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**TESTIMONY OPPOSING SB 76
MARCH 31, 2003
SENATE NATURAL RESOURCES COMMITTEE HEARING RM 2144**

**AMENDING NEVADA'S WATER LAWS TO ALLOW UNITED STATES
AGENCIES AND ENVIRONMENTAL OR OTHER ILLEGITIMATE
CLAIMANTS TO PARTNER WITH OWNERS OF VESTED OR
CERTIFICATED WATER RIGHTS IS REPUGNANT. THE NEVADA
LEGISLATURE SHOULD GO ABOUT THE BUSINESS OF PROTECTING
WATER RIGHTS FOR THEIR ORIGINAL INTENDED USE RATHER
THAN DILUTING STATE LAW BY ALLOWING NON-BENEFICIAL USE
CLAIMANTS EQUAL ACCESS TO NEVADA'S PRECIOUS WATER.
VESTED OR CERTIFICATED WATER RIGHTS ARE PERSONAL
PROPERTY OF THE HOLDER OF THOSE RIGHTS AND AS LONG AS
THOSE HOLDERS CAN PROVE BENEFICIAL USE THE WATER IS
THEIRS TO USE.**

**IT IS NAIVE AND SILLY TO ASSUME THAT A FEDERAL AGENCY OR
OTHER BOGUS CLAIMANT IS GOING TO RESPECT THE INTENT OF
NEVADA LAW BY MAINTAINING BENEFICIAL USE STATUS OF ANY**

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WATER WHICH THEY MAY HAVE ACQUIRED BY DEFAULT IN A
PARTNERSHIP ARRANGEMENT PROPOSED IN THE BILL SB 76
UNDER CONSIDERATION TODAY.

WHILE IT MAY BE TRUE THAT NEVADA WATER LAWS COULD BE
STRENGTHENED; THIS IS NOT A GOOD EXAMPLE. AS A MATTER
OF FACT IT APPEARS TO DO JUST THE OPPOSITE. THE
LEGISLATURE NEEDS TO CREATE A STATUTE WHICH MAKES IT
CLEAR IN THE EYES OF THE NEVADA SUPREME COURT THAT
WHILE IT MAY APPEAR THE UNITED STATES COULD
CONCEIVABLY GRAZE LIVESTOCK IN NEVADA THE FACT
REMAINS; THAT REMOTE POSSIBILITY CANNOT BE FOUND IN THE
UNITED STATES CONSTITUTION OR ACTS OF CONGRESS SO
THEREFORE THE LIKELIHOOD OF GRAZING BY A FEDERAL
AGENCY IS COMPLETELY IMPROBABLE.

IN THE EARLY ANNALS OF THE HISTORY OF THE WEST IT WAS
RECORDED THAT THE HIGHEST AND BEST USE OF THESE ARID
WESTERN LANDS WAS FOR THE GRAZING OF LIVESTOCK. IT IS
STILL TRUE TODAY.

**RISING IN OPPOSITION TO SB 76, I FIND THAT THE BILL GOES A
LONG WAY TOWARDS WEAKENING TRADITIONAL PROPERTY
RIGHTS OF LIVESTOCK PRODUCERS IN THE FEE LANDS AND
VESTED WATER RIGHTS.**

**THERE ARE NUMEROUS REFERENCES IN THE BILL MADE TO THE
EXISTENCE OF A PERMIT PRIOR TO GRANTING AN APPLICANT A
CERTIFICATE OF APPROPRIATION. WE MUST ALL BE REMINDED
THAT IN THE CASE OF HAGE V US WHERE HAGE HAS A FEE
INTEREST IN THE LAND ON WHICH HE HOLDS VESTED WATER
RIGHTS THAT HAGE DOES NOT NEED A PERMIT TO GRAZE.
THAT SAME FACT IS TRUE FOR EVERY OTHER LIVESTOCK
GRAZER WHO CAN PROVE A FEE OWNERSHIP IN THE
LAND AND WATER. FEE IN THIS INSTANCE MEANING THE
INHERENT RIGHT TO USE THE LAND FOR THE INTENDED
PURPOSES. IT APPEARS THIS BILL SB 76 SEEKS TO UNDERMINE
THOSE TENETS OF NEVADA LAW WHICH HAVE BEEN IN
EXISTENCE FOR OVER 100 YEARS. HAVING THEIR ROOTS IN THE
1ST NEVADA LEGISLATURE WHICH WORKED WITH SENATOR**

STEWART TO DRAFT A COMPREHENSIVE BILL PERTAINING TO
WATER RIGHTS, DITCH RIGHTS, HIGHWAYS AND EQUITABLE
MINING LAW. THOSE TENETS OF LAW EMERGED AS THE ACT OF
26 JULY 1866 KNOWN AS THE 1866 MINING LAW.

AN IMPORTANT POINT WHICH NEEDS TO BE CLARIFIED IN SB 76 IS
THE REFERENCE TO "*PUBLIC LANDS*".

ACCORDING TO THE SUPREME COURT DECISION IN THE CASE OF
BARDON V NORTHERN PAC. RR CO IT WAS ESTABLISHED:

"It is well settled that all land to which any claims or rights of others have
attached does not fall within the designation of public land."

IT WAS ALSO RENDERED IN THAT SAME DECISION THAT
"When lands cease to be public, the departmental jurisdiction thereover ceases
also."

AGAIN IN NORTHERN PAC RY CO V WISMER:

"" public lands" are lands open to the sale or other disposition under general
laws, lands to which no claims or rights of others have attached."

SB 76 MAKES INCORRECT REFERENCES TO "public lands" AND
"public grazing lands".

AS YOU CAN SEE THERE ARE NO PUBLIC LANDS BEING
ADDRESSED SINCE GRAZIER'S OWNERSHIP OF THE FEE IN THE

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LANDS CONSTITUTES CLAIMS AND RIGHTS OF OTHERS.

THERE IS MUCH WRONG WITH THIS BILL SB 76 AND I URGE THIS

**COMMITTEE TO KILL THE BILL IN ORDER TO AVOID THE
CREATION OF A LAW WHICH HAS THE EFFECT OF WEAKENING
THE PROPERTY RIGHTS OF CURRENT AND FUTURE LEGITIMATE
WATER USERS.**

**AS A RESULT OF THE FINDINGS OF FACT IN THE HAGE V US CASE
WHICH WERE MADE PUBLIC ON JANUARY 29, 2002 AND THE
DECISION OF DECEMBER 11, 2002 IN THE SAME CASE; THE ROLE
OF THE BLM, USFS, USF&WS AND OTHER ALPHABET AGENCIES OF
THE FEDERAL GOVERNMENT TO LIMIT ACTIVITIES ON GRAZING
ALLOTMENTS HAS BEEN SEVERELY HAMPERED.**

**REMEMBER THAT OWNERSHIP OF NEVADA WATER DEPENDS ON
BENEFICIAL USE AND WHERE NONE CAN BE SHOWN TO EXIST
THEN THERE IS NO REASON TO ATTEMPT TO CIRCUMVENT THAT
ASPECT OF NEVADA LAW BY CREATING EXCEPTIONS AS IT**

APPEARS IN SB76.

*D. D. Chris Johnson
Chairman Nevada Committee for
Full Statehood*