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**TESTIMONY OF THE
NEVADA LIVE STOCK ASSOCIATION**

**BEFORE THE
SENATE NATURAL RESOURCES COMMITTEE
Monday, March 31, 2002**

**SB 76: Revising Provisions Governing Acquisition of Water Rights on Public Grazing Lands for
Purposes of Water Livestock**

Mr. Chairman, Members of the Committee, by way of introduction my name is Ramona Hage Morrison. I testify today on behalf of the Chairman of the Nevada Live Stock Association, Helen Chenoweth-Hage, and the members of the Nevada Live Stock Association, predominantly livestock producers who own grazing allotments in Nevada.

While we recognize the need for clarification of Nevada's water law, as mandated by the July 24, 2001 Decision of the Nevada Supreme Court, United States v. State Engineer, 117 Nev. 585, 589, 27 P.3d 51, 53 (2001), that decision simply said the federal government may apply for water rights for livestock grazing purposes. S.B. 76, in its current form goes far beyond the clarification necessitated by this decision. S.B. 76 unnecessarily encumbers all further applications for water rights by allotment owners through the creation of an unnecessary "joint permit". The Nevada Live Stock Association has therefore unanimously voted to oppose this bill. Instead, the NLSA is supporting the attached draft language as a proposed amendment which specifically addresses the phrase, "legally entitled to place livestock on the public lands for which the permit is sought" in NRS 503.533, to comply with the Supreme Court's mandate in U. S. v. State Engineer, *supra*. This is precisely the clarification language sought by the Nevada Supreme Court.

Our opposition to S.B. 76 arises from several points. First, Mr. Chairman, with all due respect, in its current form there is no nexus between S.B. 76 and the purported desire of this Committee to use S.B. 76 to make the technical clarification in Nevada water law required by the Nevada Supreme Court in U. S. v. State Engineer, *supra*. This legislation instead seems to serve as a Trojan horse for the federal agencies to accomplish ownership and control over more of Nevada's valuable water without ever having to prove beneficial use or acquire existing water rights by purchase or condemnation at fair market value.

The Nevada Supreme Court's decision was very limited in its scope and is not inconsistent with the longstanding policy voiced by Congress in the McCarren Amendment. The Nevada Supreme Court never ruled that the owner of vested water rights must give away with no consideration, 50% of his water rights to the federal government in joint tenancy. Instead it reaffirmed the principals in the McCarren Amendment, which have been repeatedly upheld by the U.S. Supreme Court, that the federal government can obtain its own water rights. The federal government currently may obtain water rights by purchase at the highest-and-best-use fair market value. It can condemn the water and pay the fair market value for the water. It can apply for water rights under the prior appropriation doctrine. Conversely, S.B. 76 allows the federal government to short circuit the prior appropriation process or the provisions requiring it to purchase the water at the highest and best use fair market value. This legislation simply allows the federal government to extort vested water rights from the rightful private applicants who are putting that water to beneficial use.

The most dangerous language in this legislation is found on page 3, line 15, "This section must not be construed to impair the vested right of any person to the use of water for the purpose of water livestock **OR to prevent any transfer of ownership of a water right for the purpose of watering livestock.**" (Emphasis added) The first parenthetical clause is a savings clause and the second parenthetical clause destroys it because it allows the federal government through the hammer of the grazing permit to require the transfer or partial transfer of vested water rights to the federal government. Gentlemen, "or" means an alternative. This language is not about clarifying existing water law. It is about allowing the federal government to acquire Nevada water at no cost.

Gentlemen, lets clearly understand what vested water rights are. The courts have clarified on numerous occasions what vested water rights are: "A 'vested right' **is a property interest so substantial in character that its destruction or deprivation cannot be justified by the objectives in view.**" *Vernon Manor Co-op. Apartments Section I, Inc. v. Salatino*, 178 N.Y. S.2d 895, 901, 15 Misc. 2d 491.

Pursuant to the takings provisions in both the U.S. Constitution and Nevada Constitution, the State cannot take private property without payment of just compensation. This legislation, if passed, will result in the State of Nevada becoming directly liable for payment of just compensation to the private owners of vested water rights so the State can make a gift of that valuable State and privately held asset to the federal government. And the cost at highest and best use valuation, currently averaging at approximately \$5,000 per acre-foot, could be quite extensive to the State.

In addition, how can it possibly be in the State's interest to endorse and encourage joint filings, which by virtue of the grazing permit will create a "joint tenancy" in the water right? The federal government would presumably control the use of 50% of the water. However, the main effect of joint tenancy will be exacted through the conditions of the grazing permit and would be triggered upon the private owner's death, when rather than transferring water rights to his heirs, the private owner's property interest in water is simply extinguished by virtue of survivorship of the federal government.

Curiously this legislation allows the federal government to obtain water rights without ever proving beneficial use. If this legislation passes, the State of Nevada will provide a vehicle for the federal agencies to circumvent Nevada's own water law. Ultimately, this legislation opens the door for increased federal control over Nevada's economy and future. Currently the demands on Nevada's water resources by Las Vegas, Reno and California are significant even before the creation of a mandatory gift of 50% of all new water developments to the federal agencies.

The federal government's recent efforts to acquire water rights have in several instances resembled extortion. In several cases, the federal agencies, through the grazing permit process, have required the rancher to meet untenable demands. When he or she cannot, the federal agencies then impose fines, make demands and threaten the economic viability of the ranch. Once the rancher is sufficiently backed into a corner, the government offers them a deal they cannot refuse by promising to erase all charges and fines if the rancher will simply turn over a portion of their vested water rights to the federal agencies. Understanding that at highest-and-best-use valuation Nevada water is selling for approximately \$5,000 per acre-foot, the government is remarkably fiscally shrewd.

Finally, Mr. Chairman, the term "public grazing lands" creates a new definition for lands on which a grazing permit exists. This term is inconsistent the term public lands used throughout Title 43 of the U.S. Code. We need to stay consistent with federal law or an ambiguity in the law will be created. While courts have consistently ruled that an ambiguity goes against, nevertheless, it will then be incumbent upon the livestock industry to pay the legal bills to seek clarification.

Mr. Chairman, the management practices of the federal government have wreaked economic havoc on the livestock industry and by extension, our rural counties. Conservative estimates total the livestock industry's cumulative direct and indirect economic losses in our rural counties at \$828 million since 1983. Some of those counties are now facing bankruptcy. The State, and by extension Las Vegas and Reno, will be forced to pay for any bail-outs. Economic devastation in our resource economies does trickle up to negatively impact the urban economy.

S.B. 76 will have the effect of placing more regulatory burdens upon the private producer. It does not specifically address the Nevada Supreme Court's mandate but goes far beyond creating a new, unnecessary gift of Nevada's precious water to benefit the federal agencies. This legislation gives the federal agencies additional means of acquiring water rights without ever having to prove beneficial use. This legislation, if passed, may result in the State of Nevada becoming directly liable for payment of just compensation to the private owners of vested water rights.