

Nevada Ad Hoc Water Network
c/o PLAN
1101 Riverside Drive
Reno, NV 89503

July 12, 2004

Honorable Harry Reid
U.S. Senate
Washington, DC 20510

Re: Lincoln County Conservation, Recreation and Development Act of 2004

Dear Senator Reid:

S. 2532 and HR 4593 have now been introduced and we are giving the bills our full attention because of the serious ramifications this legislation has on rural and urban Nevadans and eastern Nevada ecosystems and as models for future legislation and for future generations of Nevadans. Former Governor Mike O'Callaghan editorialized about the proposed exportation project (attached) with a warning, "don't rush to destroy". The Lincoln County Conservation, Recreation, and Development Act of 2004 (bills) appears to circumvent federal policies and national laws related to environmental protection and management of public lands, therefore undermining environmental and economic protections for rural and urban counties and Indian tribes. The bills provide tacit Congressional approval of the first steps in turning eastern Nevada into another Owens Valley with the potential for severe environmental and socio-economic harm.

Beyond our general concerns, we wish to state our very serious questions about these bills, especially on Title III, Utility Corridors:

1. RIGHTS-OF-WAY: Any language about rights-of-way is premature and unnecessary. There are existing administrative procedures to address the need for and locations of utility rights-of-way. The Bureau of Land Management (BLM) is currently writing a Resource Management Plan in which these proposals will be addressed. These federal laws and procedures provide for full and open public participation in these critical decisions on public lands and waters. We urge the delegation to drop all waivers of Federal Land Policy and Management Act (FLPMA) and National Environmental Policy Act (NEPA) requirements for this proposed action.

2. EMERGENCY: There is an unspoken assumption in the bills that because of the drought, Las Vegas has an emergency need for water and waivers of normal administrative requirements. Eastern Nevada is also suffering impacts from this severe drought. We share Former Governor O'Callaghan's concerns about '...destroying the natural environment in neighboring counties to satisfy the added development of an ever-expanding man-made environment of Las Vegas.'

Before the exportation project is expedited by Congressional legislation, there should be an independent study on the entire State's water needs and supply options.

We have heard the arguments that 1.7 million residents in Las Vegas have a greater right to ground water in rural Nevada than the 3,700 residents of Lincoln County. Again we quote from O'Callaghan's 1990 editorial, 'I doubt very much if a majority of today's residents of Las Vegas and Clark County want to siphon away the water needed by others. There's nothing wrong with seeking additional water from surrounding areas. But this should be done judiciously and in cooperation with the residents of those rural areas.' Additionally, we would like to point out to the Nevada delegation that if a simple majority justifies actions which harm a minority, then Nevada has no defense against 49 other states desires to site the nuclear dump in our state.

3. EIS REQUIREMENT: While we appreciate the bill's mandate for an Environmental Impact Statement (EIS) to be completed before the BLM grants utility corridors to the beneficiaries, the bill also mandates the BLM to grant the rights-of-way for the utility corridors. We question whether the EIS will be simply perfunctory since Congress has already mandated the utility corridors. This would signify that the “no action” alternative or any other alternatives will not be seriously studied in the EIS, thus negating the NEPA requirement for a full range of alternatives. We strongly urge a change in the language in section 301 (b)(1) by substituting “may” instead of “...shall” in granting the rights-of-way. This may help clear up the apparent contradictory language in these bills. The decision on granting utility corridors should be based on the results of the hydrologic studies and environmental reviews of whether water is available for export without serious impacts on existing users and the environment.

We also urge the inclusion of language in the bills requiring a rigorous analysis in the EIS of the need for the proposed water exportation project and water pipeline utility corridors. We find no such justification in the bills.

4. SUPPORT FOR NEPA PROCESS: Because of the serious impacts of extensive ground water pumping, a full and comprehensive EIS on the water pipeline corridors may result in a BLM decision not to grant the rights-of-way across eastern Nevada public lands. We are concerned that the Nevada delegation will decide at that time to introduce legislation to over-ride the NEPA process and order BLM to grant the pipeline corridors and rights-of-way as has been done on the Mesquite land disposals [Title I, Section 102 (h)] in which BLM is ordered to sell public lands in 75 days without completing NEPA compliance requirements. Will the Nevada delegation support the NEPA process on the pipeline corridors?

5. REVERSION CLAUSE: In the event that the Nevada State Engineer denies part or all of the applications for ground water pumping and export, a provision should be added to the bills for reversion of the utility corridors within a certain time, perhaps five years.

6. NEVADA STATE WATER LAW: We believe that the bills' proposal to grant water pipeline rights-of-way corridors to the Southern Nevada Water Authority and Lincoln County Water

District and its contractor, Vidler Water Company, through legislation is premature and unwise. These bills pre-assume that the State Engineer will approve the applications and transfers and constitute undue federal pressure on the State Engineer, thereby undermining State jurisdiction over state waters.

7. WATER AS A PRIVATE COMMODITY: We strongly object to the bills' water pipeline utility rights-of-way proposals. Congress should not facilitate and legitimize marketing water as a private commodity through Vidler Water Company's contract with the Lincoln County Water District. We strongly urge all provisions for utility corridors for Vidler Water Company and Lincoln County Water District be dropped from this federal legislation.

8. HYDROLOGIC STUDY: While we appreciate the bill's requirement of a hydrologic study, the bill does not authorize funding for it, limits it to only White Pine County, and restricts the study to existing conditions and does not determine the impacts of ground water pumping on existing users and the eastern Nevada and urban environments. The geographic scope is too limited because the carbonate aquifer underlies all of eastern Nevada and has at least six flow systems, none of which correspond with the White Pine County boundaries. Funding should be authorized for an expanded study. It should include the entire carbonate aquifer, not just the part in White Pine County: this would include White Pine, Nye, Lincoln, and Clark Counties and parts of western Utah and eastern California. It should also be expanded to assess the estimated impacts of ground water pumping and export.

9. PUBLIC INTEREST: We find no public benefits in the bills' provisions for moving an existing utility corridor out of the huge development of private landowner, Harvey Whittemore, at Coyote Springs. The provisions for determining the increased value of this private property will result in under-valued return to the US government. There are no provisions for environmental review of the re-location, especially for potential impacts on threatened Desert Tortoise and on Big Horn Sheep that depend on public lands in the area. These provisions should be dropped from the bill and, instead, the relocation proposal should be examined through the normal and regular administrative processes in which environmental and economic issues can be addressed in an orderly manner with a full and open public process.

This is by no means an exhaustive list nor a detailed list. We believe the bills violate the legislative intent of FLPMA and NEPA, are legally challengeable and set a dangerous precedent for circumventing existing environmental protection and public land management laws. We also think these bills are detrimental to the state and rural counties, especially Lincoln, White Pine and Nye, further depriving them of economic opportunities because of the loss of water for exportation to southern Nevada. Huge amounts of additional water will further drive speculation and exponential growth threatening the quality of life of urban residents.

Water and wildlife do not obey county boundaries. Piecemeal legislation often creates larger and more diverse problems. Therefore, the organizations that have signed this letter object to S 2532 and HR 4593 and urge you to consider the issues and changes we have recommended.

We would also like the opportunity to meet with you and your staff who are working on these bills so that we can discuss the issues and questions we have raised.

We strongly urge the Nevada delegation to ensure that field hearings on the two bills are held in Nevada, so that all Nevadans will have an opportunity to testify on the merits or problems with the proposed legislation.

Sincerely,

Organizations:

Michael Garrity, Alliance for the Wild Rockies
Katherine Rountree, Baker Business and Tourism Council
Daniel R. Patterson, Center for Biological Diversity
Peggy Maze Johnson, Citizen Alert
George Barnes, Death Valley Task Force
Merlin McColm, Elko County Conservation Association
Elyssa Rosen, Great Basin Mine Watch
Veronica Egan, Great Old Broads for Wilderness
Karen Kish, Lahontan Audubon Society
Tina Nappe, Lahontan Wetlands Coalition
Gale Dupree, Nevada Wildlife Federation
Sophie Sheppard, North West Great Basin Association
Bob Fulkerson, Progressive Leadership Alliance of Nevada
Hugh Jackson, Public Citizen
Susan Lynn, Public Resources Associates
Ellen Pillard, Toiyabe Chapter of Sierra Club
Elden Hughes, Desert Committee of the Sierra Club, California
Terry Steadman, Trout Unlimited, Great Basin Chapter
Dennis Ghiglieri, Truckee River Yacht Club
Jon Marvel, Western Watersheds Project, Idaho
Holly Wilson, White Pine Citizens for Proper Representation
Bethanie Walder, Wildlands CPR, Montana

Citizens:

Assemblywoman Sheila Leslie, Reno
Assemblywoman Peggy Pierce
Former Assemblywoman Marcia de Braga
Louis Benezet, Pioche
Lorell Bleak, Panaca
Jim and Ann Brauer, Indian Springs
Paul and Lori Brown, Las Vegas

Jim Deacon, Las Vegas
Lance and Jo Dean, Elko County
Don Duff, Baker
Joy Fiore, Sandy Valley
JoAnne Garrett, Baker
Jan Gilbert, Washoe Valley
Launa Hall, Las Vegas
Farrel Lytle, Lincoln County, Pioche
Manetta Lytle, Lincoln County, Pioche
James Martin, Reno
Alvin McLane, Reno
Kaye and James Medlin, Rachel
Ed Rothfuss, former Superintendent Death Valley National Park, Las Vegas
Don Shanks, Pioche
Keith Stever, Pioche
Rose Strickland, Reno

CC: Nevada Congressional Delegation