

MEMBERS PRESENT

Chairman Hickey
Mr. Dini
Mr. Fielding
Mr. Getto
Mr. Mann
Mr. Marvel
Mr. Tanner

MEMBERS EXCUSED

Mr. Chaney
Mr. Price

OTHER LEGISLATORS PRESENT

Senator Blakemore
Senator Dodge
Senator Glaser
Senator Jacobsen
Senator Wilson
Senator Young
Mr. Bedrosian
Mr. Craddock
Mr. Glover
Mr. Rhoads
Mr. Rusk

GUESTS PRESENT

E. I. Rowland, Bureau of Land Management
Robert E. Stewart, Bureau of Land Management
Brian A. Randall, Nevada Division of Water Resources
Katie Galli, Lyon County Commissioners
William J. Newman, State Engineer
Peter G. Morros, DCNR
Phil Martinelli, Nevada Department of Agriculture
Richard Forman, Bundy & Forman, Inc.
Steve Robinson, Sela
Bruce W. Wilkin, M.D., Self
Andrew P. Grose, Legislative Counsel Bureau

The meeting was called to order by Chairman Hickey who said the meeting was initiated by the small county legislators who were concerned about the Bureau of Land Management's filing for certain water rights. He introduced Mr. E. I. Rowland, State Director of Bureau of Land Management, who was invited to explain BLM's position in this regard.

MR. ROWLAND: Since the creation of the Bureau of Land Management in 1946, we have followed a policy of multiple use management of the lands we are charged with administering. In 1976 the Federal Land Policy and Management Act was passed by Congress. This made multiple use a mandated policy. Water, of course, is necessary, particularly in a state like Nevada, for a number of the various uses that are made of the public lands. Some of these are livestock grazing, wildlife, recreation and wild horses.

Over the years the BLM's policy with respect to acquiring water rights has vacillated considerably. At times our legal advisers informed us that we did not need to follow state law, that we were entitled to the water on the public lands, and we just assumed that we had the right to whatever water we needed to use on those lands. At times we were instructed to provide the states where we were operating with a courtesy notice that we were appropriating the water that we were using on our various projects. In some cases through the years, and in some states, that varied and we actually followed state water law in making regular appropriation the same as any individual citizen. And that is the situation we are in today. Our legal advisers have informed us that we should do this. Since the passage of the Taylor Grazing Act in 1934, a large amount of public funds have been spent on water development such as well drilling, spring developments, reservoirs, pipelines and other types of water improvements. And most of these were based on our assumption that we had control of the water; otherwise we would not be permitted to expend the public funds in that way.

Where water had been previously appropriated and we needed to make some additional improvements, we made arrangements with the individual who had the water appropriation through a cooperative agreement. Then we gained control of part of the water that he had appropriated. In a number of cases, we have assumed that our needs for the various uses would be taken care of with two gallons per minute. This has been a kind of rule of thumb in making these agreements with an individual.

Fairly recently there have been a number of court decisions that indicated that maybe we didn't have all of the rights that we had thought we had had. And that, along with the current administration's policy, provided the impetus for our following state law in order to obtain the necessary water to carry out our responsibilities. There is considerable doubt that what we had been doing was going to be upheld by the courts.

Over the past 2 years we have filed for water rights on approximately 60 waters in Nevada. These have been BLM developments

including wells, pipelines, etc., in which government monies have been expended for the development.

We have a very rough estimate by our district people that we have somewhere between 6,000 and 9,000 BLM projects that needed to be filed on where we are or will be utilizing water for one or more of the multiple uses. I want to emphasize that these are estimates. We are currently conducting an inventory where we are trying to find out actually what the needs are, and we hope to complete our inventory in the next fiscal year.

The policy of cooperation with the State of Nevada in the filing of water right applications provides stability to our programs. It provides for the orderly recordation and location and beneficial uses of water by the State Engineer, and it protects the multiple use values of the public lands, as well as assuring the continued use of the waters by the legally licensed livestock users.

In fiscal year '78 we spent about \$64,000 in Nevada on water developments. In fiscal year '79, we will spend around \$179,000 on water projects. It is necessary, in order to spend these monies, that we have control of the water that we will be using. We can't develop water projects if we do not have some adequate control according to the present thinking of our legal advisers.

I think, Mr. Hickey, that's about my story, and I'll be happy to answer questions.

SENATOR GLASER: You say that because of the multiple use concept you felt it necessary to file on these waters. I take it then that you're filing primarily on BLM ground.

MR. ROWLAND: That's correct, as far as I'm aware. I'm sure we wouldn't be filing on any private grounds.

SENATOR GLASER: Even in the checkerboard area?

MR. ROWLAND: I'm sure that's correct. Unless--I suppose it would be possible if we had some kind of an exchange of use arrangement. This might be a possibility. It would be very doubtful that we would try to file on water on privately owned land.

SENATOR GLASER: You indicated that BLM has put a considerable amount of money into water resource development. Through the cooperative agreement over the years the private entrepreneur and private sectors have put considerable money into water development--drilled wells, put windmills up, developed springs and put in pipelines. This wouldn't preclude you from filing on a water development into which a considerable amount of private capital has gone?

MR. ROWLAND: If we put money into that and most of those projects were cooperative, I think, with the BLM providing part of the expenditure and the user the other part, we would probably, under the present rules and present thinking, have to require some kind of an agreement with him as to the use of that water. As I understand your question, he has the appropriation at this point, is that right?

SENATOR GLASER: No, he has never filed on it but he did the development. There has been a cooperative agreement. In the early days BLM would say, we'll see that you develop the water. And so it was a cooperative joint venture. Are you filing on the water that this man has developed?

MR. ROWLAND: I'm afraid I cannot answer that question. And I'm not sure what the proper answer is. If the water has use only for that livestock operator, I wouldn't see any point in our filing on it. If it is needed for other uses, then we'd probably try and work out something with him--buying part of that water, or something.

MR. HICKEY: Ed, Bob, if there is a problem here on specific questions and answers, what we will do, is you write those down and then we'll write you a letter for those answers and then you can write us and give us the answers.

MR. ROWLAND: We'd be glad to do that.

SENATOR GLASER: What is the situation in Humboldt County relative to Blue Lakes. I understand Blue Lakes is one of the scenic attractions in Humboldt County and the county commissioners built a good access road up there. BLM has closed it off. Now I notice you filed on Blue Lakes as one of these water resources. What was the logic there?

MR. ROWLAND: The logic in filing is to maintain stored water, to avoid having all the water pumped out of the lake, for example. I think we did the same thing on Leonard Lake.

SENATOR GLASER: Isn't there a gravity fall from the snowbanks?

MR. ROWLAND: Yes, but it could be pumped out and our filing was merely to maintain water in there, primarily for wildlife purposes. To assure that there was stored water.

MR. MARVEL: Are there any filings on Blue Lakes now?

MR. ROWLAND: I don't know. I think we have a filing on it, but I don't know of any others.

CHAIRMAN HICKEY: We'll make a note of Blue Lakes, and make an inquiry.

SENATOR DODGE: Can a livestock operator, or in the past have they actually made appropriations on underground water sources-- that they have developed that have been on public domain? In other words, in the situation where the guy drilled a well-- can he get an appropriation on that?

MR. NEWMAN: Yes, sir.

SENATOR DODGE: Then I suppose that several of them have them appropriated, maybe others didn't. Maybe one of the reasons they didn't is because they had assurance from the Bureau--and I don't know that this is so, that maybe they didn't go ahead and make appropriation that their rights be protected. But in the first instance, where the guy spent his own money and developed a water source and does have a state appropriated right on that source, is it your position that in that case what you would expect to do if there was some other need for that water besides his cattle grazing there, you'd try to buy in to a part of that water source with him if there was an adequate supply available?

MR. ROWLAND: Yes, that's our policy.

SENATOR DODGE: In other words, you'd honor his property right in that. What about the situation where he developed it and could establish that the only reason he didn't appropriate it was because of some representation by the Bureau. What would your position be there? He spent the money, but he didn't actually make the filing.

MR. ROWLAND: If we felt it was necessary for uses other than his livestock, we would probably file on the water for all of the uses including his livestock to protect it from any other possible loss.

SENATOR DODGE: What assurance would he have about protection of his use if you made the filing? Is there any way you could work out a joint filing arrangement or something like that so he could have some legal right to protect your quantity of water out of that source?

MR. ROWLAND: I suppose that would be a possibility if the well supplied adequate water. It could be divided. I'm not an expert on state water law.

MR. NEWMAN: Sure it could be. I don't know that we've had a joint filing, but it's possible.

MR. CRADDOCK: As we know, some 40 percent of the water basins within the state are either designated or nearing designation. The appropriations are basically made in the approximate 40 percent. When the specific area in the State of Nevada is developed

to a point that the beneficial use allocations are currently being made for other than human need, do you foresee any problems with the Federal Government?

MR. ROWLAND: I didn't understand the question.

MR. CRADDOCK: Some 40 percent of the water basins within the state are either designated or nearing designation. If the State of Nevada in specific areas develops to the point that the water is needed which is currently allocated for other than human need, if the allocation follows to human need then do you see any problem of the Federal Government dealing with that?

MR. ROWLAND: I presume if we reached that point, our concern would be for the humans rather than the animals.

MR. CRADDOCK: The reason I asked the question is because some of the past practices in areas like contributing streams to the Truckee River the animal life has seemed to hold quite a high precedent there in past times.

MR. ROWLAND: I'm afraid BLM has never run into this kind of a situation.

MR. CRADDOCK: I'd like to have the opportunity to go into that in writing, too.

SENATOR JACOBSEN: Will all of your filings show multiple use? Or will some be specific, for fish and game, livestock, or--

MR. ROWLAND: I think it will all be multiple use, because in almost every case where we develop water out in wild land, it has several uses.

SENATOR JACOBSEN: Is it the intent down the road to charge a reasonable fee, the same as the grazing fee, for the use of that water?

MR. ROWLAND: Not that I know of. I don't believe there's any plans for these for water.

SENATOR BLAKEMORE: My question goes deeper. As I understand it, you have a water right, it is a property right. The title is negotiable, so it must be a right. I guess my question is have you looked at the constitutional question? Does the Federal Government have a right to own this? Does your legal staff give you an opinion on this?

MR. ROWLAND: Their opinion has been that we should acquire a right to water under state law, the same as a citizen.

SENATOR BLAKEMORE: Have they looked at the point as to whether you are allowed to even own it?

MR. ROWLAND: I'm not aware whether they have or not.

SENATOR BLAKEMORE: That would be the question I ask first-- whether you have the constitutional right to even own the property. I know there are lots of references to owning of BLM land which of course you do not. You're a custodian.

MR. RHOADS: You did mention that you filed in Blue Lake. Are you aware of the letter that was sent to the livestock company that had that lake in 1974?

MR. ROWLAND: I became aware of it when I saw the first copy of it about 10 minutes ago.

MR. RHOADS: Let me read the paragraph. It's to the owner of the ranch. "The BLM will not, nor will we ask the Nevada Department of Fish and Game to file with the State of Nevada Division of Water Resources for nonagricultural water rights at Leonard Lake." Yet this is one of your applications. What reason is that?

MR. ROWLAND: I have no knowledge of the background that prompted this letter. I'd have to dig back into it and find out what the reason was. But it was my understanding that we have filed to maintain a pool in that lake so it can't be pumped dry.

MR. RHOADS: Our problem is, I think, that many of us have received letters of commitment like this in the past, and it seems like our signature with you is good but your signature with us is no good.

MR. ROWLAND: If the individual who signed that letter had the legal right to make that kind of a commitment, then it appears that we have violated that.

MR. RHOADS: Who has the legal right in the BLM then to sign an agreement with a rancher that we can hold in court? The president? The secretary? This is the area manager who signed this.

MR. ROWLAND: The district manager or the area manager if he is acting within his legal abilities. I am not sure--I don't know the background of this and that's why I can't really answer your question. I'll have to dig that up.

CHAIRMAN HICKEY: Ed, can we get that information?

MR. ROWLAND: Yes, we'll provide it.

MR. MANN: I had a question that I wanted to go back to concerning the joint rights. I hope everybody will bear in mind that I'm not a rancher, I'm a city boy. I'm new on this committee and if my questions seem ridiculous, I hope you'll forgive me for it.

But I have had some dealings with the Federal Government, and I think that might qualify me for the thing I want to get into. I would comment just briefly to Mr. Rhoads that the Indians had the same problem 100 years ago and I'm not sure that the Federal Government can't always change their mind. That brings me into the question that I have.

When you talk about your filing on the water rights and then also including the rancher's cattle into that particular use factor, it would seem to me on the surface that that would give the Federal Government the same kind of a hold over that rancher's head that they've been holding over our heads on road funds and those kind of things; that they could restrict that farmer's number of cattle that he wanted to use and those kind of things. I'm just not sure that I wouldn't like to see a commitment from BLM that they would go with joint use or that that rancher's use of the water would be guaranteed for your live animals, wild animals or vegetation, or whatever. I would just like to hear you respond to that because whether we're satisfied with how in-depth you went into that. Being a new person to this field I see that as one of the basic questions. It's obvious to me that if you let the Federal Government file the water rights, it's their water rights, and that rancher is going to have to take whatever is given to him. So, I'd really like to explore this joint use or joint filing thing.

MR. ROWLAND: I think he would be in no different situation than he is anyway because we license the number of livestock that he can run on that land, and we actually control how much use he can make of that water on that particular land. Maybe he could pipe it off, but if he's using it on that land he is restricted to a certain number of livestock for a certain period of time.

MR. MANN: In other words, you could just reduce the number of livestock. It wouldn't matter if he had water rights anyway. You could hit it on the other end is what you're saying.

MR. ROWLAND: That's right. The amount of water there wouldn't control the number of livestock that's he'd be licensed for.

MR. MANN: The only other problem I have, and I think its probably the same problem that Mr. Rhoads has advocated ever since he's been in the legislature. You know Nevada is 87 percent owned by the Federal Government anyway. I don't care whether you -all it custodial or not. It just seems to me that all we're

doing now is saying you own the land, now we'll let you have the water too. Maybe that's an emotional appeal, I don't know. I feel very uncomfortable with the Federal Government getting more and more of a hold upon Nevadans and Nevada industry. I see your rights to file for water rights as being one more interference by Federal Government to where they have control. I'd rather see the state file a water right and then allocate it to you, rather than the feds having the right. I'd like to hear your comments on that.

MR. ROWLAND: The state does allocate it to us.

MR. MANN: I don't mean for a permanent--in other words, I don't like the idea of you owning the water. Not you personally, but the Federal Government. I'd rather have the state own the water and then if you want to use it, then we'll say okay, you make the application once a year instead of the farmers or ranchers making the application and say, okay, you've got 20 acre feet of water or whatever you need. But at least the state has the right to do that. I hope I'm making myself clear what I'm worrying about. I really have a paranoid thing with this Federal Government and what they've done to Nevada. I read an article in a magazine that said these decisions are being made by people in Washington, D.C., that don't know what the desert or Nevada or Arizona or any western state looks like. They're more concerned about deers and some of those kind of things. If there's anyway at all that we can possibly maintain those water rights for the State of Nevada for our use and let the Federal Government come to us, I'd think that's a better way to go than having fed's file on that water right. That's just a personal thing.

MR. MARVEL: What is your position going to be on private people going out and making application on public lands for water?

MR. ROWLAND: We will probably protest those where water is needed for multiple use purposes and they intend to utilize it for single use, such as livestock.

MR. MARVEL: That's very consistent.

MR. ROWLAND: Our problem with wildlife, particularly on non-flowing water, windmill pumps and things like this, is that if the livestock aren't there and this is water appropriated by a private operator, he probably is going to turn his windmill loose so it doesn't pump. He doesn't want to wear it out, or he's not going to keep a gasoline pump or electric pump going in most cases to water wild horses, for example.

MR. MARVEL: That's for better management.

MR. ROWLAND: Yes, it could be in some cases.

MR. RHOADS: Ed, could you give to the committee the policy direction that you feel you have to go out and ask for these water rights. Do you have to refer to some act or some bill or executive order--

MR. ROWLAND: No, it's instructions based upon the outcome of some court actions and administration policy.

MR. RHOADS: Could you put this together and send it to Mr. Hickey so the committee would have it for--

MR. ROWLAND: Right.

SENATOR GLASER: Are the other BLM offices in the other western states doing the same thing?

MR. ROWLAND: Yes, sir. As a matter of fact, some of the other states started this long ago.

SENATOR WILSON: I assume this means that the federal sovereign recognizes and is willing to place itself under the jurisdiction of the state sovereigns as far as ownership of the water and submitting to permits and the regulation governing the use of water under those permits?

MR. ROWLAND: That's correct in part. I failed to mention that when we file one of these things we have a disclaimer or statement on there that we are filing under protest--I've forgotten exactly what the wording is--so it's not a complete submission to state sovereignty.

SENATOR WILSON: It appears that the party tested a proceeding before the State Engineer in the Pupfish case. I know you submitted to the state's jurisdiction there. I can't recall if that was under protest or not.

MR. ROWLAND: That was the United States but not the Bureau of Land Management, I think. It was the Park Service, I believe.

MR. GETTO: I find it very interesting and tremendous contradictions in the fact that under the Department of Interior now we find that the field analyst recognizes state jurisdiction by filing on these waters, and yet under the Bureau of Reclamation in our own situations under an irrigation project, the Federal Government does not honor state law.

In other words, we own water rights supposedly, and yet we can't transfer them so we really don't own them. All we do is have a right to use the water, so they say. And yet here another arm of the Department of Interior is coming in and acknowledging that the state owns the water. Very interesting situation. If

you wonder why the people in Nevada do not trust the Federal Government, we're gunshy.

CHAIRMAN HICKEY: I would like to keep this meeting compact. Rather than statements, I would prefer questions.

MR. MANN: I'm not sure I understand what Mr. Getto said. He said that they came in and they acknowledge the state's right to own the water. But, I understood they do it with disclaimer, right? In other words, you're saying we recognize the state's rights until we disagree with that right and then we're going to do what we want. Is that correct?

MR. ROWLAND: Not being a lawyer, I'm not in a good position to describe this. But it's a way that I think the lawyers have of maintaining the right to change around if the courts switch.

MR. MANN: Then I'm right. As long as we agree and we don't do anything that they get mad about we own--but once we get in an argument, we don't.

CHAIRMAN HICKEY: The chair has a question. You mentioned 6000 to 9000 entries that you're thinking about?

MR. ROWLAND: We're estimating that there will be that many in total in the State of Nevada that we'll have water projects that we would expect to file on--windmills, reservoirs, wells, pipelines, springs.

CHAIRMAN HICKEY: How are they located? Are they spread throughout the state? Is there certain areas they're located in?

MR. ROWLAND: They're scattered throughout the state.

CHAIRMAN HICKEY: Would you say they're evenly scattered throughout the state?

MR. ROWLAND: I suppose we would probably have a preponderance of these developments in areas where there's a lack of surface water, a lack of available water--where we have to develop through wells--

CHAIRMAN HICKEY: You would say down towards the southern desert area?

MR. ROWLAND: Yes, I would say so.

MR. RHOADS: You mentioned that you spent \$64,000 last year and plan on spending \$179,000 this year. What fund is that money coming out of? Grain improvement or grazing fees?

MR. ROWLAND: Grain improvement.

MR. RHOADS: Grain improvement?

MR. ROWLAND: Yes.

SENATOR GLASER: You mean the ranchers are funding this?

CHAIRMAN HICKEY: You mentioned that court action will bring about change of policy, rules and thinking. How does this work? Before you used to give courtesy notices. Now you're filing.

MR. ROWLAND: The United States, not the Bureau of Land Management, but some other agencies lost some law suits over what they thought were adequate water rights that had not been acquired through following state law. The Bureau felt in an even weaker position. One of those was the Forest Service which had relied upon this doctrine of reserved rights and the fact that the National Forestry set aside--they had assumed that that also set aside all the water that they needed for all of the uses that might be made of that forest. In New Mexico they lost a case because the forests were set aside for purposes of growing timber and watershed, I think, that and possibly one other item, so that use for game, wildlife and recreation were not covered. The court held that they would have to acquire their rights through the state.

MR. MANN: Are any of these proposed wells deepwater wells, 5000 or 6000 feet or more, to be used in connection with breeder reactor cooling activities?

MR. ROWLAND: No.

SENATOR BLAKEMORE: I guess your primary concern is for wildlife and horses and you wouldn't be able to pump the well the rancher is not pumping now because he is going to move his pump jack as he moves his cattle. Has any thought been given to an alternative such as check dams?

MR. ROWLAND: You mean developing other water to take the place of that?

SENATOR BLAKEMORE: Check dams.

MR. ROWLAND: We wouldn't be able to do that if we're unable to get a water right. We wouldn't be able to build a check dam because we can't spend our money unless we have control of that water.

SENATOR DODGE: Would you be willing to pursue a theory or submit it to your people about pursuing a theory of joint filing?

MR. ROWLAND: Yes, in effect I guess when we have purchased a part of someone's water right we have in effect the same thing. And I presume it's legal, but I'd like to check it with our solicitors' office and find out what he thinks about it.

SENATOR DODGE: I think you're right. If you buy part of water from an appropriated right, then I think that's correct. You each have a proportionate ownership. I'm talking about those situations where maybe the water has been developed and the filing was never made. Would you be willing under those conditions, if it was used by a livestock operator who had spent his own money developing the source, of pursuing a joint filing with him? You'd wind up presumably in the same position. I'm not sure you'd have to pay any money under those conditions. It's just a case of whether you're going to protect him on his own use for which he developed the water.

MR. ROWLAND: I understand the question, Senator Dodge, but I'd like to go back and do a little checking with our lawyers and see. It seems reasonable to me, but I need to check it out.

CHAIRMAN HICKEY: Okay, you get back to us.

MR. CRADDOCK: I would like to hear Mr. Newman comment on the impact of this kind of a number of filings with his office.

MR. NEWMAN: We're handling them on a case by case basis. Since the first of the year we have received some 500 applications from the BLM and they're in the various stages of being advertised and the protest period.

MR. CRADDOCK: Additional manpower or expenses that you incurred?

MR. NEWMAN: We're swamped with those filings, desert land entry filings, plus the Carey Act applications.

MR. RHOADS: You said 500 applications. You mean the BLM made 500 applications?

MR. NEWMAN: So far this year.

MR. RHOADS: He just said 60. Over 2 years you said you made 60.

MR. ROWLAND: Yes, in the past 2 years. That was the information I had.

MR. RHOADS: Bill says 500.

MR. NEWMAN: Well, it must not be quite that high.

MR. RHOADS: Could you clarify that, Bill, and send it to Tom as to how many actual applications you have in there?

MR. NEWMAN: Yes.

MR. STEWART: Do you want me to review the questions I have for us?

Senator Glaser's first question dealt with cooperative, where they usually develop the water, will it be on file on the water. Senator Dodge has asked for some pursuing of that issue also. Assemblyman Marvel's question is on Blue Lake, what filings have been made on Blue Lake, particularly by the BLM but also by anyone else. A question from Mr. Craddock on conversion of rights from wildlife rights to human rights and municipal and industrial water rights. What would be the Bureau's position on this when it is needed.

CHAIRMAN HICKEY: By the way, I consider that an important question, especially around the large cities.

MR. STEWART: Was your reference specifically to Stampede Dam which is a Department of the Interior project, but not a Bureau project?

MR. CRADDOCK: No. What prompted the questions was past practices of using water that was needed for human consumption in the areas of fish preservation.

MR. STEWART: Senator Blakemore's question is on the constitutional right to ownership of water which it is a right to own. From Mr. Rhoads a question on the Leonard Lake issue, also some definition of what instruction we are following specifically, why we are doing this. And those are the questions I have, Mr. Chairman.

MR. GETTO: I want to pursue Senator Glaser's question a little further. You just started in the filing of these, you say 60 or whatever. Is it the policy then of the BLM to go on and pay for all? I can see where you could get into suits and so forth which gets expensive down the line. Are the livestock grazers going to pay for this all the way through? Because you have just started and you say you have spent \$69,000 and \$179,000.

MR. ROWLAND: That was spent on developing waters, springs and wells, and this sort of thing, not on the--I want to be sure that is clarified. That was money that does come through our range improvement funds and it was spent on range improvements in the way of water developments.

MR. GETTO: But the water developments would be for single purpose use for wildlife, not predominantly for livestock, is that right?

MR. ROWLAND: No, for livestock and for all the uses that might be needed.

MR. GETTO: Then I really misunderstood. The cost of the filings, and so forth, where does that money come from?

MR. ROWLAND: From our appropriations. From Direct appropriations by Congress to us.

SENATOR JACOBSEN: Mr. Chairman, I don't know whether this is really a question. Do you have any jurisdiction on Indian lands?

MR. ROWLAND: No, sir, fortunately.

SENATOR JACOBSEN: Would there be any advantage for the state to protest all these filings?

MR. ROWLAND: Advantage to whom, sir?

SENATOR JACOBSEN: The the state, to the individual user. I am just wondering whether that would have any credence in court for the state to protest because some of these have been developed by private industry, put their own money into it and now somebody comes along and takes it away from them. Bill, do you see any advantage for the state--

MR. NEWMAN: There's a provision for protesting. The State Engineer would have to take those into consideration, how it's done by the individual that felt himself harmed by this filing. For many years the State Engineer's office has tried to get the BLM to comply with state law and file as a matter of record on various water sources. In other words, to qualify exactly the amount of water they needed. Now that they are doing it, it would seem at cross purposes to turn around and protest on each step of the way.

SENATOR JACOBSEN: I guess I am more or less directing myself to land that was originally BLM land that was offered to the county for recreational purposes and one thing or another. So they developed the area, and it is my understanding that that land still has some--the county has owned it in a sense, but if they don't develop it in a manner prescribed then it reverts back.

MR. ROWLAND: That is correct. If it is obtained under the Recreation and Public Purposes Act, it is obtained at a very, very low, very nominal figure, and the deed to it does carry a reverter if it isn't used for the purposes for which it was acquired.

SENATOR JACOBSEN: I am thinking in relation to Topaz where we are involved with an irrigation district also and, of course, the county has drilled a well there for recreational purposes. Can you come along now and claim that well?

MR. ROWLAND: No, not unless the land actually reverts to the Federal Government. No, we wouldn't make any claims on water on private land unless it was a cooperative arrangement of some kind.

MR. RHOADS: I'm a little confused. You say that the state water engineer's office for years has been wanting the BLM to come in and clarify the water that they need. Why would they need any? They don't own any livestock or wildlife in the State of Nevada. Why would you be trying to urge them in the past to even come in and ask for water? It doesn't seem to me it is getting beneficial use.

MR. NEWMAN: I think recreation is beneficial use, the water that goes to wildlife, and that would create a beneficial use.

(Brief discussion on this matter which is unintelligible on tape)

SENATOR WILSON: I have one question. Maybe you could get back with an answer to this. That is what the Bureau's position is legally, how it receives water on federal lands. If I understand your position, by filing under protest it's an administrative accommodation without a stipulation that we have jurisdiction over water on federal lands. I'd like to know if it is Bureau policy or department policy. You may have to talk to your counsel on that. If what you really are doing is extending the Winters Doctrine which of course is based upon the establishment of a reservation or a monument of some kind, and the water incidental to its use is being appropriated--if you are extending that doctrine as it has developed most recently in the Pupface case to the proposition where water sources on federal lands without the creation of a reservation or a monument or something--the federal sovereign has primary rights to the water. That question has a lot of implication in the western states. If the federal sovereign feels that it has any primary claims to appropriation of that water. That's a legal question I want you to talk to your counsel about. Because I'd like to know what the Bureau and department policy is without regard to whether or not that policy is being administered or used or asserted or anything else. We'd like to know up front where you are instead of a series of steps over 2 to 5 years.

MR. ROWLAND: It is my impression that based upon these court decisions over the last 2 or 3 years that they do not feel that the Federal Government has water rights on the lands that we administer, the unreserved public domain lands, except for those areas that were set aside by Executive Order of 1926, the Federal Water Reserve Executive Order, and that took in existing springs and water holes that were needed and used for public use. They had set aside the 40 acre tract on which that water is located, or an area of 1/4 mile radius around such water hole if it is an unsurveyed area.

SENATOR WILSON: Could we get something fairly comprehensive on that?

MR. ROWLAND: Yes.

Chairman Hickey closed the open meeting and requested the committee to remain. The committee agreed to introduce a bill relating to sheep tax. The trip to Elko was discussed.

There being no further business to come before the committee, the meeting was adjourned.

Respectfully submitted,

Jane Dunne
Assembly Attache