MINUTES OF THE MEETING OF THE SENATE COMMITTEE ON NATURAL RESOURCES

SIXTY-FIRST SESSION NEVADA STATE LEGISLATURE May 18, 1981

The Senate Committee on Natural Resources was called to order by Chairman Norman Glaser at 2:15 P. M., Monday, May 18, 1981, in Room 323 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Norman Glaser, Chairman
Senator Wilbur Faiss, Vice Chairman
Senator James H. Bilbray
Senator Lawrence E. Jacobsen
Senator Joe Neal

COMMITTEE MEMBER ABSENT:

Senator Floyd R. Lamb

GUEST LEGISLATORS:

Assemblyman Paul Prengaman
Assemblyman Kenneth K. Redelsperger
Assemblyman Thomas J. Hickey

ASSEMBLY BILL NO. 383--REQUIRES FEDERAL GOVERNMENT TO PROVIDE CERTAIN INFORMATION AND OBTAIN CERTAIN PERMITS RELATING TO "MX" MISSILE PROJECT.

Mr. Paul Prengaman, Assemblyman, District No. 26, opened discussion on this bill. He said there is a need for this type of legislation as the Air Force MX study was disappointing and incomplete. It did not do an adequate job of determining the true impact of "MX" on the state. The bill would set up a procedure whereby the federal agencies in the State of Nevada involved with the "MX" missile project provide information as to the impact of that project to the governor; it is then channeled to state agencies for review and comment. If a state agency feels a certain area has not been adequately addressed, the agency returns to the federal agency for proper redress.

Mr. Prengaman added if problems are not clearly identified, the United States Congress will not be able to see them and address them properly, making it difficult to obtain mitigation funds. He referred to social and economic problems which have been created in other areas where the federal government has brought extensive construction projects and resulting boomtowns. He also discussed the especial impact upon the elderly and the Draft Environmental Impact Statement regarding aging services, saying the Statement fails in general to cite impact upon senior citizens and the elderly population within the proposed basing area of MX. He referred to how the problems of young people have been treated in the Statement, noting it fails to address in substantive fashion impact upon youth services.

Mr. Prengaman submitted a report prepared by Congressman James Santini to support his remarks (Exhibit C), and also referred to two reports, "Lake Powell Research Project Bulletin, No. 57, September 1977," and "Nucleus--A Report to Union of Concerned Scientists Sponsors--MX Missile Experimental," which are to be placed on file in the Office of the Senate Committee on Natural Resources.

Senator Neal asked upon what basis should he vote for this bill. Mr. Prengaman replied this bill might be the last opportunity the state has to obtain redress for MX mitigation. He said the state is now at the point where there is a short time period involved and there are not many alternatives. He said there is a need to obtain a commitment from the Air Force to share its information with the state, and to recognize the true environmental, social and economic problems associated with the MX system. Otherwise, the state will not receive the money it needs with which to mitigate those problems. He said there has to be a procedure in state law whereby the Air Force has to share information it has regarding the MX with the state and it has to address the impacts upon Nevada.

Chairman Glaser asked Mr. Prengaman if this bill is directed only to the MX missile project or would it refer to any federal project. Mr. Prengaman answered it is directed specifically at the MX missile project. Mr. Prengman noted some changes have been made in the bill as there were certain provisions in the original bill which the bill drafter felt were not constitutional, but the sections remaining in the present bill are in fact constitutional (See Exhibit D).

The Chair recessed the hearing on Assembly Bill No. 383 due to time constraints of witnesses waiting to speak on other legislation.

Senate Committee on Natural Resources
May 18, 1981

ASSEMBLY BILL NO. 428--MAKES VARIOUS CHANGES TO LAW RELATING TO ADMINISTRATION OF UNDERGOUND WATER BY STATE ENGINEER.

Assemblyman Ken Redelsperger,Assembly District No. 36, was the first speaker regarding this bill. He said he had it drafted because, during his campaign for the assembly seat, one of the biggest issues to confront him was the apparent feeling on the part of his constituents of arbitrary decisions to close water basins or valleys where there is agricultural potential, without public hearing or public notice, or notification of an investigation in process to close a specific basin. He said it created an economic hardship on the people of the area who had planned on development of land. He said the bill's intent is to establish a procedure for public hearings, and eliminate the animosity and litigation which exists. He explained the mechanisms within the bill for redress of the situation, and he feels the bill would be of benefit to the state engineer as well as interested private parties.

Mr. Redelsperger stated the bill would allow for the creation of a ground water board within a basin which would work closely with the state engineer; it does not take away any authority from the state engineer but does call for public hearings. Mr. Redelsperger referred to section 2, line 30 of the bill, where it is stated a board of county commissioners may, by ordinance, establish a ground water board; "by ordinance" was used in order to ensure ordinance- establishment procedures are followed, utilizing public hearings, and the right of the state engineer to appear and discuss the needs for establishing a ground water board in that particular area.

Chairman Glaser noted that previously, the state engineer had the option of creating such a board and this bill takes that option out of the state engineer's hands and places it in the hands of county commissioners.

Senator Neal asked the function of a ground water board. Mr. Redelsperger replied such a board would work with the state engineer and furnish him with information as to wells, the amount of water being pumped, and would also help individuals in the area. Senator Neal pointed out the state engineer would already have such information if he had designated a basin. Mr. Redelsperger said there could be more local input. Chairman Glaser said the board would be of a local advisory nature. He said there are already advisory boards set up by the state engineer; this bill would change the procedure and the governor would set up such boards.

Mr. Redelsperger advised that the state engineer, before designating a basin, would be required to hold public hearings and take testimony, After a basin is designated, a ground water board may be formed by the county commissioners rather than the state engineer.

Mr. Roland Westergard, Director, Conservation and Natural Resources, said he agreed with Mr. Redelsperger on section 1, subparagraph 2 on this bill, and so testified before the Assembly committee hearing. He said there is some merit to a hearing before a ground water basin is designated. It could cause some complications but it could resolve some of the misunderstandings and alleviate some of the fears of the people who are using water in a particular basin.

Mr. Westergard stated there could be some costs associated with the requested hearings. He had distributed to the committee members fact sheets in regard to specific costs (Example E), and explained the sheets, noting it could cost as much as one thousand dollars for each hearing. He said they have no serious disagreement with the hearing section of the bill; but they have problems with the section relating to ground water boards.He traced the history of ground water boards in the state in the past. He further added that when the point has been reached where a ground water basin designation is needed, it has been reached because the resources are already committed. He said rather than go through the procedure and the expense of creating yet another layer, he would like to request consideration of the concept of having county commissioners serve in the capacity the boards would be serving. He feels good rapport has been developed in the past with the county commissioners.

Mr. Pete Morros, State Water Engineer's office, assisted Mr. Westergard in displaying and explaining a map showing where ground water basins are located within the state. He said there are at present 67 designated basins with the probability of adding two or three more by July; if boards are created for those 70 areas, in addition to anticipated MX areas, it would produce a high financial impact, which is not warranted in view of the fact criteria has already been established for a basin. The water users in any given basin would pay all expenses, and the cost would be significant, especially in low-density population areas.

In summary, Mr. Westergard said he would agree that if a procedure was implemented to hold hearings before designation,it would serve a real purpose; he requested consideration of allowing time, between now and the next legislative session, before making any significant changes in the criteria for establishing

additional ground water boards based on costs and the limited service that could be provided. He feels the problem could be handled in a more informal manner by a concentrated effort on the part of the state engineer and the county commissioners to accomplish it through the existing structure.

Chairman Glaser asked Mr. Westergard if he or Mr. Newman, state engineer, could confer with Mr. Redelsperger to attempt to reach a compromise for an interim period along the lines suggested, perhaps by amendment, by involving the county commissioners and to allay some of the costs. Mr. Westergard said he would glad to attempt to do so.

Senator Neal and Senator Bilbray said they do not see what the problem is, and feel there is no need for this bill. Senator Faiss concurred with them.

Chairman Glaser noted it had been indicated it would probably be a good procedure to follow before a basin is designated.

Mr. Westergard referred to a bill processed earlier in this session by the Senate Committee on Natural Resources to try to increase the efficiency and cut down on time and expense involved in the state engineer's office, which has been signed by the governor into law.

Mr. William Newman, state water engineer, testified he supports Mr. Westergard's comments and opinions.

Mr. Arthur Johnson, private citizen, Fish Lake Valley (which is a designated basin), is in favor of this bill. He added he has no problem with the water laws as they are presently set up but he does have a problem with an area being designated. The greater percentage of water users in Fish Lake Valley do not feel the water has been over-allocated. He said the residents of the valley have seen ground,refused water permits for agricultural use,subdivided and turned into domestic well use.

Considerable discussion ensued on this bill. Chairman Glaser asked Mr. Redelsperger to confer with Legislative Counsel Bureau counsel, Mr. Westergard, and Mr. Newman to reach a compromise on language in the bill and to return with the suggestions to the next meeting of the committee on May 22, 1981.

The Chair declared the hearing on Assembly Bill No. 428 concluded.

ASSEMBLY BILL NO. 383--REQUIRES FEDERAL GOVERNMENT TO PROVIDE CERTAIN INFORMATION AND OBTAIN CERTAIN PERMITS RELATING TO "MX"MISSILE PROJECT.

The Chair called for testimony on this bill. Mr. Erickson said Mr. Steve Bradhurst, MX Project Director, had conveyed to him that he has no problem with the bill.

Senator Bilbray said he would like to think about it before taking any action.

There being no further testimony, the hearing on Assembly Bill No. 383 was placed in abeyance for the time being.

ASSEMBLY BILL NO. 632--MAKES EUREKA COUNTY SEPARATE AGRICULTURAL DISTRICT.

Chairman Glaser presented a brief history of the situation which prompted the request for this bill.

Mr. Phil Martinelli, Department of Agriculture, testified, saying it gives Eureka County the authority to hold its own county fair. He supports the bill.

Mr. Paul Bottari, Nevada Cattlemen's Association, said as passage of the bill would not have a financial impact on other counties in the state, his association supports the bill. He added Eureka County is very active in agriculture so it would be of benefit to put it into its own agricultural district.

Senator Bilbray said as there was no cost involved, he could see no problem with the bill.

There being no further testimony, Chairman Glaser concluded the hearing on Assembly Bill No. 632.

ASSEMBLY BILL NO. 603--AUTHORIZES STATE QUARANTINE OFFICER TO ADOPT REGULATIONS REQUIRING PROCESSING OF FOOD WASTE BEFORE IT IS FED TO ANIMALS.

Mr. Jack Armstrong, Department of Agriculture, supports this bill. It is essentially legislation to prevent diseases in swine by regulating and controlling the feeding of food waste to them. Mr. Armstrong named major diseases, African swine fever and hog cholera, which afflict this species. He added the bill identifies food waste, it presents no problems in administering, and contains no fiscal impact.

Chairman Glaser asked Mr. Armstrong whether the feeding of food wastes to swine was particularly prevalent in the state due to the hotel-casino business. Mr. Armstrong replied in the affirmative. He added the provision of cooking food waste prior to feeding to swine destined for interstate movement does, in fact, permit for interstate movement of those particular animals. Many states prohibit the interstate movement of swine fed unprocessed food waste, and this works an economic hardship on swine raisers in the state.

There was discussion on the availability of fees to cover eradication of swine diseases, particularly hog cholera, in the state should the need to do so arise; and on the problem with brucellosis in the state. Mr. Armstrong said this bill would merely cover the policing of its regulations and would not generate a fund which would be capable of identification of people suffering losses as a result of the two major diseases.

There was no further testimony and the hearing on Assembly Bill No. 603 was concluded.

ASSEMBLY BILL NO. 82--MAKES ADMINISTRATIVE CHANGES TO LAW RELATING TO CONTROL OF PESTS.

Mr. Martinelli, Department of Agriculture, said this bill is essentially one to clean up the language in the present bill on the subject. He said the Assembly committee dealing with it had no objections to it. He said the primary change is in the definition of pest control. The Attorney General has recommended language be put in the statutes to cover the department in the event of court cases arising from pest control malpractice. This bill would handle such contingencies.

Senator Neal moved Do Pass Assembly Bill No. 82 (Exhibit F).

Senator Bilbray seconded the motion.

The motion carried unanimously. (Senator Lamb was absent for the vote).

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Senator Bilbray moved Do Pass Assembly Bill No. 632 (Exhibit G).

Senator Neal seconded the motion.

The motion carried unanimously. (Senator Lamb was absent for the vote).

Senator Neal moved Do Pass Assembly Bill No. 603 (Exhibit H).

Senator Bilbray seconded the motion.

The motion carried unanimously. (Senator Lamb was absent for the motion).

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There was general discussion on Assembly Bill No. 383 and Assembly Bill 279; the members of the committee wished to have the bill drafter discuss them in more detail.

Chairman Glaser declared a five-minute recess in order to request Mr. Will Crockett, bill drafter, to appear before the committee for this purpose.

The meeting reconvened with all members previously noted in attendance.

ASSEMBLY BILL NO. 383--continued

Chairman Glaser advised Mr. Crockett the committee wished to know if this bill is constitutional. Mr. Crockett spoke as follows: the instrumentalities of the federal government are immune from state regulation if the regulation interferes with, or is inconsistent with, the federal statute in question. This ruling is on the basis of the "Supremacy Clause." This principle extends the same immunity to federal contractors, i. e., Miller vs Arkansas, 1956. The section of the bill under consideration requiring "timely information" is constitutional, conforming to certain federal acts. The section of the bill requiring federal applications, other than water, is unconstitutional; regarding the provision referring to private property, the federal government may pre-empt private property by paying just compensation.

With respect to water, Mr. Crockett continued, when the federal government reserves land by implication it reserves the water; it may only reserve the amount necessary to the purpose. The state may require a permit for all other water. This bill is just unconstitutional only as it applies to reserved water rights, that is, water rights with respect to land that is reserved or may be reserved.

Senator Neal wished to know what could be unconstitutional about section 1. Mr. Crockett replied the information section is constitutional and does not conflict with the underlying federal statutes.

Chairman Glaser noted that the request in the bill for information regarding an environmental impact statement is after the fact, as such a statement has already been submitted to the governor.

Senator Bilbray commented the environmental impact statement presented to the governor was worthless, so a new statement is being requested. Senator Jacobsen noted the statement submitted is not a final one but just a preliminary one.

Mr. Crockett said section 6 is constitutional to the extent it does not interfere with the purposes of the underlying federal acts. He said it might be more appropriate to "request" the federal agencies...instead of "shall."

Senator Bilbray said the bill could be put out by the committee but it should be made as constitutional as possible.

Mr. Crockett said he could have an opinion letter prepared for the bill as it stands now, and return it to the committee, including some suggestions for making the bill more constitutional.

The Chair asked if this would be agreeable to the committee and there was general consensus; the letter and suggestions will be ready for the May 22nd meeting of the committee.

That concluded the discussion on Assembly Bill No. 383.

ASSEMBLY BILL NO. 279--continued

Mr. Erickson reviewed this bill, saying in previous committee consideration there was concern about inclusion of a person within a particular weed district; a person could be included by petitioning the board of directors of the weed district. On the other hand, someone other than the owner of land within the district could request that land be placed within the district, and that request would go directly to the board of directors of the weed district. Senator Bilbray had expressed concerns over the appropriateness of such action, and said perhaps the board of county commissioners should consider such a request instead of the weed district board.

Senator Bilbray further explained there would be crossing over of county lines in many cases, and the appropriate petition, in the way the amendment reads, goes directly to the county commission of that district to be taken into that weed control district. He feels this would be a more equitable way to handle the matter. Senator Bilbray read the amendment.

Mr. Thomas Hickey said the the lands in question could cross over into two different counties. He asked what would then be the appropriate filing. Senator Bilbray replied he would think it would have to be in both counties. Mr. Erickson said perhaps the larger of the two counties would be hearing on the request. Senator Bilbray said the intent of the amendment was to go to the county where the land is situated. Mr. Erickson commented the bill drafter had a difficult time with the amendment due to complications with two counties being involved.

Mr. Hickey asked Senator Bilbray what his intent had been. Senator Bilbray answered his intent was to go to the county where the property lies; if the weed control district is 90% or 100% in one county, and there is land concerned in another county, there would be appeal to the county commission of the second county (which should have jurisdiction over the land within its county) and ask the land be included in the weed district.

Mr. Hickey asked Senator Jacobsen how such a problem is handled in agricultural districts in regard to water. Senator Jacobsen said that any problem would be referred to the state water engineer, the county would have nothing to do with it.

Mr. Hickey said perhaps it would be necessary to go to the Department of Agriculture for Appeal. Senator Bilbray said it would be necessary to have an impartial appeal agency.

Mr. Phil Martinelli, Department of Agriculture, said his department would be willing to act in arbitration, but he feels the matter should go through the county commissioners of the county being brought in.

Chairman Glaser and other committee members agreed. Mr. Hickey said it could be limited to just the land within the county, rather than crossing county lines.

There was discussion regarding this concept. If portions of a person's land were in more than one county, petition to include that land in a weed control district would be addressed to county commissioners within each of those counties.

Mr. Will Crockett indicated he could rework the language to clarify it. Chairman Glaser said the committee would like the petition to go to the board of county commissioners where the affected land is located. Wherever the land is located, the board of county commissioners having jurisdiction would be approached.

Mr. Martinelli said the weed districts wanted to bring in contiguous lands by one owner, and noted such language is not in the bill. Chairman Glaser said there was concern about bringing in a landowner without his permission, and assessing him for cost of weed control. Mr. Martinelli said the county wishing to do the controlling should pay for it.

Senator Jacobsen felt there should be discussion with a representative of one or more weed districts. He feels as does Senator Bilbray that assessment should not be imposed without being sanctioned.

Mr. Erickson noted another flaw in the bill, on page one, in relation to the creation of a weed control district. The way the language reads, one county could basically control parts of other counties in creating districts, expansion of districts and so on. Senator Bilbray noted the way the amended language reads, it is now possible to go the county commission for expansion to include just one section of land, but this is not entirely desireable. Chairman Glaser expressed concern with certain deletions. Senator Bilbray felt the entire bill had flaws in it and he would like to hear more testimony on it, and ascertain how serious the problem is. He is mainly concerned with finding a way of bringing landowners into a weed district which is equitable.

There was discussion on further amendments and/or language which would make the bill more acceptable. The Chair had questions as to where sections would go in the bill, and Mr. Crockett advised new sections of a bill always come first. Mr. Erickson suggested Mr. Crockett could perhaps bring back another set of amendments. Chairman Glaser agreed, saying to leave in the old language in section 1, and making other recommendations as to the intent of the committee, noting the real problem is on page 2, subparagraph 3. He instructed Mr.Crockett to rewrite it along the lines already taken, but making it clear if land is across a county line, a landowner cannot be forced into a weed district unless the board of county commissioners of the other county in which his land resides agrees to the inclusion in the weed district.

Senate Committee on Natural Resources
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After further discussion, The Chair instructed Mr. Crockett to rework the amendment to reflect the intentions of the committee and to return with the new language at the next meeting of the committee.

Mr. Martinelli raised a question as to where the funds would come from for weed control in the adjacent county; would it come from the county having the original district. Chairman Glaser advised the acreage would pay for it. Senator Bilbray said there should be a provision for paying the assessment into the county, which would then reimburse the weed district. The assessment would be paid to the county making it, i. e., wherein the land lies.

There being no further disussion on the bill or amendments to it, the hearing was concluded.

The Chair called for any further business. Senator Jacobsen was appointed Tour Leader for the trip to Watasheamu Dam and the raft trip, and is to work with Mr. Erickson on this matter. The trip is tentatively scheduled for May 20, 1981.

There being no further business, the meeting was adjourned at 5:10 P. M.

Respectfully submitted by:

Carolyn L. Freeland

Carolyn L. Freeland, Secretary

APPROVED:

Norman Glaser

Senator Norman Glaser, Chairman

DATE: May 26, 1981

FIRST REVISION

SENATE AGENDA

COMMITTEE MEETINGS

EXHIBIT A

Committee on Natural Resources, Room 323.

Day Monday, Date May 18 1981, Time 1:30 P. M.

A. B. No. 383--Requires Federal Government to provide certain information and obtain certain permits relating to "MX" missile project.

A. B. No. 632--Makes Eureka County separate agricultural district.

A. B. No. 603--Authorizes state quarantine officer to adopt regulations requiring processing of food waste before it is fed to animals.

A. B. No. 82--Makes administrative changes to law relating to control of pests.

A. B. No. 428--Makes various changes to law relating to administration of underground water by state engineer.

A. B. No. 279--Revises statutes governing weed control districts.

ATTENDANCE ROSTER FORM

COMMITTEE MEETINGS

SENATE COMMITTEE ON Natural Resources

EXHIBIT B

DATE: May 18, 1981

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
[illegible]	Individual. Truckee Tahoe Valley	
Bill Newman	State Water Engineer	
Pete Morros	State Water Engineer office	
Roland Westergard	Director Dept of Conservation & Water Resources	
[illegible]	Nevada Dept. Wildlife	
[illegible]	Nevada Cattlemen's Assn	
[illegible]	Nev. Dept Prisons	
Will Corbett	Legis. counsel Bureau	

OTA REPORTS ON MX

EXHIBIT C

SUMMARY OF A CONGRESSIONAL BRIEFING
BY THE OFFICE OF TECHNOLOGY ASSESSMENT (OTA)
ON ALTERNATIVE BASING METHODS FOR THE MX

MARCH 10, 1981

BEFORE THE HOUSE SUBCOMMITTEE ON PUBLIC LANDS

PREPARED BY CONGRESSMAN JIM SANTINI

By the spring of 1980, I and several other congressmen were sufficiently concerned about the MX racetrack proposal that we requested Congress's independent science and technology experts in the Office of Technology Assessment (OTA) to conduct a review of the racetrack proposal and several other alternatives for basing the MX missile. In May of 1980, OTA agreed to perform this review. Systems studied included MX land mobile in Nevada and Utah; vertical shelters; split-basing; fixed silo basing; small submarine basing; surface ship basing; and an air mobile system. On Tuesday, March 10, 1981, the House Subcommittee on Public Lands received an interim briefing on OTA's findings to date. A final OTA report on alternative MX basing is expected in May of this year. The major points of the OTA interim briefing are summarized below.

MILITARY

1. The major technical risk for deploying MX is associated with preservation of location uncertainty in the currently proposed MX land-based scheme. Development of a fool-proof method of "hiding" one missile in one of 23 shelters is a major engineering task, and according to OTA represents "a new technology." No MX basing mode is without technical problems, but MX land based

has the greatest technical risk.

2. Of all MX deployment systems reviewed, small submarine basing has the best likelihood of surviving a major Soviet attack.

3. In weapons effectiveness, any land-based system still has a slight edge, but the difference between land-based systems and submarines is rapidly diminishing.

IMPACTS

1. MX as currently proposed for Nevada and Utah will have "severe" physical and socioeconomic impacts. These impacts are the most adverse under MX as currently planned compared to other alternative basing plans. Split-basing would lessen these impacts.

2. Without SALT II, MX could have a major expansion. By the time the first 4,600 shelters are built, that number probably won't be adequate. By 1995, without SALT II, MX could expand to 12,500 shelters and by 2000 it could exceed 15,000 shelters. Incidentally, the General Accounting Office reports that even with SALT II, the Supreme Allied Command estimates that 4,600 may not be adequate to assure survivability of the MX system.

3. OTA also points out that because survivability of the entire MX system as planned requires secrecy of missile location, this factor could mean an expanded security area or other restrictions on public access to land. OTA states that until MX shelters are actually field-tested for detection, the Air Force cannot know what security and land requirements are necessary to maintain preservation of location uncertainty.

4. MX will definitely have an inflationary impact in the deployment area.

5. In terms of MX created jobs, unemployed people are the least likely to benefit. It is more likely that there will be a shift in jobs from existing employment and that in migration will fill MX jobs.

6. Mining operations will likely be adversely affected because of economic factors and possible land restrictions.

7. There will be severe problems for state and local governments in the provision of social services area. The financing for these services and the competition for employment is likely to seriously impact local governments.

8. MX as currently planned in a mobile land-based system will seriously constrain western energy development with its demand for materials and experienced professionals.

9. MX will cause loss of established rangelands, plants and wildlife.

10. MX will cause possible pollution of groundwater reserves in the Great Basin.

INSTITUTIONAL CONSTRAINTS

The Navy is not interested in a sea-based MX because it could interfere with other submarine programs. The Air Force opposes putting Air Force missiles on Navy submarines.

SCHEDULE

OTA is highly skeptical about any survivable MX basing in any mode within the current decade. Submarine basing does achieve some survivability from the moment the first submarine is deployed. MX land-mobile offers very little defense usefulness until the entire fleet of 4,600 shelters and 200 missiles or more is deployed.

GAO REPORTS ON MX

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SUMMARY OF A CONGRESSIONAL BRIEFING TO THE HOUSE PUBLIC LANDS SUBCOMMITTEE

MARCH 12, 1981

PREPARED BY CONGRESSMAN JIM SANTINI

When the Air Force issued the Draft Environmental Impact Statement (DEIS) on the MX missile basing plan in December 1980, I asked the General Accounting Office (GAO) to analyze the document and report to the Subcommittee on Public Lands and National Parks. A briefing was presented to the Subcommittee on March 12. In addition, GAO issued a report on February 17, outlining in detail numerous weaknesses in the Air Force's proposal to base the MX missile in a mobile land-based system. Highlights of both the Congressional briefing and the earlier report are summarized below.

PROPOSED PLAN

Perhaps the most glaring deficiency in the DEIS is a failure to clarify that the numbers of missiles and shelters in the proposed scheme - 200 and 4600 respectively - are not final by any means. These baseline numbers were established in conformity with the unratified SALT II treaty between the United States and the Soviet Union. Current Strategic Air Command (SAC) projections indicate that within the limits of SALT II the 200 missiles/4600 shelters plan may not be adequate to ensure survivability of the system. GAO emphasized the probability that the MX system would be expanded well beyond the current baseline and/or a ballistic missile defense would be added to the system. None of these probable actions affecting the size of the deployment area in Nevada and Utah was even mentioned in the DEIS and GAO indicated they should have been. As it is, the proposed MX basing will directly

impact about 12,000 square miles and will be spread across a total area of 43,000 square miles, about the size of Pennsylvania. Of this amount, 35,000 square miles are in Nevada.

RESOURCES

GAO expresses concern about continued and timely availability of essential construction materials at currently estimated costs. Difficulties could arise because of competing defense and commercial projects, reliance on foreign suppliers for many critical aerospace materials and minerals, and the inability of the Air Force to fund procurement of supplies while MX is still in the development phase. GAO predicts general competition for various critical resources - titanium, cobalt, chromium metals, manufactured parts, and skilled manpower. Furthermore, the availability of large amounts of electricity, water, and cement has not been demonstrated.

MANPOWER

According to GAO, manpower requirements are highly uncertain in the DEIS. A firm construction plan for MX has not yet been developed, and until it is, the reliability of manpower needs is very questionable, as is the assessment of impacts related to population influx. For example, in the peak year of MX construction, the Air Force figured that only 17,000 workers would be required, whereas the Corps of Engineers estimated a need for nearly 24,000 that same year. The construction plan proposed by the Army Corps of Engineers for MX is based on entirely different assumptions from those in the DEIS, and thus the impacts of labor camps and construction crews on local communities could be quite different from and more severe than those assumed by the Air Force.

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SECURITY

Preserving secrecy of missile location poses difficulties in the security system which are not yet adequately addressed. Under the planned security, some measures, possibly including new laws, may be required to restrict public access for activities, but the Air Force has made no final decisions on options. GAO recommends resolution of this issue before Congress considers legislation for land withdrawal.

COSTS

The latest estimate by Department of Defense for the cost of development, acquisition, and maintenance of MX until the year 2000 is $70 billion exclusive of the costs for warheads, economic assistance and any future design changes. To arrive at the $70 billion figure, DOD used, in my view, unrealistically low inflation rates such as 8 and 6 percent. The GAO report notes that costs for MX could increase substantially. The Air Force itself estimates that meeting a probable Soviet threat in the absence of a SALT II agreement would increase the total by $13 to $31 billion without considering inflation. I predict MX as currently planned will eventually cost between 100 and 200 billion dollars.

CONCLUSION

The latest GAO reports confirm my own opinion that the DEIS for MX has grave shortcomings and is totally inadequate as a basis for approving land withdrawal. The Air Force must consider all of the public comment on this document in the Final EIS but has allowed only 45 days to do so. I am exceedingly skeptical that the substantial concerns expressed by GAO, the public lands subcommittee, and by the people of Nevada and Utah can be adequately addressed in the 45 days after the comment period on MX closes.

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March 5, 1981

EXHIBIT D

Assemblyman Paul V. Prengaman
Assembly Chambers
Legislative Building
401 South Carson Street
Carson City, Nevada 89710

Dear Assemblyman Prengaman:

We have drafted at your request the attached bill (BDR S-1043). In the opinion of this office, its provisions, as requested, contain several constitutional infirmities. The basic constitutional principle involved is that in the absence of a statute of Congress authorizing state regulation, the instrumentalities of the Federal Government are immune from state regulation if the regulation might interfere with the functions they are designed to perform or is inconsistent with the purpose of the federal statute involved. McCulloch v. Maryland 4 Wheat 316, 4 L.Ed. 579 (1819); Hancock v. Train 426 U.S. 167 (1976); Ventura County v. Gulf Oil Corp. 601 F.2d 1080 (1979). This principle also extends the same immunities to federal contractors. Miller v. Arkansas 351 U.S. 948 mem. (1956). This principle devolves from the existence of the Supremacy Clause and the Property power in the United States Constitution which reads in relevant part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land; (clause 2 of Article VI)
>
> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; (clause 2, section 3 of Article IV)

1. In light of the above, the provisions of BDR S-1043, as requested, which require that certain information be provided

to state agencies on a timely basis are constitutional. These provisions are within the general purposes of 42 U.S.C. § 4332 and 43 U.S.C. § 1701 which govern land withdrawals and federal land management and provide an increased role for public involvement in these determinations and impose duties on federal agencies to provide information and assess environmental effects in consultation with public groups. These provisions of BDR S-1043 are consistent with these statutes and the federal purpose. Merrill Lynch, Pierce, Fenner and Smith v. Ware 414 U.S. 117 (1973). These provisions have been drafted as requested and constitute sections 6 and 7 of the attached draft.

2. The provisions which require federal agencies to apply for any licenses, permits or approval pursuant to state law for the effects on waters or the use or effects on state or private land are in our opinion unconstitutional. These provisions give the state a veto power over a use of federal land which has adverse consequences on uses of state or private land. At present, no federal statute expresses the policy that federal agencies involved in the "MX" project must obtain state permission for such uses. No congressional action makes this requirement clear and unambiguous and such requirements have consistently been held invalid. Nancock v. Train supra at 179, Ventura County v. Gulf Oil Corp. 601 F.2d 1080 (1979) at 1084, and Miller v. Arkansas supra.

The second concern of these provisions is the process by which federal agencies would obtain dominion over state or private lands. The Federal Government may take private property for a public use as long as just compensation is provided. U.S. v. Pewee Coal Co. 341 U.S. 114 (1951) This power extends to interferences with the use of property. Jacobs v. U.S. 290 U.S. 13, (1933). A taking of property does entitle the possessor to compensation, but any conditioning of the exercise of the power of eminent domain on compliance with state law is impermissible. These provisions have been drafted as requested and constitute subsection 1 of section 8 of the attached draft.

3. The provisions which require federal agencies to apply for permits to appropriate water pursuant to state law violate the Supremacy Clause to the extent discussed below.

Winters v. U.S. 207 U.S. 564 (1908) established that when the Federal Government withdraws its land from the public domain and reserves it for a specific purpose, the government, by implication, reserves the rights to then unappropriated water sufficient only to accomplish this purpose. When Congress authorizes land withdrawal for purposes of "MX" construction and operation, an implied reservation of surface and ground water may occur. Cappaert v. U.S. 426 U.S. 128 (1976). But only that amount of water necessary to fullfill the purpose of the land withdrawal may be reserved. U.S. v. New Mexico 438 U.S. 696 (1978) The state may require the federal agency to apply for a permit to appropriate all other water as long as it does not conflict with an explicit congressional directive to the contrary. California v. United States 438 U.S. 635 (1978). If Congress were to provide for the condemnation of water rights in legislation which withdraws land for "MX" missile development, any condemnation may only be able to proceed according to state water law.. California v. U.S. supra at 662 and 669. Notably, Congress has never so provided, rather it historically has shown great deference to the water law of the western states. These provisions are considered unconstitutional only to the extent that they would apply to any reserved water rights, and, as drafted, do not apply to any reserved water rights and constitute subsection 2 of section 8. As drafted, in our opinion, they are constitutional.

Very truly yours,

FRANK W. DAYKIN
Legislative Counsel

By George V. Postrozny
George Postrozny
Deputy Legislative Counsel

GP:ab
attachment

EXAMPLE E

EXAMPLE 1

COSTS FOR HEARINGS ON PRE-DESIGNATIONS

232 BASINS

70 DESIGNATED BY JULY 1, 1981

162 BASINS NOT DESIGNATED

ASSUME: 10 DESIGNATIONS PER YEAR (10 PRE-DESIGNATION HEARINGS)

ROUND TRIP AVERAGE 500 MILES @ 20¢ PER MILE	$ 100.00
TRASCRIPT (INCLUDING COSTS)	600.00
SALARY - TWO ENGINEERS (2 DAYS)	320.00
TOTAL	$1,020.00

$1,020.00 @ 10 DESIGNATIONS PER YEAR= $10,200.00 COST TO GENERAL FUND.

EXAMPLE 2

AVERAGE BASIN

70 DESIGNATED BASINS — APPROXIMATELY 35 BOARDS

1 BOARD MEETING

PREPARATION

2 DAYS INVESTIGATION (1 ENG.)	$ 128.00
TRAVEL - 500 MILES @ 20¢	100.00
SECRETARY - NOTICES, MINUTES (1 DAY)	40.00
TOTAL	$ 268.00

BOARD

PER DIEM; 7 MEMBERS @ $18.00	$ 126.00
TRAVEL 20¢ @ 50 MILES (7 MEMBERS)	70.00
TOTAL	$ 196.00

STAFF

1 ENGINEER SALARY (2 DAYS)	$ 160.00
1 SECRETARY (2 DAYS)	80.00
TRAVEL 500 MILES @ 20¢	100.00
TOTAL	$ 340.00

TOTAL AVERAGE COST FOR ONE MEETING . . . . . .$ 804.00

THIS COST WILL BE TAXED TO THE WATER RIGHT OWNERS

EXAMPLE 3

PAHRUMP BASIN

MEMBERS: ONE FROM TONOPAH
SIX FROM PAHRUMP

BOARD

TRAVEL:	1 MEMBER @ 20¢ PER MILE FOR 268 MILES	$ 53.60
	6 MEMBERS @ 20¢ PER MILE FOR 10 MILES	12.00
PER DIEM:	1 MEMBER @ $18.00	18.00
	6 MEMBERS @ $4.50	27.00

STAFF

TRAVEL:	$112.00 AIR FARE 1 ENG. FROM CARSON CITY AND 120 MILES @ 20¢	$ 136.00
	SECRETARY TRAVEL	112.00
SALARY:	ENGINEER	80.00
	SECRETARY	40.00

PREPARATION

ENGINEER FOR LAS VEGAS OFFICE (1 DAY)	64.00
SECRETARY	40.00
TOTAL COST FOR ONE MTG.	$ 582.60

FROM MAY 1980 - MAY 1981 APPROXIMATELY 17 APPLICATIONS WERE FILED IN PAHRUMP.

EXAMPLE:

$582.00 X 6 MEETINGS PER YEAR = $ 3,492.00
582.00 X 10 MEETINGS PER YEAR = 5,820.00

IN MANY BASINS THROUGHOUT THE STATE THE WATER RIGHT OWNERS RANGE FROM TEN USERS TO SEVERAL HUNDRED.

THESE ADDITIONAL COSTS WILL BE TAXED TO THE WATER RIGHT OWNERS

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	SECRETARY	40.00

PREPARATION

ENGINEER FOR LAS VEGAS OFFICE (1 DAY)	64.00
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EXHIBIT F

A. B. 82

ASSEMBLY BILL NO. 82—COMMITTEE ON AGRICULTURE

JANUARY 29, 1981

Referred to Committee on Agriculture

SUMMARY—Makes administrative changes to law relating to control of pests. (BDR 49-204)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to the control of pests; enlarging the definition of "pest control" to include the submission of bids and reports; removing certain exemptions regarding the application of restricted-use pesticides; providing for the revocation of licenses in certain circumstances; and providing other matters properly relating thereto.

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

SECTION 1. NRS 555.2667 is hereby amended to read as follows:

555.2667 "Pest control" means the business of engaging in, advertising or soliciting for [or performance of the use] *:*

1. The use for hire of pesticides or mechanical devices for the [purpose of eliminating, exterminating, controlling or preventing] *extermination, control or prevention of* infestations of pests.

2. The inspection for hire of households or other structures and the submission of reports of inspection, estimates or bids, written or oral, for the inspection, extermination, control or prevention of wood-destroying pests.

SEC. 2. NRS 555.267 is hereby amended to read as follows:

555.267 "Pesticide" means *:* [, but is not limited to:]

1. Any substance or mixture of substances, including any living organisms or any product derived therefrom or any fungicide, herbicide, insecticide, nematocide or rodenticide, intended to prevent, destroy, control, repel, attract or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus (except virus on or in living man or other animals) which is normally considered to be a pest or which the executive director may declare to be a pest.

2. Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant, and any other substances

intended for such use as may be named by the executive director by regulation after calling a public hearing for [such] *that* purpose.

SEC. 3. NRS 555.277 is hereby amended to read as follows:

555.277 1. The provisions of NRS 555.2605 to 555.460, inclusive, relating to licenses and requirements for their issuance [shall] *, except a certificate or permit to use a restricted-use pesticide, do* not apply to any farmer-owner of ground equipment applying pesticides for himself or his neighbors, if:

(a) He operates farm property and operates and maintains pesticide-application equipment primarily for his own use.

(b) He is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation, and he does not publicly hold himself out as a pesticide applicator.

(c) He operates his pesticide-application equipment only in the vicinity of his own property and for the accommodation of his neighbors for agricultural purposes only.

2. The provisions of NRS 555.2605 to 555.460, inclusive, [shall] *except those provisions relating to a certificate or permit to use a restricted-use pesticide, do* not apply to any person using hand-powered equipment, devices or contrivances to apply pesticides to lawns, or to ornamental shrubs and trees not in excess of 12 feet high, as an incidental part of his business of taking care of household lawns and yards for remuneration, if [such] *that* person does not publicly hold himself out as being in the business of applying pesticides.

SEC. 4. NRS 555.280 is hereby amended to read as follows:

555.280 No person [shall] *may* engage in [custom application of pesticides] *pest control* or serve as an agent, operator or pilot [or engage in making custom inspections of households or other structures for wood destroying pests or similar organisms] *for that purpose* within this state at any time without a license issued by the executive director.

SEC. 5. NRS 555.310 is hereby amended to read as follows:

555.310 1. The executive director shall collect from each person applying for the examination or reexamination a testing fee of $5 for each field of pest control in which the applicant wishes to be examined, subject, however, to a maximum charge of $25 and a minimum charge of $10 for any one application.

2. Upon the successful completion of the testing, the executive director shall collect from each person applying for a license for [the custom application of pesticides] *pest control* the sum of $25 before the license is issued. Any company or person employing operators, pilots or agents shall pay to the executive director $10 for each [such] operator, pilot or agent licensed.

SEC. 6. NRS 555.320 is hereby amended to read as follows:

555.320 1. If the executive director finds the applicant qualified, and upon the applicant's appointing the executive director agent for service of process and finding that the applicant has satisfied the requirements of NRS 555.330, the executive director shall issue a license to perform [custom application of pesticides] *pest control* within this state.

2. The license period is the calendar year. All licenses [shall] expire on December 31 of each year. The license may be renewed annually

intended for such use as may be named by the executive director by regulation after calling a public hearing for [such] *that* purpose.

SEC. 3. NRS 555.277 is hereby amended to read as follows:

555.277 1. The provisions of NRS 555.2605 to 555.460, inclusive, relating to licenses and requirements for their issuance [shall] *, except a certificate or permit to use a restricted-use pesticide, do* not apply to any farmer-owner of ground equipment applying pesticides for himself or his neighbors, if:

(a) He operates farm property and operates and maintains pesticide-application equipment primarily for his own use.

(b) He is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation, and he does not publicly hold himself out as a pesticide applicator.

(c) He operates his pesticide-application equipment only in the vicinity of his own property and for the accommodation of his neighbors for agricultural purposes only.

2. The provisions of NRS 555.2605 to 555.460, inclusive, [shall] *except those provisions relating to a certificate or permit to use a restricted-use pesticide, do* not apply to any person using hand-powered equipment, devices or contrivances to apply pesticides to lawns, or to ornamental shrubs and trees not in excess of 12 feet high, as an incidental part of his business of taking care of household lawns and yards for remuneration, if [such] *that* person does not publicly hold himself out as being in the business of applying pesticides.

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SEC. 5. NRS 555.310 is hereby amended to read as follows:

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2. Upon the successful completion of the testing, the executive director shall collect from each person applying for a license for [the custom application of pesticides] *pest control* the sum of $25 before the license is issued. Any company or person employing operators, pilots or agents shall pay to the executive director $10 for each [such] operator, pilot or agent licensed.

SEC. 6. NRS 555.320 is hereby amended to read as follows:

555.320 1. If the executive director finds the applicant qualified, and upon the applicant's appointing the executive director agent for service of process and finding that the applicant has satisfied the requirements of NRS 555.330, the executive director shall issue a license to perform [custom application of pesticides] *pest control* within this state.

2. The license period is the calendar year. All licenses [shall] expire on December 31 of each year. The license may be renewed annually

upon application to the executive director and payment of the license fee on or before January 16 of each year.

3. A penalty fee of $5 [shall] *must* be charged for failure to pay the renewal fee when due unless the application for renewal is accompanied by a written statement signed by the applicant that he has not made any application of pesticides from the time of expiration of his prior license to the time of application for renewal.

4. The license may restrict the licensee to the use of a certain type of types of equipment or materials if the executive director finds that the applicant is qualified to use only [such] *a certain* type or types.

5. If a license is not issued as applied for, the executive director shall inform the applicant in writing of the reasons therefor.

SEC. 7. NRS 555.330 is hereby amended to read as follows:

555.330 1. The executive director shall require from each applicant for a [custom] pest control license proof of public liability and property damage insurance in an amount not less than $10,000, nor more than $200,000. The executive director may accept a liability insurance policy or surety bond in the proper amount which has a deductible clause in an amount not exceeding $500 for aerial applicators and $250 for all other applicators for the total amount of liability insurance or surety bond required. However, if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, such *a* deductible clause [shall] *may* not be accepted by the executive director unless [such] *the* applicant furnishes a surety bond or liability insurance which satisfies the amount [of the] deductible as to all claims that may arise in his application of pesticides.

2. The executive director may require drift insurance for [operators employing] *the use of* pesticides or other materials declared hazardous or dangerous to man, livestock, wildlife, crops or plantlife.

3. Any person injured by the breach of any such obligation [shall be] *is* entitled to sue in his own name in any court of competent jurisdiction to recover the damages he [may have] sustained by [such] *that* breach, [providing] *if* each claim is made within 6 months after the alleged injury.

4. The executive director on his own motion may, or upon receipt of a verified complaint of an interested person shall, investigate, as he deems necessary, any loss or damage resulting from the application of any pesticide by a licensed [custom] pest control operator. [Verified] *A verified* complaint of loss or damage must be filed within 60 days from the time that the occurrence of [such] *the* loss or damage becomes known; or if a growing crop is alleged to have been damaged, [such] *the* verified complaint [shall] *must* be filed [prior to the time] *before* 50 percent of the crop has been harvested. A report of investigations resulting from a verified complaint [shall] *must* be furnished to the complainant.

SEC. 8. NRS 555.350 is hereby amended to read as follows:

555.350 1. The executive director may suspend, pending inquiry, for not longer than 10 days, and, after opportunity for a hearing, may

revoke, suspend or modify any license issued under NRS 555.2605 to 555.460, inclusive, if he finds that:

(a) The licensee is no longer qualified;

(b) The licensee has engaged in fraudulent business practices in [the custom application of pesticides;] *pest control;*

(c) The licensee had made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(d) The licensee has applied known ineffective or improper materials;

(e) The licensee operated faulty or unsafe equipment;

(f) The licensee has made any [custom] application in a faulty, careless or negligent manner;

(g) The licensee has violated any of the provisions of NRS 555.2605 to 555.460, inclusive, or regulations made thereunder;

(h) The licensee engaged in the business of [the application of a pesticide] *pest control* without having a licensed applicator or operator in direct on-the-job supervision;

(i) The licensee aided or abetted a licensed or an unlicensed person to evade the provisions of NRS 555.2605 to 555.460, inclusive, combined or conspired with such a licensee or an unlicensed person to evade [such] *the* provisions, or allowed one's license to be used by an unlicensed person; [or]

(j) The licensee was intentionally guilty of fraud or deception in the procurement of his license [.] *; or*

(k) The licensee was intentionally guilty of fraud or deception in the issuance of an inspection report on wood-destroying pests or other report required by regulation.

2. A license [shall be] *is* suspended automatically, without action of the executive director, if the proof of public liability and property damage or drift insurance filed pursuant to NRS 555.330, is canceled, and the license [shall remain] *remains* suspended until [such] *the* insurance is reestablished.

SEC. 9. NRS 555.262 is hereby repealed.

EXHIBIT G

A. B. 632

ASSEMBLY BILL NO. 632—COMMITTEE ON AGRICULTURE

MAY 7, 1981

Referred to Committee on Agriculture

SUMMARY—Makes Eureka County separate agricultural district. (BDR 49-1958)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to agricultural districts; making Eureka County a separate district; and providing other matters properly relating thereto.

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

SECTION 1. NRS 547.010 is hereby amended to read as follows:

547.010 The state is divided into [14] *15* agricultural districts as follows:

1. Agricultural district No. 1. Carson City and the counties of Douglas and Storey [shall] constitute agricultural district No. 1.

2. Agricultural district No. 2. The county of Esmeralda [shall constitute] *constitutes* agricultural district No. 2.

3. Agricultural district No. 3. The county of Humboldt [shall constitute] *constitutes* agricultural district No. 3.

4. Agricultural district No. 4. The county of Elko [shall constitute] *constitutes* agricultural district No. 4.

5. Agricultural district No. 5. The county of Mineral [shall constitute] *constitutes* agricultural district No. 5.

6. Agricultural district No. 6. The [counties of Eureka and Nye shall constitute] *county of Nye constitutes* agricultural district No. 6.

7. Agricultural district No. 7. The county of Churchill [shall constitute] *constitutes* agricultural district No. 7.

8. Agricultural district No. 8. The county of Clark [shall constitute] *constitutes* agricultural district No. 8.

9. Agricultural district No. 9. The county of Lyon [shall constitute] *constitutes* agricultural district No. 9.

10. Agricultural district No. 10. The county of Washoe [shall constitute] *constitutes* agricultural district No. 10.

11. Agricultural district No. 11. The county of Pershing [shall constitute] *constitutes* agricultural district No. 11.

12. Agricultural district No. 12. The county of Lincoln [shall constitute] *constitutes* agricultural district No. 12.

13. Agricultural district No. 13. The county of White Pine [shall constitute] *constitutes* agricultural district No. 13.

14. Agricultural district No. 14. The county of Lander [shall constitute] *constitutes* agricultural district No. 14.

15. Agricultural district No. 15. The county of Eureka constitutes agricultural district No. 15.

EXHIBIT H

A. B. 603

ASSEMBLY BILL NO. 603—COMMITTEE ON AGRICULTURE

MAY 4, 1981

Referred to Committee on Agriculture

SUMMARY—Authorizes state quarantine officer to adopt regulations requiring processing of food waste before it is fed to animals. (BDR 50-1857)
FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to animals; authorizing the state quarantine officer to adopt regulations requiring the processing of food waste before it is fed to animals; and providing other matters properly relating thereto.

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

SECTION 1. Chapter 571 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. The state quarantine officer, with the approval of the state board of agriculture, may adopt such regulations requiring the processing of food waste before it is fed to livestock, fish or other animals as are necessary to prevent the introduction or spread of infectious, contagious or parasitic diseases. The regulations may prescribe a procedure by which permits are issued to those persons desiring to process food waste, minimum standards of sanitation are established and periodic inspections of the processing facilities are made. The state quarantine officer may collect a reasonable annual fee for each permit issued to recover costs incurred by the department in the issuance of permits and the inspection of processing facilities.

2. Any regulation adopted pursuant to this section does not apply to a person feeding food waste from his household to livestock, fish or other animals being raised on the premises for his consumption.

3. For the purposes of this section, "food waste" means all waste material derived in whole or in part from the meat of any animal or other animal material, or other refuse associated with any such material, resulting from the handling, preparation and consumption of food.

ADDENDUM TO MINUTES OF
THE SENATE COMMITTEE ON
NATURAL RESOURCES

MAY 18, 1981

ASSEMBLY BILL NO. 383

Submitted May 22, 1981

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

ARTHUR J. PALMER, *Director*
(702) 885-5627

LEGISLATIVE COMMISSION (702) 885-5627
KEITH ASHWORTH, *Senator, Chairman*
Arthur J. Palmer, *Director, Secretary*
INTERIM FINANCE COMMITTEE (702) 885-
DONALD R. MELLO, *Assemblyman, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
William A. Bible, *Assembly Fiscal Analyst*

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
JOHN R. CROSSLEY, *Legislative Auditor* (702) 885-5620
ANDREW P. GROSE, *Research Director* (702) 885-5637

May 22, 1981

Senator Norman D. Glaser
Chairman of the Committee on Natural Resources
Senate Chambers
Carson City, Nevada 89710

Dear Senator Glaser:

You have asked whether any provision of the 1st Reprint of A.B. 383 is unconstitutional. These provisions would require federal agencies to provide certain information relating to the "MX" missile project for the purposes specified in the statement of policy contained in section 1 of the bill. The imposition of requirements on the Federal Government is not per se unconstitutional. For example, the state may require, in the absence of a congressional directive to the contrary, that federal agencies apply for water rights not reserved pursuant to state water law. (See California v. United States, 438 U.S. 696 [1978]). The state may also require federal agencies to comply with state standards for pollution, although it may not require the federal agency to obtain a permit based on compliance with those standards. (See Hancock v. Train, 426 U.S. 167 [1976]). These cases indicate that state regulation is invalid whenever it would interfere with the functions the federal agency is required to perform. In the opinion of this office, the provisions of A.B. 383, 1st Reprint, do not constitute such an interference since its requirements are imposed in light of the responsibilities of federal agencies to provide for public involvement in the missile project and concern the furnishing of information which is anticipated to be readily available to the federal agency.

State regulation of federal agencies is also invalid whenever it is preempted explicitly by Congress or is inconsistent with the purposes of applicable federal statutes. Hancock v. Train, supra; Ventura County v. Gulf Oil Corp., 601 F.2d 1080 1979; Merrill Lynch, Pierce, Fenner and Smith v. Ware, 414 U.S. 117 (1973). To date, the Congress does not appear to have preempted the kind of regulation imposed by A.B. 383, 1st Reprint. Of course, such preemption could occur when land is withdrawn for the "MX" missile project.

To determine whether the requirements of A.B. 383, 1st Reprint, are inconsistent with the purposes of applicable federal statutes requires an attempt to ascertain congressional intent. The National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; the Federal Land Policy and Management Act, 43 U.S.C. § 1701 et seq.; the Engle Act, 43 U.S.C. § 155 et seq.; and the Intergovernmental Coordination Act of 1968, 42 U.S.C. 4231 et seq., relate to land withdrawals and federal land management and are applicable to the "MX" missile project. A review of the provisions of these federal statutes does not reveal a congressional intent inconsistent with the reporting requirements of the proposed bill. Rather they evidence a general intention to provide for increased public involvement in agency determinations, require federal agencies to provide information and assess environmental effects in consultation with public groups and take into account state and local viewpoints in planning federal projects.

The requirements imposed by A.B. 383, 1st Reprint, are designed to set up a useful procedure for the sharing of meaningful information regarding the "MX" missile project. The procedure and information specified appear to be reasonably related to the ability of the state to participate in the public process required for the "MX" missile project. In the opinion of this office, the requirements of the proposed bill are not inconsistent with any existing federal statutes.

For these reasons the provisions of A.B. 383, 1st Reprint, do not appear to us to be unconstitutional.

Very truly yours,

Frank W. Daykin
Legislative Counsel

By George V. Postrozny
George V. Postrozny
Deputy Legislative Counsel

GVP:smc