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PERSPECTIVE ON NEVADA'S WATER 2003, RE: FIRST REPRINT SB 76

Nevada has been called the 'driest state' due to a low average annual precipitation of 9 inches per year. The use and right to water in a dry climate is of great importance. Without the ability to invest in managing water resources, little of the development we see in Nevada today would have taken place. As with other western states, investment and improvements by landowners are encouraged through a fair and stable water rights program overseen by the State of Nevada.

Because of the homesteading and settlement pattern in Nevada, the majority of water rights are tied to early ranching and farming lands. These rights are passed from generation to generation or to new owners and continue to be used to create the patchwork of fertile, green, valleys in Nevada. The rights of private owners must be encouraged and upheld with thoughtful revision of water statutes with laws like SB 76, if historic water use in Nevada is to be preserved. It appears that the revisions to SB 76 avoid arbitrary classes of users and beneficial uses which would open the door to legal challenges by opponents of State's rights.

In a state with a large federal presence, safeguards are needed to conserve and protect water resources for residents. The McCarran Amendment (43 USC 666) is a legislative example of balancing private rights with federal powers. It restricts the federal government from using its permitting authority to reallocate or obtain non-federal water rights in certain instances.

There is a court case in Nevada concerning the primacy of the State as opposed to the rights of the Federal government regarding public lands and water rights. This case had a ruling in 1998 by a Nevada District court and was appealed to the State Supreme court. It yet has potential to define how much power the federal land management agencies can exert over the lives of individuals and state rights. Unless the federal government loses its appetite for continuing beyond the State Supreme court, it may pass to the U.S. Supreme Court. The case has been between the State of Nevada Water Engineer and the United States of America through the Bureau of Land Management (Case No. 970-C-0119, 9th Judicial District Court).

The current Nevada case with the Federal government came about because the BLM asked the State for stock water rights for nine springs on federal lands. The state refused to give stock water rights to the BLM for the reason that the federal government would not be personally grazing livestock, but rather, using these rights with their permits to stock growers for public land use

When the Federal government approved the creation of individual States out of the public domain, it enumerated the rights which could be exercised by the new governments including water rights for the citizens of the state. It was clearly understood that each new state government would be able to administer and regulate the use of water for its citizens. The Federal government also specified that there were other rights "reserved" by the federal government which could become important in the future, but were unspecified at that time.

Most of the public, not knowing how water rights are administered in the Western US, would be amazed by how detailed the ownership and use of water has evolved. Essentially, in Nevada, similar to other western states, the water right is based on defining certain things: a point of diversion (where you take the water), the quantity you will take, the place where you will use the water, and what your beneficial use will be. These aspects and many others are what is referred to as your claim for water. Your claim for water does not reach the highest quality of ownership until it is "perfected," or until you have established your water use for a period of time.

A reasoned interpretation of the State's water rights is that in order to obtain a water right, you need to be the direct user of the water. This policy serves to keep water available for the residents of the states instead of allowing them to be usurped by other entities which do not put the water to beneficial use or may even try to put it to other uses as they see fit. The federal government can rely on its "reserved" rights for such uses as wildlife and Indian Reservations so there isn't really a good case for the US Government having water rights for stock water.

Nevadans should be wary of how far the Federal Government might go in its effort to appropriate water resources and the implications of such actions. There are people in the US today, being ignorant of history and natural resources, who see stock on Western range as undesirable and simplistically seek to find ways to eliminate this use. Many citizens here have a suspicion that there are also individuals embedded in the public land management agencies who possess just such an agenda. An aggressive federal government seeking undeserved water rights and other resource rights has become a 600-pound gorilla, all-powerful over many aspects of life which are critical to individual survival in the western US. Suppose that in the future, because of market forces, stock grazing all but dies away for a decade and the federal government succeeds in assigning the water to other uses. It would be impossible to reestablish stock grazing without water rights.

Some states have already acceded to the federal government and awarded it certain kinds of water rights for what should be reserved for individual uses. Enacting SB76, as amended, would be a big boost for state rights and maintaining the use of important resources such as water for the individual citizens of the states.

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