of a water right and the consumptive use of a proposed beneficial use of water in determining whether a proposed change in the place of diversion, manner of use or place of use complies with the provisions of subsection 2 of NRS 533.370.

2. The provisions of this section:

(a) Must not be applied by the State Engineer in a manner that is inconsistent with any applicable federal or state decree concerning consumptive use.

(b) Do not apply to any decreed, certified or permitted right to appropriate water which originates in the Virgin River or the Muddy River.

(Added to NRS by 2007, 2015; A 2011, 761)

NRS 533.460 Unauthorized use or willful waste of water; prima facie evidence. The unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, shall be a misdemeanor, and the possession or use of such water without legal right shall be prima facie evidence of the guilt of the person using or diverting it.

[81:140:1913; 1919 RL p. 3247; NCL § 7967]

STATUTES

OF THE

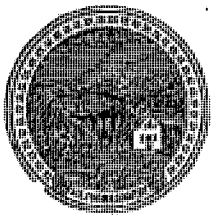
STATE OF NEVADA

PASSED AT THE

TWENTY-SIXTH SESSION OF THE LEGISLATURE

1913

COMMENCED ON MONDAY, THE TWENTIETH DAY OF JANUARY, AND ENDED ON THURSDAY, THE TWENTIETH DAY OF MARCH



CARSON CITY, NEVADA
STATE PRINTING OFFICE : : : JOE FARNSWORTH, SUPERINTENDENT
1913

CHAP. 140—*An Act to provide a water law for the State of Nevada; providing a system of state control; creating the office of the state engineer and other offices connected with the appropriation, distribution and use of water, prescribing the duties and powers of the state engineer and other officers and fixing their compensation; prescribing the duties of water users and providing penalties for failure to perform such duties; providing for the appointment of water commissioners, defining their duties and fixing their compensation; providing for a fee system, for the certification of records, and an official seal for the state engineer's office; providing for an appropriation to carry out the provisions of this act; and other matters properly connected therewith, and to repeal all acts and parts of acts in conflict with this act, repealing an act to provide for the appropriation, distribution and use of water, and to define and preserve existing water rights, to provide for the appointment of a state engineer, an assistant state engineer, and fixing their compensation, duties and powers, defining the duties of the state board of irrigation, providing for the appointment of water commissioners and defining their duties, approved February 26, 1907; also repealing an act amendatory of a certain act entitled "An act to provide for the appropriation, distribution and use of water, and to define and preserve existing water rights, to provide for the appointment of a state engineer and assistant state engineer, and fixing their compensation, duties and powers, defining the duties of the state board of irrigation, providing for the appointment of water commissioners and defining their duties, approved February 26, 1907, and to provide a fee system for the certification of the records of, and an official seal for the state engineer's office and other matters relating thereto," approved February 20, 1909.*

[Approved March 22, 1913]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

GENERAL PROVISIONS

All water public property

SECTION 1. The water of all sources of water supply within the boundaries of the state, whether above or beneath the surface of the ground, belongs to the public.

Beneficial use

SEC. 2. Subject to existing rights, all such water may be appropriated for beneficial use as provided in this act and not otherwise.

Basis

SEC. 3. Beneficial use shall be the basis, the measure and the limit of the right to the use of water.

Provisions for use of water

SEC. 4. All water used in this state for beneficial purposes shall remain appurtenant to the place of use; *provided,* that if for any reason it should at any time become imprac-

ticable to beneficially or economically use water at the place to which it is appurtenant, said right may be severed from such place of use and simultaneously transferred and become appurtenant to other place or places of use, in the manner provided in this act, and not otherwise, without losing priority of right heretofore established; *and provided,* that the provisions of this section shall not apply in cases of ditch or canal companies which have appropriated water for diversion and transmission to the lands of private persons at an annual charge.

Right to divert ceases, when

SEC. 5. 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 this state except at such times as the water is required for a beneficial purpose.

Right of eminent domain

SEC. 6. The beneficial use of water is hereby declared a public use, and any person may exercise the right of eminent domain to condemn all lands and other property or rights required for the construction, use and maintenance of any works for the lawful diversion, conveyance and storage of waters.

Relative to storage of water

SEC. 7. Water may be stored for a beneficial purpose. Water turned into any natural channel or water course by any person entitled to the use thereof, whether stored in Nevada or in an adjoining state, may be claimed for beneficial use below, and diverted from said channel or water course by such person, subject to existing rights, due allowance for losses to be made, as determined by the state engineer.

Regulations as to use and appropriation

SEC. 8. Rights to the use of water shall be limited and restricted to so much thereof as may be necessary, when reasonably and economically used for irrigation and other beneficial purposes, irrespective of the carrying capacity of the ditch; and all the balance of the water not so appropriated shall be allowed to flow in the natural stream from which such ditch draws its supply of water, and shall not be considered as having been appropriated thereby; and in case the owner or owners of any such ditch, canal or reservoir shall fail to use the water therefrom for beneficial purposes for which the right exists during any *four* successive years, the right to use shall be considered as having been abandoned, and they shall forfeit all water rights, easements and privileges appurtenant thereto, and the water formerly appropriated by them may be again appropriated for beneficial use, the same as if such ditch, canal or reservoir had never been constructed.

A. 17, 35.

Standards of measurement

SEC. 9. A cubic foot of water per second of time shall be the legal standard for the measurement of water in this state. The unit of volume shall be an acre-foot defined as 43,560 cubic feet. Where necessary to transpose miners inches to cubic feet per second, one cubic foot per second shall be considered equal to forty miners inches; but the

term "miners inch" shall not be used henceforth in any permit or adjudicated right issuing from the office of the state engineer without first naming the amount in cubic feet per second or in acre-feet.

Office of state engineer created

SEC. 10. The office of the state engineer is hereby created. The state engineer shall be appointed by the governor and shall receive a salary of thirty-six hundred dollars ($3,600) per annum, payable in equal monthly installments by the state treasurer on warrants drawn by the state controller.

Qualifications

He shall keep his office at the state capital. No person shall be appointed as state engineer who does not have such training in hydraulic and general engineering, and such practical skill and experience as shall fit him for the position. He shall hold office for the term of four years from and after his appointment, or until his successor shall have been appointed. The governor may at any time for cause remove said state engineer. His successor shall in all cases have the qualifications as hereinbefore provided.

Maximum amount of water allowed

SEC. 11. The maximum quantity of water which may hereafter be appropriated in this state for irrigation purposes shall be as follows:

Where the water is diverted for direct irrigation, not to exceed one one-hundredth of one cubic foot per second for each acre of land irrigated; the measurement to be taken where the main ditch enters or becomes adjacent to the land to be irrigated; due allowance for losses to be made by the state engineer in permitting additional water to be diverted into said ditch.

Where water is stored, not to exceed four acre-feet for each acre of land to be supplied; that is, four acre-feet per acre stored in the reservoir, the losses of evaporation and transmission to be borne by the appropriator.

Oath and bond of state engineer

SEC. 12. Before entering upon the duties of his office, the state engineer shall take and subscribe to an official oath, such as is provided by law for state officers, before some officer authorized by the law of the state to administer oaths, and shall file with the secretary of state said oath and his official bond in the penal sum of five thousand dollars ($5,000) with not less than two sureties to be approved by the governor, conditioned for the faithful performance of his duties and for the delivery to his successor or other person to be appointed by the governor to receive the same, all maps, papers, books, instruments and other property belonging to the state then in his hands and under his control, or with which he may be chargeable, to such officer.

Duties of state engineer

Deputy

SEC. 13. The state engineer shall perform such duties as may be prescribed by law. He may, when necessary, employ an assistant engineer at a salary not exceeding the sum of twenty-four hundred dollars ($2,400) per annum, and may employ such other assistants and purchase such material as may be necessary for the proper conduct and maintenance

of his department, to be paid from the moneys which may be appropriated for such purposes from time to time, by the state treasurer, on warrants drawn by the state controller on the certificate of the state engineer. The state engineer or any of his assistants when called away from headquarters on official business, shall be entitled to their traveling and other necessary expenses, which shall be paid from the funds appropriated for the support and maintenance of his department by the state treasurer on warrants drawn by the state controller on the certificate of the state engineer. Assistants

SEC. 14. The state engineer shall prepare and deliver to the governor, as soon as possible after December 31 of the year preceding the regular session of the legislature, and at such other times as may be required by the governor, a full report of the work of his office, including a detailed statement of the expenditures thereof, with such recommendations as he may deem advisable. Biennial report

SEC. 15. The records of the office of the state engineer are public records and shall remain on file in his office and be open to the inspection of the public at all times during business hours. Such records shall show in full all maps, profiles, and engineering data relating to the use of water, and certified copies thereof shall be admissible as evidence in all cases where the original would be admissible as evidence. Records of office open to public

SEC. 16. The state engineer and his authorized assistants may administer such oaths as may be necessary in the performance of their official duties. May administer oaths

SEC. 17. The state engineer shall keep his office open to the public from the hours of 9 o'clock a. m. to 12 o'clock m., and from 1 o'clock p. m. to 4:30 o'clock p. m. each day, Sundays and holidays excepted. Office hours

SEC. 18. Upon a petition to the state engineer, signed by one or more water users of any stream or stream system, requesting the determination of the relative rights of the various claimants to the waters thereof, it shall be the duty of the state engineer, if upon investigation he finds the facts and conditions justify it, to enter an order granting said petition and to make proper arrangements to proceed with such determination; *provided, however,* that it shall be the duty of the state engineer, in the absence of such a petition requesting a determination of relative rights, to enter an order for the determination of the relative rights to the use of water, of any stream selected by him; commencing on the streams in the order of their importance for irrigation. As soon as practicable after said order is made and entered, it shall be the duty of the state engineer to proceed with such determination as hereinafter provided. A water user upon or from any stream or body of water shall be held and deemed to be a water user upon the stream system of which said stream or body of water is a part or tributary. Determination of rights to water, how effected

Publication of orders

SEC. 19. As soon as practicable after the state engineer shall make and enter the order granting the said petition or selecting the streams upon which the determination of rights is to begin, he shall prepare a notice setting forth the fact of the entry of the said order and of the pendency of the said proceedings, which notice shall name a date when the state engineer or his assistants shall begin said examination, and shall set forth that all claimants to rights in the waters of said stream system are required, as in this act provided, to make proof of their claims, which notice shall be published for a period of four consecutive weeks in one or more newspapers of general circulation within the boundaries of said stream system.

Investigation of flow of streams and ditches

SEC. 20. At the time set in said notice, the state engineer shall begin an investigation of the flow of the stream and of the ditches diverting water, and of the lands irrigated therefrom, and shall gather such other data and information as may be essential to the proper determination of the water rights in the stream. He shall reduce his observations and measurements to writing, and execute or cause to be executed, surveys, and shall prepare, or cause to be prepared, maps from the observations of such surveys in accordance with such uniform rules and regulations as he may adopt, which surveys and maps shall show with substantial accuracy the course of the said stream, the location of each ditch or canal diverting water therefrom, together with the point of diversion thereof, the area and outline of each parcel of land upon which the water of the stream has been employed for the irrigation of crops or pasture, and indicating the kind of culture upon each of the said parcels of land, which map shall be prepared as the surveys and observations progress, and which, when completed, shall be filed and made of record in the office of the state engineer; *provided, however,* that such map for original filing in his office shall be on tracing linen on a scale of not less than one thousand feet to the inch.

Data of U. S. geological survey may be used

SEC. 21. In the event that satisfactory data are available from the measurements and areas compiled by the United States Geological Survey, or other persons, the state engineer may dispense with the execution of such surveys and the preparation of such maps and stream measurements, except in so far as is necessary to prepare them to conform with the rules and regulations, as above provided. In the further event that said surveys are executed and maps are prepared and filed with the state engineer at the instance of the person claiming a right to the use of water, the proportionate cost thereof, as determined by the state engineer to be assessed and collected for the adjudication of the relative rights, as hereinafter provided, shall be remitted to said claimant after the completion of the determination; *provided, however,* that the map must conform with the rules and regulations of the state engineer and shall be accepted

Provisions regarding maps

only after the state engineer is satisfied that the data shown thereon are substantially correct. Such measurements, maps and determinations shall be exhibited for inspection at the time of taking proofs and during the period during which such proofs and evidence are kept open for inspection in accordance with the provisions of this act.

Proofs, procedure regarding

SEC. 22. Upon the filing of such measurements, maps and determinations, the state engineer shall prepare a notice setting forth the date when the said state engineer is to commence the taking of said proofs, as to the rights in and to the waters of said stream system, and the date prior to which the same must be filed; *provided, however,* that the date set prior to which said proofs must be filed shall not be less than sixty days from the date set for the commencement of the taking of said proofs, which notice shall be deemed to be an order of the state engineer as to its contents, and which notice the state engineer shall cause to be published for a period of four consecutive weeks in one or more newspapers of general circulation within the boundaries of the said stream system, the date of the last publication of said notice to be not less than fifteen (15) days prior to the date fixed for the commencement of the taking of proofs by the said state engineer. At or near the time of the first publication of said notice it shall be the duty of the said state engineer to send by registered mail to each person, or deliver to each person, in person, hereinafter designated as claimant, claiming rights in or to the waters of said stream system, in so far as such claimants can be reasonably ascertained, a notice equivalent in terms to the said published notice setting forth the date when the said state engineer will commence the said taking of proofs, and the date prior to which said proofs must be filed with the state engineer. Said notice must be mailed at least thirty (30) days prior to the date fixed for the commencement of the taking of said proofs.

Publication of notice

Statement regarding rights to water

SEC. 23. The state engineer shall, in addition, enclose with the notice to be mailed as aforesaid, blank forms upon which said claimant shall present in writing all particulars necessary for the determination of his right in or to the waters of said stream system, the said statement to include the following:

What statement shall contain

(a) The name and postoffice address of the claimant.

(b) The nature of the right or use on which the claim for appropriation is based.

(c) The time of the initiation of such right and a description of works of diversion and distribution.

(d) The date of beginning of construction.

(e) The date when completed.

(f) The dates of beginning and completion of enlargements.

(g) The dimensions of the ditch as originally constructed and as enlarged.

(h) The date when water was first used for irrigation or other beneficial purposes, and if used for irrigation, the amount of land reclaimed the first year, the amount in subsequent years, with the dates of reclamation, and the area and location of the lands which are intended to be irrigated.

(i) The character of the soil and the kind of crops cultivated, the number of acre-feet of water per annum required to irrigate the land, and such other facts as will show the extent and nature of the right and a compliance with the law in acquiring the same, as may be required by the state engineer.

Statements to be under oath

SEC. 24. Each claimant shall be required to certify to his statements, under oath, and the state engineer and his assistants authorized to take proofs are hereby authorized to administer such oaths, which shall be done without charge to the claimant, as shall also the furnishing of blank forms for said statement.

State engineer to take proofs

SEC. 25. It shall be the duty of the state engineer to commence the taking of proofs on the date fixed and named in the notice, provided for herein for the commencement of the taking of proofs, and he shall proceed therewith during the period fixed by him and named in the said notice, after which no proofs can be received by or filed with the said state engineer; *provided, however,* that the state engineer may, for cause shown, in his discretion, extend the time in which proofs may be filed. Any person who shall fail to appear herein and make proof of his claim or rights in or to the waters of said stream system, as required by this act, prior to the expiration of the period fixed by said state engineer during which proofs may be filed, shall be deemed guilty of a misdemeanor, and if an individual person, shall upon conviction, be punished by a fine of not less than two hundred and fifty dollars ($250), and not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for a term of not less than ten days and not exceeding six months, or by both such fine and imprisonment in the discretion of the court, and if a corporation, each and every officer and director thereof shall be amenable to said punishment hereinbefore in this section provided; *provided, however,* that the state engineer may, in his discretion, accept and use as a proof of claim any instrument purporting to be a record of a water right, recorded in the county or counties in which such stream system lies, and render a finding for a water right for the number of irrigated acres of land as found by his observation; *provided further,* that a finding rendered by the state engineer on a water claim, the holder of which is in default, shall be given a later priority than the rights of claimants whose proofs were filed in accordance with the provisions of this act.

Penalties for failure to appear

Provisos

Petition of intervention, when

SEC. 26. Any person interested in the water of any stream upon whom no service of notice shall have been had of the pendency of proceedings for the determination of the relative rights to the use of water of said stream system, and who shall have no actual knowledge or notice of the pendency of said proceedings, may at any time prior to the expiration of six months after the entry of the determinations of the state engineer, file a petition to intervene in said proceedings. Such petition shall be under oath and shall contain, among other things, all matters required by this act of claimants who have been duly served with notice of said proceedings, and also a statement that the intervenor had no actual knowledge or notice of the pendency of said proceedings. Upon the filing of said petition in intervention granted by the state engineer, the petitioner shall be allowed to intervene upon such terms as may be equitable, and thereafter shall have all rights vouchsafed by this act to claimants who have been duly served.

Fees to be collected by state engineer

SEC. 27. At the time of submission of proof of appropriation, the state engineer shall collect from such claimants a fee of fifteen cents for each acre of irrigated lands up to and including one hundred acres, ten cents for each acre in excess of one hundred acres and up to and including one thousand acres, and five cents per acre for each acre in excess of one thousand acres; also twenty-five cents for each theoretical horsepower up to and including one hundred horsepower, fifteen cents for each horsepower in excess of one hundred horsepower and up to and including one thousand horsepower, and five cents for each horsepower in excess of one thousand horsepower, as set forth in such proof, the minimum fee, however, for any claimant to be five dollars ($5), also a fee of five dollars ($5) for a proof of water used for domestic purposes or any other character of claim to water. Such fee shall include the cost of recording the water right certificate in the office of the county recorder, should such certificate of water right issue. All fees collected as above set forth shall be accounted for in detail and deposited with the state treasurer once in each month; *provided, however,* that the state engineer shall deduct and hold such an amount from said fees as may be estimated to cover the cost of recording the certificates of water right and the rebate due claimants for the execution of surveys as herein provided.

Proviso

State engineer shall assemble proofs and have same printed

SEC. 28. As soon as practicable after the expiration of the period fixed in which proofs may be filed, the state engineer shall assemble all proofs which have been filed with him, and prepare and certify an abstract of all of the said proofs, which shall be printed in the state printing office. As soon as practicable the state engineer shall prepare a notice fixing and setting a time and place when and where the evidence

taken by or filed with him shall be open to the inspection of all interested persons, said period of inspection to be not less than ten (10) days, which notice shall be deemed to be an order of the state engineer as to the matters contained therein. A copy of said notice together with a printed copy of the said abstract of proofs, shall be delivered by the state engineer, or sent by registered mail at least thirty (30) days prior to the first day of such period of inspection, to each person who has appeared and filed proof as herein provided. The state engineer shall be present at the time and place designated in said notice, and allow, during said period, any person interested to inspect such evidence and proofs as have been filed with him in accordance with this act.

Contest, how instituted

SEC. 29. Should any person claiming any interest in the stream system involved in the determination of relative rights to the use of water, whether claiming under vested title or under permit from the state engineer, desire to contest any of the statements and proof of claims filed with the state engineer by any claimant to the waters of such stream system, as herein provided, he shall, within twenty days after said evidence and proofs, as herein provided, shall have been opened to public inspection, or within such further time as for good cause shown may be allowed by the state engineer upon application made prior to the expiration of said twenty (20) days, in writing notify the state engineer, stating with reasonable certainty the grounds of the proposed contest, which statement shall be verified by the affidavit of the contestant, his agent or attorney. The statements or proofs of the person whose rights are contested and the verified statement of the contestant shall be deemed sufficient to constitute a proper cause for such contest.

Hearing of contest, how conducted

SEC. 30. The state engineer shall fix a time and place for the hearing of said contest, which date shall not be less than thirty (30) days nor more than sixty (60) days from the date the notice is served on the persons who are parties to the contest. Said notice may be sent by registered mail to the person and the receipt thereof shall constitute valid and legal service. Said notice may also be served and returns thereof made in the same manner as summons is served in civil actions in the district courts of this state, but such service may be made by the state engineer or by any person qualified and competent to serve subpenas as in civil actions appointed by the state engineer. The state engineer shall have power to adjourn hearings from time to time upon reasonable notice to all parties interested, and to issue subpenas and compel the attendance of witnesses to testify upon such hearings, which shall be served in the same manner as subpenas issued out of the district courts of the state. In the case of disobedience on the part of any person to comply with any order of the state engineer or any subpena, or on the refusal of any witness to testify to any matter regarding

which he may be lawfully interrogated, it shall be the duty of the district court of any county, or a judge thereof, on application of the state engineer, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpena issued from such court, or a refusal to testify therein. The state engineer shall have the power of a notary public in such hearings. Said witnesses shall receive fees as in civil cases, the costs to be taxed in the same manner as in civil actions in this state. The evidence in such proceedings shall be confined to the subjects enumerated in the notice of contest and answer and reply, when the same are permitted to be filed. All testimony taken at such hearings shall be reported and transcribed in its entirety.

State engineer to make rules governing contests

SEC. 31. The state engineer shall have power to make rules, not in conflict herewith, governing the practice and procedure in all contests before his office, to insure the proper and orderly exercise of the powers herein granted, and the speedy accomplishment of the purposes of this act. Such rules of practice and procedure shall be furnished to any person upon application therefor.

Contestants to pay expenses of contests

SEC. 32. The state engineer shall require a deposit of five dollars ($5) from each party for each day he shall be so engaged in taking evidence of such contests. Upon the final determination of the matters in the contest the money so deposited shall be refunded to the person in whose favor such contest shall be determined, and all moneys deposited by other parties therein shall be turned into the general fund of the state treasury upon the next monthly transmission of fees to said state treasurer.

State engineer to make order determining rights of claimants

SEC. 33. As soon as practicable after the hearing of contests, it shall be the duty of the state engineer to make, and cause to be entered of record in his office an order determining and establishing the several rights to the waters of said stream; *provided, however,* that within sixty days after the entry of an order establishing water rights, the state engineer may, for good cause shown, reopen the proceedings and grant a rehearing. Such order and determination shall be prepared, and after certification by the state engineer, printed in the state printing office. A copy of said order and determination shall be sent by registered mail, or delivered in person to each person who has filed proof of claim, and to each person who has become interested through intervention or by having entered a contest through having received a permit from the office of the state engineer, as herein provided. The determination of the state engineer shall be in full force and effect from and after the date of its entry in the records of the state engineer, unless and until its operation shall be stayed by a stay bond as provided for by this act.

Order in full force and effect

Any party aggrieved may appeal to district court

SEC. 34. Any party, or any number of parties acting jointly, who may feel themselves aggrieved by the determination of the state engineer may have an appeal from the order of the state engineer to any district court of the State of Nevada in which any part of such stream system involved in such determination may be situated. All persons joining in the appeal shall be joined as appellants and all persons having interests adverse to the parties appealing or either of them shall be joined as appellees; *provided, however,* that such appeal must be taken within six (6) months of the date on which said party or parties appealing have received a copy of the order of the state engineer determining said rights.

Appeal, how prosecuted

SEC. 35. The party or parties appealing shall, within six (6) months after the receipt of a copy of the order of the state engineer determining the rights to the use of water, file in the district court to which appeal is taken, a notice in writing stating that such party or parties appeal to such district court from the determination and order of the state engineer; and upon the filing of such notice, the appeal shall be deemed to have been taken; *provided, however,* that the party or parties appealing shall, within the six (6) months mentioned, enter into an undertaking, to be approved by the district court or judge thereof, and to be given to all the parties in the said suit or proceeding, other than the parties appealing, and to be in such an amount as the court or judge thereof shall fix, conditioned that the parties giving their said undertaking shall prosecute their appeal to effect and without unnecessary delay and will pay all costs and damages which the party to whom the undertaking is given, or either, or any of them, may sustain in consequence of such appeal.

Undertaking for costs on appeal

Court clerk to notify state engineer of appeal

SEC. 36. The clerk of the district court shall immediately upon the filing of said notice of appeal and the approval of the bond mentioned in the preceding section, transmit to the state engineer a notice over the seal of the court to the effect that said appeal has been perfected, which notice shall be entered in the records of the state engineer, and the appellant or appellants shall cause a copy thereof to be served on each of the appellees, serving the same in the manner provided for the serving of a summons in the district court.

Appellants to file transcript of records

SEC. 37. The appellant or appellants shall within sixty days after the appeal, as provided for, is perfected, file in the office of the clerk of the district court a certified transcript of the order of determination made by the state engineer, and which is appealed from, a certified copy of all records of the state engineer relating to such determination, and a certified copy of all evidence offered before the state engineer, including such measurements, maps and determinations as herein provided to be made of record by the state engineer, together with the petition setting out the cause of the complaint of the party or parties appealing, to which petition all parties

joined as appellees shall be served with notice by the issuance of a summons out of the office of the clerk of the district court, within the time and in the manner provided by law for the issuance and service of summons in actions of law.

All proceedings according to civil code

SEC. 38. All proceedings of appeal shall be conducted according to the provisions of the civil code of procedure, and the practice of appeals from the district courts of the state to the supreme court; *provided,* that the practice on appeal in the district court, as to pleadings necessary to be filed and the admission of evidence upon the trial, shall be the same as is now or may hereafter be provided for by law regulating appeals from the justice court.

Proviso

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Copy of judgment sent to state engineer

SEC. 39. It shall be the duty of the clerk of the district court immediately upon the entry of any judgment, order or decree by the district court, or by the judge thereof, in an appeal from the decision of the state engineer, to transmit a certified copy of said judgment, order or decree to the state engineer, who shall immediately enter the same upon the records of his office and forthwith issue to the water commissioners in such district instructions in compliance with the said judgment, order or decree, and in execution thereof.

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Costs paid by losing party

SEC. 40. All costs made and accruing by reason of such appeal shall be adjudged to be paid by the party or parties against whom such appeal shall be finally determined.

Operation of decree stayed by sufficient undertaking

SEC. 41. At any time after the appeal has been perfected the appellant may stay the operation of said order or decree appealed from by filing in the district court wherein such appeal is pending an undertaking with good and sufficient sureties, to be approved by the district judge in such amount as the district judge may designate, conditioned that appellant will pay all damages that may accrue to the appellee or appellees by reason of such order or decree not being enforced, should the proceedings and appeal be decided against the appellant. And immediately upon the filing and approving of such bond to stay the operations of the order or decree, the clerk of the district court shall transmit to the state engineer a notice over the seal of the court to the effect that such bond has been filed and that the operations of such order or decree are stayed during the pendency of such appeal proceedings. This notice shall be recorded in the records of the state engineer who shall immediately give proper notice to the water commissioners in such district.

These appeals to have precedence over all civil causes

SEC. 42. Upon an appeal being taken as is by this act provided, from the state engineer to the district court of the state it shall be the duty of said court to advance said appeal to the head of its civil trial docket, and to give such appeal precedence over all civil causes in hearing and determination thereof, and if an appeal be taken from the judgment or decree of the district court of the state it shall in like manner be the duty of the supreme court to advance such appeal to

the head of its docket for the hearing of civil causes and give it like precedence as to trial.

Civil practice act to govern in appeals

SEC. 43. The civil practice act of the State of Nevada shall govern in appeals from the decrees of the district court and for rehearings in the supreme court; *provided, however,* in an appeal from the district court the clerk of said district court, or upon the filing of a petition for a rehearing in the supreme court the clerk of the supreme court shall, at the expense of the petitioner, forthwith mail written notices of said application for appeal or petition for rehearing to the state engineer and every party interested, which notice shall state the time and place when such application for an appeal or petition for rehearing will be heard.

Proviso

Final orders of state engineer conclusive, subject to appeal

SEC. 44. The final orders or decrees of the state engineer, in the proceedings provided by law for the adjudication and determination of rights to the use of the waters in this state, shall be conclusive as to all prior appropriations, and the rights of all existing claimants upon the stream or other body of water lawfully embraced in the adjudication, subject, however, to the provisions of law for appeals, rehearings and for the reopening of the orders or decrees therein.

Joint defendants, who are

SEC. 45. In any suit which may be brought in any district court in the state for the determination of a right or rights to the use of water of any stream, all persons who claim the right to use the waters of such stream and the stream system of which it is a part shall be made parties. When any such suit has been filed, the court shall by its order duly entered, direct the state engineer to furnish a complete hydrographic survey of such stream system, which survey shall be made as provided in section 20 of this act, in order to obtain all physical data necessary to the determination of the rights involved. The cost of such suit, including the costs on behalf of the state and of such surveys, shall be charged against each of the private parties thereto in proportion to the amount of water right allotted. In the case of any such suit now pending or hereafter commenced the same may at any time after its inception, in the discretion of the court, be transferred to the state engineer for determination as in this act provided.

Court suits may be transferred to state engineer for determination

Appropriation of $5,000 for hydrographic fund

SEC. 46. For the purpose of advancing the money required for any surveys so ordered by the court, there is hereby appropriated and set apart from any moneys in the state treasury not otherwise appropriated, the sum of five thousand dollars ($5,000) to be known as the hydrographic fund, which shall be a continuous fund. Such fund shall be used only for the payment of claims for services rendered, expenses incurred, or materials and supplies furnished under the direction of the state engineer in the prosecution of said work, which claims shall be paid by the state treasurer on warrants drawn by the state controller upon certificates of the state engineer. The amounts paid by the parties to said

suit, on account of said surveys, shall be paid into said hydrographic fund.

"Stream system" defined

SEC. 47. The words "stream system," as used in this act, shall be interpreted as including any stream together with its tributaries and all streams or bodies of water to which the same may be tributary.

"Person" defined

SEC. 48. The word "person," where used in this act, includes a corporation, an association, the United States, the state, as well as a natural person.

"State engineer" defined

SEC. 49. Wherever the words "state engineer" are used in this act it shall be deemed to mean the state engineer or any duly authorized assistant.

Claimants must furnish blue-prints

SEC. 50. The state engineer shall have power to make and enforce such reasonable rules and regulations for the furnishing of claimants of blue-prints of particular parcels of land shown on the map prepared by the state engineer, and for such supplementary surveys and examinations or such inspection by the state engineer, as may be required, to the end that observations and surveys of the state engineer may be made, in so far as practicable, available to the claimants for attachment to the proofs to be filed by them.

State engineer to issue certificates after final determination

SEC. 51. Upon the final determination of the relative rights in and to the waters of any stream system, it shall be the duty of the state engineer to issue to each person represented in such determination a certificate to be signed by such state engineer, and bearing the seal of his office, setting forth the name and postoffice address of the owner of the right, the date of priority, extent and purpose of such right; and if such water be for irrigation purposes, a description of the land, by legal subdivisions when possible, to which said water is appurtenant. Such certificate shall be transmitted by the state engineer in person or by registered mail to the county recorder of the county in which said right is located, and it shall be the duty of the county recorder upon the receipt of a recording fee of one dollar, collected as hereinbefore provided, to record the same in a book especially prepared and kept for that purpose, and thereupon immediately transmit the certificate to the respective owners.

Water commissioners, how appointed

SEC. 52. There shall be appointed by the state board of irrigation one or more water commissioners for each water district, who shall receive a salary, including all expenses, of not more than five dollars ($5) per day for each day actually employed on the duties herein mentioned. Such water commissioner shall execute the laws prescribed in sections 53 to 58, inclusive, of this act, under the general direction of the state engineer. The salary of the water commissioner or water commissioners shall be paid by the water users in the district in which such water commissioner or water commissioners shall serve. The charge against each water user shall be based upon the proportion which his acreage, as finally determined by the findings of the state engineer or the court,

Salary

Duties

Users to pay salary of water commissioner

bears to the total number of acres in such district as finally determined by the findings of the state engineer or the court. The state engineer shall, and he is hereby directed to prepare a certified list of the land to be served by such water commissioner or water commissioners, together with the names and addresses, taken from the tax roll of said county, and to transmit the same to the board of county commissioners of the county in which such water commissioner or water commissioners of the county in which such water commissioner or water commissioners shall serve, and upon receipt thereof by such board of county commissioners, the said board of county commissioners shall transmit to each and every property holder a statement showing the amount due from such property owner, as his proportionate charge, for the services so rendered, and should such property owner fail, after thirty days from mailing such statement of account, to make payment thereof to the county treasurer of the county wherein such land is situated, then the amount so charged against such property holder shall be and constitute a lien upon the property so served by such water commissioner or water commissioners, and collectable in the same manner as taxes levied against said property. Upon receipt of a certified statement from the state engineer, showing the land served by such water commissioner or water commissioners and the number of days such commissioner or commissioners was actually employed, as hereinbefore provided, the board of county commissioners shall draw a warrant against the general fund of such county for the payment of such claim for the services of such water commissioner or water commissioners, and the same shall be paid as other claims against the said county, and upon payment by said owner or owners of land served by such water commissioner or water commissioners to the county treasurer, said amount shall be placed to the credit of the general fund of said county.

County commissioners to draw warrant for payment of water commissioner

SEC. 53. The state engineer shall divide the state into water districts to be so constituted as to insure the best protection for the water user, and the most economical supervision on the part of the state. Said water districts shall not be created until a necessity therefor shall arise and shall be created from time to time as the priorities and claims to the streams of the state shall be determined.

State divided into districts by state engineer, when

SEC. 54. It shall be the duty of the state engineer to divide or cause to be divided the waters of the natural streams or other sources of supply in the state, among the several ditches and reservoirs taking water therefrom, according to the rights of each respectively, in whole or in part, and to shut or fasten, or cause to be shut or fastened, the headgates or ditches, and to regulate or cause to be regulated, the controlling works of reservoirs, as may be necessary to insure a proper distribution of the waters thereof. Such state engineer shall have authority to regulate the distribu-

State engineer to insure proper distribution of water, mode of procedure

tion of water among the various users under any partnership ditch or reservoir where rights have been adjudicated in accordance with existing decrees. Whenever, in pursuance of his duties the water commissioner regulates a head-gate to a ditch or the controlling works of reservoirs, it shall be his duty to attach to such head-gate or controlling works a written notice properly dated and signed, setting forth the fact that such head-gate or controlling works has been properly regulated and is wholly under his control and such notice shall be a legal notice to all parties interested in the diversion and distribution of the water of such ditch or reservoir. It shall be the duty of the district attorney to appear for or in behalf of the state engineer or his duly authorized assistants in any case which may arise in the pursuance of the official duties of any such officer within the jurisdiction of said district attorney.

Misdemeanor to interfere with water officers

SEC. 55. Any person who shall wilfully open, close, change or interfere with any lawfully established head-gate or water-box without authority, or who shall wilfully use water or conduct water into or through his ditch which has been lawfully denied him by the state engineer, his assistants or water commissioners, shall be deemed guilty of a misdemeanor.

Prima facie evidence

The possession or use of water when the same shall have been lawfully denied by the state engineer or other competent authority shall be *prima facie* evidence of the guilt of the person using it.

Head-gates to be maintained by owners

SEC. 56. The owner or owners of any ditch or canal shall maintain to the satisfaction of the state engineer of the division in which the irrigation works are located, a substantial head-gate at or near the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water commissioner; and such owners shall construct and maintain, when required by the state engineer, suitable measuring devices at such points along such ditch as may be necessary for the purpose of assisting the water commissioner in determining the amount of water that is to be diverted into said ditch from the stream, or taken from it by the various users. Any and every owner or manager of a reservoir located across or upon the bed of a natural stream or of a reservoir which requires the use of a natural stream channel, shall be required to construct and maintain, when required by the state engineer, a measuring device of a plan to be approved by the state engineer, below such reservoir, and a measuring device above such reservoir, on each or every stream or source of supply discharging into such reservoir, for the purpose of assisting the state engineer or water commissioners in determining the amount of water to which appropriators are entitled and thereafter diverting it for such appropriators' use. When it may be necessary for the protection of other water users, the state engineer may

Measuring device must be maintained

require flumes to be installed along the line of any ditch. If any such owner or owners of irrigation works shall refuse or neglect to construct and put in such head-gates, flumes, or measuring devices after ten (10) days' notice, the state engineer may close such ditch, and the same shall not be opened or any water diverted from the source of supply, under the penalties prescribed by law for the opening of head-gates lawfully closed until the requirements of the state engineer as to such head-gate, flume, or measuring device have been complied with, and if any owner or manager of a reservoir located across the bed of a natural stream, or of a reservoir which requires the use of a natural stream channel, shall neglect or refuse to put in such measuring device after ten (10) days' notice by the state engineer, such state engineer may open the sluice-gate or outlet of such reservoir and the same shall not be closed under the penalties of the law for changing or interfering with head-gates, until the requirements of the state engineer as to such measuring devices are complied with.

State engineer or assistants may arrest violators of water law

SEC. 57. The state engineer or his assistants shall have power to arrest any person violating any of the provisions of this act, and to turn them over to the sheriff, or other competent police officer within the county, and immediately on delivering any such person so arrested into the custody of the sheriff, it shall be the duty of said state engineer, or his assistant making such arrest to immediately, in writing, and upon oath, make complaint before the justice of the peace against the person so arrested.

Penalties for violation

SEC. 58. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty-five dollars ($25), nor more than two hundred and fifty dollars ($250), together with the costs, or imprisoned in the county jail not exceeding six months, and not less than ten (10) days, or by both such fine and imprisonment.

APPROPRIATION OF WATER

Method of appropriation of water

SEC. 59. Any person desiring to appropriate any of the public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, shall, before performing any work in connection with such appropriation, change in place of diversion, or change in manner of use or place of use, make an application to the state engineer for a permit to make the same.

For one purpose only—exception

No application shall be for the water of more than one source to be used for more than one purpose; *provided, however,* that individual domestic use may be included in any application with the other use named. Each application for a permit to appropriate water shall contain the following information:

What application must contain

(a) The name and postoffice address of the applicant, and if the applicant be a corporation, the date and place of incorporation.

(b) The name of the source from which the appropriation is to be made.

(c) The amount of water which it is desired to appropriate, expressed in terms of cubic feet per second except in application for permit to store water where the amount shall be expressed in acre-feet.

(d) The purpose for which the application is to be made.

(e) A substantially accurate description of the location of the place at which the water is to be diverted from its source, and if any of such water is to be returned to the source, a description of the location of the place of return.

(f) A description of the proposed works.

(g) The estimated cost of such works.

(h) The estimated time required to construct said works, and the estimated time required to complete the application of the water to beneficial use.

(j) The signature of the applicant or his properly authorized agent.

What application shall contain

In addition to the foregoing, the application shall contain if for irrigation purposes, except in case of application for permit to store water, the number of acres to be irrigated and a description by legal subdivisions, where possible, of the lands to be irrigated; if for power purposes, the vertical head under which the water will be applied, the location of the proposed power-house, and, as near as may be, the use to which the said power is to be applied; if for municipal supply, or for domestic use, the approximate number of persons to be served, and the approximate future requirements; if for mining purposes, the proposed method of applying and utilizing the water; if for stock-watering purposes, the approximate number and character of animals to be watered; if for any purpose contemplating the storage of waters, in addition to the information required in applications naming the said purpose, it shall give the dimensions and location of the proposed dam, the capacity of the proposed reservoir and a description of the land to be submerged by the impounded waters. Every application for permit to change the place of diversion, manner of use or place of use of water already appropriated, shall contain such information as may be necessary to a full understanding of the proposed change, as may be required by the state engineer. All applications for permit shall be accompanied or followed by such maps and drawings and such other data as may hereafter be prescribed by the state engineer, and such accompanying data shall be considered as part of the application.

Duties of state engineer on receipt of application

SEC. 60. Upon receipt of an application, which shall be upon a blank form to be prescribed by the state engineer, and supplied the applicant without charge, it shall be the duty

of the state engineer to make an endorsement thereon of the date of its receipt, and to keep a record of the same. If upon examination the application is found to be defective, it shall be returned for correction or completion with advice of the reasons therefor, and the date of the return thereof shall be endorsed upon the application and made a record of his office. No application shall lose its priority of filing on account of such defects; *provided,* the application, properly corrected and accompanied by such maps and drawings, as may be required, is filed in the office of the state engineer within sixty (60) days from the date of said return to applicant. Any application returned for correction, or completion, not refiled in proper form within the said sixty days shall be canceled. All applications which shall comply with the provisions of the act shall be recorded in a suitable book kept for that purpose.

Publication of notice of application

SEC. 61. When any application is filed in compliance with this act the state engineer shall, within thirty (30) days, at the expense of the applicant, to be paid in advance as herein provided, publish or cause to be published, in some newspaper having a general circulation, and printed and published in the county where such water is sought to be appropriated, a notice of the application, which shall set forth that said application has been filed, the date of said filing, the name and address of the applicant, the name of the source from which the appropriation is to be made, the location of the place of diversion, and the purpose for which said water is to be appropriated, to which shall be added by the publisher the date of first publication, and the date of last publication. Upon proof of such publication, which must be filed within thirty (30) days from the date of the last publication, the state engineer shall pay for the same from the moneys deposited by the applicant for such purpose; *provided, however,* that if the application is canceled for any reason before it is published, the fee of ten dollars ($10) collected for said publication, shall be returned by the state engineer to said applicant.

Protests of applications, how conducted

SEC. 62. Any person interested may, within thirty (30) days from the date of last publication of the said notice of application, file with the state engineer a written protest against the granting of said application, setting forth with reasonable certainty the grounds of such protest, which shall be verified by the affidavit of the protestant, his agent or attorney. On receipt of a protest, as hereinbefore provided, it shall be the duty of the state engineer to advise the applicant whose application has been protested of the fact that said protest has been filed with him, which advice shall be sent by registered mail. The state engineer shall duly consider the said protest, and may, in his discretion, hold hearings and require the filing of such evidence as he may deem necessary to a full understanding of the rights involved; *pro-*

vided, however, that no hearing thereon shall be had except after due notice by registered mail to both the applicant and protestant, which notice shall give the time and place at which the said hearing is to be held, which notice shall be mailed at least fifteen days prior to the date set for said hearing. Said hearings shall be conducted under such rules and regulations as the state engineer may make, which he is hereby empowered to make for the proper and orderly exercise of the powers conferred herein.

State engineer to approve applications, when

SEC. 63. It shall be the duty of the state engineer to approve all applications made in proper form where all fees, as in this act provided, have been paid, which contemplate the application of water to beneficial use, and where the proposed use or change does not tend to impair the value of existing rights, or be otherwise detrimental to the public welfare. But where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interests, it shall be the duty of the state engineer to reject said application and refuse to issue the permit asked for. Should the state engineer refuse to issue said permit, or should the permit be issued for a less amount of water than named in the application, the state engineer shall return to the applicant the amount of the deposit for such water rights, or the balance of the amount of the deposit for which the permit was denied; *provided, however,* the fee of fifteen dollars ($15) for examining, filing and publishing said application shall not be included in the amount returned, except as herein provided.

Fees returned, when

Proviso

Record of action made and kept

The refusal or approval of an application shall be endorsed on a copy of the original application, and a record made of such endorsement in the records of the office of the state engineer; said copy of the application so endorsed shall be returned to the applicant. If approved, the applicant shall be authorized on receipt thereof, to proceed with the construction of the necessary works and to take all steps required to apply the water to beneficial use and to perfect the proposed appropriation. If the application is refused the applicant shall take no steps toward the prosecution of the proposed work or the diversion and use of the public water so long as such refusal shall continue in force.

State engineer may require accurate and ample information

SEC. 64. Before either approving or rejecting the application, the state engineer may require such additional information as will enable him to properly guard the public interest, and may in case of application proposing to divert more than ten cubic feet per second of water, require a statement of the following facts: In case of incorporated companies he may require the submission of the articles of incorporation, and names and the places of residence of directors and officers, and the amount of its authorized and of its paid-up capital. If the applicant is not an incorporated company, he may

require a statement as to the name or names of the party or parties proposing to construct the work, and a showing of facts necessary to enable him to determine whether or not they have the financial ability to carry out the proposed work, and whether or not the said application has been made in good faith.

State engineer to fix time of beginning actual construction work

SEC. 65. In his endorsement of approval upon any application the state engineer shall set a time prior to which actual construction work shall begin, which shall not be more than one year from the date of such approval; and that work shall be prosecuted diligently and uninterruptedly to completion unless temporarily interrupted by the elements; a time prior to which the construction of the said works must be completed, which shall be within five years of the date of such approval, and a time prior to which the complete application of water to a beneficial use must be made, which time shall not exceed ten years from the date of the said approval. He may limit the applicant to a less amount of water than that applied for, to a less period of time for the completion of work, and a less period of time for the perfecting of the application than named in the application. The state engineer shall have authority, for good cause shown, to extend the time within which construction work shall begin, within which construction work shall be completed, or water applied to a beneficial use, under any permit therefor issued by said state engineer; *provided, however,* that application for such extension must in all cases be made prior to the time set in the application limiting the period which it is desired to extend.

Extension of time, when

Proviso

Applications may be assigned, restrictions.

SEC. 66. Any application for permit or any permit to appropriate water, may be assigned subject to the conditions of the permit, but no such assignment shall be binding except between the parties thereto, unless filed for record in the office of the state engineer.

Statements of progress of work to be filed with state engineer

SEC. 67. It shall be the duty of any person holding a permit from the state engineer, on or before thirty (30) days after the date set for the commencement of work as endorsed thereon, and at other times required by the state engineer, to file with the state engineer the statement setting forth the time when, the place where, and the amount of such work as may have been performed by him thereunder in connection with such appropriation, and it shall be the further duty of the applicant within thirty (30) days after the date set for the completion of such work to file in detail, a description of said works as actually constructed, which statement shall be verified by the affidavit of the applicant, his agent, or his attorney.

Failure to file statements, penalties for

Should any applicant fail, prior to the date set for such filing in his permit to file with the state engineer, proof of commencement of work, or should the said applicant fail to file within thirty (30) days of the date set prior to which

proof of completion of the work must be made, said proof of completion of work, as hereinbefore provided, the state engineer shall, in either case, advise the holder of said permit, by registered mail, that the same is held for cancelation, and should the said holder within thirty (30) days after the mailing of such advice fail to file the required affidavit with the state engineer, the said permit shall be canceled and no further proceedings shall be had thereunder; *provided, however,* that for good cause shown, upon application made prior to the expiration of the period for filing said instrument, the state engineer may, in his discretion, grant a further extension of time in which to file said instruments. Proviso

SEC. 68. If, in the judgment of the state engineer, the holder of any permit to appropriate the public water is not proceeding in good faith and with reasonable diligence to perfect said appropriation, the state engineer may require at any time the submission of such proof and evidence as may be necessary to show a compliance with the law, and the state engineer shall, after duly considering said matter, if, in his judgment, the said holder of a permit is not proceeding in good faith and with reasonable diligence to perfect the said appropriation, cancel the said permit, and advise the holder of said permit of said cancelation. State engineer may require proofs of good faith

SEC. 69. On or before the date set in the endorsement of a permit for the application of water to beneficial use, or on the date set by the state engineer under a proper application for extension therefor, it shall be the duty of any person holding a permit from the state engineer to appropriate the public waters of the State of Nevada, to change the place of diversion, or the manner or place of use, to file with the state engineer a statement under oath, on a form prescribed by the state engineer, which statement shall include: Statement on application

(1) The name and postoffice address of the person making such proof. What statement shall set forth

(2) The number and date of the permit for which proof is made.

(3) The source of water supply.

(4) The name of the canal or other works by which the water is conducted to the place of use.

(5) The name of the original person to whom the permit was issued.

(6) The purpose for which the water is used.

(7) If for irrigation the actual number of acres of land upon which the water granted in the permit has been beneficially used; giving the same by forty (40) acre legal subdivisions when possible.

(8) An actual measurement (taken by some competent person, giving the name of said person) of the water diverted for such use.

What statement shall set forth

(9) The capacity of the works of diversion.

(10) If for power, the dimensions and capacity of the flume, pipe, ditch or other conduit.

(11) The average grade and the difference in elevation between the termini of such conduit.

(12) The number of months, naming them, in which water has been beneficially used.

(13) The amount of water beneficially used, taken from actual measurements by some competent person, naming said person, together with such other data as the state engineer may require to acquaint himself with the amount of the appropriation for which said proof is filed. Accompanying said statement, there shall be filed with the state engineer a map on tracing linen on a scale of not less than one thousand feet to the inch, which shall show with substantial accuracy the following:

(1) The point of diversion by legal subdivisions or by metes and bounds from some corner, when possible, from the source of supply.

(2) The traverse of the ditch or other conduit, together with cross-sections of same.

(3) The legal subdivisions of the land embraced in the application for permit and the outline by metes and bounds of the irrigated area, with the amount thereof.

(4) The average grade and the difference in elevation of the termini of the conduit, and the carrying capacity of same.

(5) The actual quantity of water flowing in the canal or conduit during the time said survey was being made.

Map and affidavit

Said map must bear the affidavit of the surveyor or engineer making such survey and map. In the event the survey and map are made by different persons the affidavit of each must be on the map, showing that the map as compiled agrees with said survey. Said map shall conform with such rules and regulations as the state engineer shall make, which rules shall not be in conflict herewith.

Permit may be canceled, when

Should any applicant fail, prior to the date set for such filing in his permit, to file with the state engineer proof of application of water to beneficial use, and the accompanying map, or prior to such extension as the state engineer may grant, the state engineer shall advise the holder of said permit, by mail, that the same is held for cancelation, and should the said holder within thirty days after the mailing of such advice fail to file the required affidavit and map or either of them with the state engineer, the said permit shall be canceled and no further proceedings shall be had thereunder.

State engineer may refuse faulty map

SEC. 70. The state engineer may, in his discretion, refuse to accept for filing, any map not conforming with the foregoing provisions and such rules and regulations as he may make. He may, in his discretion, require additional data to be placed thereon, and may make proper provision therefor.

Penalty for false swearing

SEC. 71. Should it be found upon inspection of the premises by the state engineer that said surveyor or engineer had sworn falsely to said map and survey, he may, in the discretion of the state engineer, be barred from the further practice of engineering in any matters before the state engineer, in addition to the penalties prescribed by law for swearing falsely to any affidavit.

Certificate issued by state engineer

SEC. 72. As soon as practicable after satisfactory proof has been made to the state engineer that any application to appropriate water has been perfected in accordance with the provisions of this act, said state engineer shall issue to said applicant, his assign or assigns, a certificate setting forth the name and postoffice address of the appropriator, his assign or assigns, date, source, purpose and amount of appropriation; and if for irrigation, a description of the irrigated lands by legal subdivisions, when possible, to which said water is appurtenant, together with the number of the permit under which such certificate is issued, which certificate shall, within thirty (30) days after its issuance, be sent by mail to the recorder of the county in which such water is diverted from its source, as well as to the recorder of the county in which the water is used, to be recorded in books specially kept for that purpose, and the fee for recording such certificate, which is hereby fixed in the sum of one dollar ($1) for each county in which said record is made, shall be paid in advance to the state engineer by the party in whose favor the certificate is issued.

Filed in county records

Fees of state engineer

SEC. 73. The following fees shall be collected by the state engineer in advance, and shall be accounted for and paid by him into the general fund of the state treasury, on or before the tenth day of each month; *provided, however,* that the fees named in subdivision (c) of this section shall not apply to permits for underground waters:

Fees enumerated

(a) For examining and filing an application for permit to appropriate water, fifteen dollars ($15), which shall include the cost of publication, which publication fee is hereby fixed at ten dollars ($10).

(b) For examining and filing an application for permit to change place of diversion, manner of use, or place of use, twenty-five dollars ($25), which shall include the cost of permit should the same issue thereunder, and the cost of publication of such application.

(c) For issuing and recording permit to appropriate water for irrigation purposes; five cents per acre for each acre to be irrigated, up to and including one hundred acres, and three cents for each acre in excess of one hundred acres up to and including one thousand acres, and two cents for each acre in excess of one thousand acres.

(d) For issuing and recording permit for power purposes, twenty-five cents for each theoretical horsepower to be developed up to and including one hundred horsepower, and

fifteen cents for each horsepower in excess of one hundred horsepower, up to and including one thousand horsepower, and ten cents for each horsepower in excess of one thousand.

(e) For issuing and recording permit to store water, two cents for each acre-foot of water to be stored, up to and including one thousand acre-feet, and one cent for each acre-foot in excess of one thousand.

Fees enumerated

(f) For issuing and recording permit to appropriate water for any other purpose, $5 for each second-foot of water applied for, or fraction thereof.

(g) For filing secondary permit under reservoir permit, $5; for approving and recording secondary permits under reservoir permits, $5.

(h) For filing proof of commencement of work, $1.

(i) For filing proof of completion of work under any permit, $1.

(j) For filing any protest, affidavit, or any other water-right instrument or paper, $1.

(k) For making copy of any document recorded or filed in his office, one dollar for the first hundred words and twenty cents for each additional one hundred words or fraction thereof; where the amount exceeds $5, then only the actual cost in excess of that amount shall be charged.

(l) For certifying to copies of documents, records or maps, one dollar for each certificate.

(m) For blue-print copy of any drawing or map, ten cents per square foot.

(n) For such other work as may be required of his office, actual cost of the work.

Seal for state engineer

SEC. 74. The state engineer is hereby empowered and directed to procure, for his said office, a seal upon which shall appear his official title, and such other suitable inscription as he may deem proper, and such seal shall be affixed to all official permits, certificates and other documents issued by him under the provisions of this act.

Right of appeal to courts from decision of state engineer

SEC. 75. Any party feeling aggrieved by the action of the state engineer in refusing his application in whole or in part, or in allowing such application against his protest, may bring an action, in any court having jurisdiction of the matter, against the state engineer to compel him to reverse or modify his decision, and all persons having interests adverse to the party or parties bringing such action shall be joined therein with the state engineer as defendants. Such action must be commenced within sixty days after notice in writing of the decision by the state engineer complained of, and shall be begun and prosecuted in all respects like the ordinary civil action in this state, and shall be tried *de novo* by the court. Any party feeling himself aggrieved by the decision of the court may have the same reviewed, in any court having appellate jurisdiction of such decision, by appeal or writ of error in the manner provided by law.

Reservoir permits, regulations concerning

SEC. 76. All applications for reservoir permits shall be subject to the provisions of sections 59 to 74, both inclusive, except those sections wherein proof of beneficial use is required to be filed; but the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall file an application for permit to be known herein as the secondary permit, in compliance with the provision of sections 59 to 74, both inclusive, except that no notice of such application shall be published. Said application shall refer to said reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owner of the reservoir for a permanent and sufficient interest in such reservoir, to impound enough water for the purpose set forth in said application.

Secondary permit

Final certificate issued when

When beneficial use has been completed and perfected under the secondary permit, and after the holder thereof shall have made proofs of the commencement and completion of his work, and of the application of water to beneficial use, as in the case of other permits, as provided in this act, final certificate of appropriation shall issue as other certificates are issued, except that said certificate shall refer to both the works described in the secondary permit and the reservoir described in the primary permit.

Use of bed of stream, how regulated

SEC. 77. Whenever the owner, manager or lessee of a reservoir constructed under the provisions of this act shall desire to use the bed of a stream or other watercourse for the purpose of carrying stored or impounded water from the reservoir to the consumer thereof, he shall, in writing, notify the state engineer, and the water commissioner of the district in which said water is to be used, giving the date when it is proposed to discharge water from said reservoir, its volume, and the names of all the persons and ditches entitled to its use, and it shall then be the duty of the said state engineer, or his assistant, to regulate the said works and head-gates, of all ditches from the stream or watercourse not entitled to the use of such stored water as will enable those having the right to secure the volume to which they are entitled. The state engineer shall keep a true and distinct account of the time spent by him in the discharge of his duties, as defined in this section, and to present a certified statement thereof to the county commissioners of the county wherein the expense is incurred. Said county commissioners shall present a bill for the expense so incurred to the reservoir owner, manager or lessee, and if such owner, manager, or lessee shall neglect for thirty (30) days after the presentation of such bill of costs, to pay the same, the said costs shall be made a charge upon the said reservoir and shall be collected as delinquent taxes until payment of such bill of costs has been made.

Expenses how met

Legal advisers of state engineer

SEC. 78. The attorney-general and the district attorney of the county in which legal questions arise, shall be the legal advisers of the state engineer and shall perform any and all

legal duties necessary in connection with their work without any further compensation than their salaries fixed by law.

Negligent coowners may be compelled to pay share of expenses

SEC. 79. In all cases where ditches are owned by two or more persons, and one or more of such persons shall fail or neglect to do a proportionate share of the work necessary for the proper maintenance and operation of such ditch or ditches, or to construct suitable head-gates, or other devices at the point where water is diverted from the main ditch, such owner or owners desiring the performance of such work, may, after giving ten days' written notice to such other owner or owners who have failed to perform such proportionate share of the work necessary for the operation and maintenance of said ditch or ditches, perform such share of the work, and recover therefor from such person or persons in default, the reasonable expense of such work.

Statement of expenses to constitute valid lien against property of delinquent

SEC. 80. Upon the failure of any coowner to pay his proportionate share of such expense, as mentioned in the preceding section, within thirty days after receiving a statement of the same as performed by his coowner or owners, such person or persons so performing such labor may secure payment of said claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county clerk of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons in default, which said lien may be established and enforced in the same manner as provided by law for the enforcement of mechanics' liens.

Unauthorized use or wilful waste of water *prima facie* evidence of guilt

SEC. 81. The unauthorized use of water to which another person it entitled, or the wilful waste of water to the detriment of another, shall be a misdemeanor, and the possession or use of such water without legal right, shall be *prima facie* evidence of the guilt of the person using or diverting it.

Obstruction unlawful

SEC. 82. Whenever any appropriator of water has the lawful right of way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of his works, or prevent convenient access thereto. Any violation of the provisions of this section shall be a misdemeanor.

Misdemeanor to violate these provisions

SEC. 83. All violations of the provisions of this act declared herein to be a misdemeanor, shall be punished by a fine not exceeding two hundred and fifty dollars ($250), and not less than ten dollars ($10), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Vested rights to water not impaired

SEC. 84. Nothing in this act contained shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this act where appropriations have been initiated in accordance with law prior to the approval of this act. Any and all appropriations based upon

applications and permits now on file in the state engineer's office, shall be perfected in accordance with the laws in force at the time of their filing.

Rotation in use of water

SEC. 85. To bring about a more economical use of the available water supply, it shall be lawful for water users owning lands to which water is appurtenant, to rotate in the use of the supply to which they may be collectively entitled; or a single water user, having lands to which water rights of a different priority attach, may in like manner rotate in use, when such rotation can be made without injury to lands enjoying an earlier priority, to the end that each user may have an irrigation head of at least two (2) cubic feet per second.

State engineer to make rule

SEC. 86. The state engineer is hereby empowered to make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred by this act.

Each section of this law declared independent

SEC. 87. Each section of this act and every part of each section is hereby declared to be independent sections, and parts of sections, and the holding of any section or part thereof to be void or ineffective for any cause shall not be deemed to affect any other section or any part thereof.

Repeal of conflicting acts

SEC. 88. All acts designated in the following schedule, and all other acts and parts of acts in conflict herewith shall stand repealed from and after the time when this act goes into effect.

Has - 13-182.

SCHEDULE

Specific acts repealed

An act to provide for the appropriation, distribution and use of water, and to define and preserve existing water rights, to provide for the appointment of a state engineer, an assistant state engineer, and fixing their compensation, duties and powers, defining the duties of the state board of irrigation, providing for the appointment of water commissioners and defining their duties, approved February 26, 1907.

An act amendatory of a certain act entitled "An act to provide for the appropriation, distribution and use of water, and to define and preserve existing rights, to provide for the appointment of a state engineer and assistant state engineer, and fixing their compensation, duties and powers, defining the duties of the state board of irrigation, providing for the appointment of water commissioners, and defining their duties," approved February 26, 1907, and to provide a fee system for the certification of the records of, and an official seal for, the state engineer's office, and other matters relating thereto, approved February 20, 1909.

This law not retroactive

The repeal of a law by this act shall not affect any application for permit made to, or permit granted by the state engineer to appropriate the public water when any such instrument was filed or approved before the repeal takes effect, and any action or proceeding heretofore commenced

or initiated under any law repealed by this act, shall be completed in accordance with the provisions of the law in force at the time of such filing and approval.

Appropriation, $30,000

SEC. 89. The sum of thirty thousand dollars ($30,000) is hereby appropriated out of the general fund in the state treasury to carry out the provisions of this act.

In effect

SEC. 90. This act shall take its effect from and after its passage and approval.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Woodburn and Wedge and that on the 12th day of April, 2019, I electronically filed the foregoing with the Clerk of the Court using the Supreme Court of Nevada Electronic Filing system, which will send notification of such filing to the following attorneys of record via their email addresses:

K. Kevin Benson
Brett C. Birdsong
Robert L. Eisenberg
Aaron D. Ford
Simeon M. Herskovits
Steven G. Martin
Nhu Q. Nguyen
Sean A. Rowe
Stephen B. Rye
Jerry M. Snyder
Bryan L. Stockton
Tori N. Sundheim
Therese A. Ure
Roderick E. Walston
Wes Williams, Jr.

I further certify that on this date, I deposited for mailing at Reno, Nevada first-class postage prepaid, a true and correct copy of the foregoing, properly addressed to:

Stephen M. Kerins, Deputy County Counsel
Stacey Simon, Acting County Counsel
Mono County
P.O. Box 2415A
Mammoth Lakes, California 93546-2415

/ s / Holly Dewar
Holly Dewar