

## ***ATTACHMENT 1***

### ***STATUTORY AND REGULATORY FRAMEWORK***

The statutory and regulatory framework governing water resources, water quality, and environmental quality impact White Pine County's management of its water resources. In this section the major State and Federal laws that must be taken into consideration are identified and discussed.

***County Jurisdiction:*** Local governments have jurisdiction over the development of master plans and regional plans as well as limited authority over some aspects of sewer facilities. Nevada state water law and federal law provide the primary guidance for water law and administration of water quality requirements. Several aspects of federal and state law govern environmental issues, which relate to water resources.

#### ***State of Nevada:***

***Nevada Water Law*** - Nevada Water Law governs the administration of the waters of the State of Nevada. The Nevada Department of Conservation and Natural Resources is the branch of State government responsible for management of water resources and the Division of Water Resources, directed by the Nevada State Engineer, is responsible for the allocation of the public waters of the State, administering the law, and resolving disputes. The water law and its implementing regulations bind the State Engineer's actions and decisions:

#### ***Nevada Revised Statutes***

Chapter 532- State Engineer

Chapter 533- Adjudication of Vested Water Rights; Appropriation of Public Water

Chapter 534- Underground Water and Wells

Chapter 534A - Geothermal Resources

Chapter 535- Dams and Other Obstructions

Chapter 536- Ditches, Canals, Flumes, and Other Conduits

Chapter 537- Navigable Waters

Chapter 538- Interstate Waters, Compacts, and Commissions

Chapter 540-Planning and Development of Water Resources

Chapter 349- State Obligations

#### ***Nevada Administrative Code***

NAC 533-Adjudication of Vested Water Rights, Appropriation of Public Water

NAC 534-Regulations for Water Well and Related Drilling

NAC 534A-Geothermal Resources (The Division of Mineral Resources administers geothermal resources and Division of Water Resources is generally not involved in administration of geothermal resources unless there is a consumptive use.)

NAC 535-Dams and Other Obstructions

#### ***Statutory Guidance***

All waters in the state of Nevada belong to the public and are managed by the State of Nevada in accordance with the provisions of Nevada Water Law (NRS 533 and 534). The Nevada State Engineer determines the limit and extent of appropriative water rights including the quantity of appropriative right and any conditions that must be met for the water to be placed to a beneficial use. Determination of prestatutory rights is subject to procedures provided in NRS 533 and 534. The state Engineer is prohibited by law from granting an application to appropriate the public waters where:

- 1) There is no unappropriated water at the proposed source;
- 2) The proposed use or change conflicts with existing rights; or
- 3) The proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS 533.024; or
- 4) The proposed use or change threatens to prove detrimental to the public interest.

According to NRS 533.370(1) c, “the State Engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use if the applicant provides proof satisfactory to the State Engineer of: (1) His intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence; and (2) His financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.”

Through Senate Bill 108, the 1999 Nevada Legislature amended Nevada Water Law to add additional criteria governing interbasin transfers of water by adopting the following revisions to the provisions of NRS 533.370: In determining whether an application for an interbasin transfer of ground water must be rejected pursuant to the section, the state engineer shall consider:

- (a) Whether the applicant has justified the need to import the water from another basin;
- b) If the state engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;
- (c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;
- (d) Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and
- (e) Any other factor the state engineer determines to be relevant.

The State Environmental Commission is responsible for developing water quality standards for specific water bodies within the State, and for developing a handbook of best management practices to control pollution from diffuse sources.

Additionally, the State of Nevada has adopted regulations that define State programs to implement the provisions of the Clean Water Act and Nevada Water Pollution Control laws. Nevada’s Water Pollution Control laws, contained in Chapter 445A of the Nevada Revised Statutes establish several non-federal water pollution control programs. These programs, implemented by NDEP, include programs for issuing Water Pollution Control Permits with zero-discharge performance standards, and State Ground Water Permits for infiltration basins, land application of treated effluents, large septic systems, and industrial facilities. The State Environmental Commission is responsible for developing water quality standards for specific water bodies within the State, and for developing a handbook of best management practices to control pollution from diffuse sources.

The Division of Water Planning, directed by the Nevada State Water Planner was created by legislation in 1977 and was responsible for water management and planning, conservation plans, planning assistance to local governments, and development of the 1999 State Water Plan. The State Water Planner also administered community assistance and flood mitigation assistance under the National Flood Insurance Program, and the Small Community Grant Program.

NRS 278 lists the components required and recommended for County Comprehensive Master Plans. The components include conservation and management of natural resources including water resources.

Three bills were passed during the 2005 Session of the Nevada State Legislature that impact the state's administration of water resources:

**SB 35:** Effective July 1, 2005, it redefined the transfer tax levied on water obtained through inter-county and interstate transfers as a fee rather than a tax and effective January 1, 2007, it increased the fee from \$6 per acre foot to \$10 per acre foot of water.

**SB 62:** Effective July 1, 2005, the bill contained several water resource measures including changes in the process for approving or rejecting applications for changes in point of diversion, use, and place of use for existing water rights; adding a procedure to transfer ownership and clarifying how conflicts in ownership must be resolved; adding a Water Rights Technical Support fund to provide grants to local governments to obtain data and carry out projects to protect and enhance existing water rights; establishing the Section of Water Planning within the Water Resources Division in place of the separate Water Planning Division; adding specific criteria to be evaluated by the Section on Water Planning; requiring water conservation plans (NRS 540.41) to be updated every five years by water purveyor; and increasing rural representation on the Advisory Board on Water Resources and Planning to a minimum of four members and reduced the of representatives from the County with the largest population.

**AB 80:** Effective July 1, 2005, the bill provides for a procedure by which the State Engineer may approve a waiver from the requirement of plugging an abandoned well.

***Federal Law:***

Federal law and policy establish standards for clean water, control growth in flood plains, and protect the environment.

**Safe Drinking Water Act:** The Safe Drinking Water Act and its amendments require certain protection for sources of drinking water and the Clean Water Act establishes standards for surface and ground water protection. The Safe Drinking Water Act, an amendment to the Public Health Service Act, is the primary federal law enacted to protect underground sources of drinking water from pollution, and to ensure the quality of drinking water delivered at the tap. The Act established a program for setting primary and secondary standards for drinking water, a permit program for injection wells, and mandated a program of wellhead protection practices. Authority to implement the various programs of the Safe Drinking Water Act has been granted by the EPA to the Nevada Bureau of Health Protection Services (BHPS) and the NDEP (Nevada Division of Environmental Protection). The State Board of Health has promulgated standards for over 100 contaminants in drinking water, consistent with federal standards. BHPS implements permitting programs for public suppliers of tap and bottled water, which include routine sampling and monitoring of public water supplies to demonstrate compliance with drinking water standards. BHPS also implements a permit program for domestic septic systems to ensure underground water supplies are adequately protected. Industrial wastewater treatment systems, and waste and enhanced mineral and hydrocarbon recovery injection wells are permitted through the NDEP. The wellhead protection program is implemented by BHPS, in cooperation with local water supply systems. Elements of the wellhead protection program include delineating the wellhead protection area (WPA), identifying potential pollution sources within the WPA, defining constraints on siting of new wells, contingency planning and emergency response, and defining roles of state and local governments and water purveyors. Local governments are encouraged to support and participate in wellhead protection

**Clean Water Act** - The Clean Water Act is the primary federal law enacted to prevent pollution of surface waters. The act was established to “restore the chemical, physical, and biological integrity of the nation’s waters.” It requires that states establish standards for surface water quality, provides federal funding for sewage treatment plants, and sets goals of zero toxic discharges to, and realization of “fishable” and “swimmable,” surface waters. The Clean Water Act also mandates a regulatory system for reporting of hazardous spills to surface waters, and a wetlands preservation program. The (NDEP) has been delegated the authority to implement programs of the Clean Water Act. Enforceable provisions of the Clean Water Act include permitting programs (National Pollution Discharge Elimination System), technology-based effluent standards for point source pollution, and water quality standards. NDEP also implements federally mandated programs for the management of non-point source pollution, and a construction grants program to build or upgrade systems.

**National Environmental Policy Act and Federal Land Policy Management Act:** The National Environmental Policy Act and Federal Land Policy Management Act determine how federal land management agencies can allow the lands they administer to be used. The City and County maintain good working relationships with the local offices of the Bureau of Land Management and U.S. Forest Service, and participate in their planning and NEPA processes.

**The Endangered Species Act:** The Endangered Species Act protects certain species of plants, insects, fish, and birds that are native to White Pine County. The purpose of the Endangered Species Act is to ensure that any action, administrative, or real, does not unduly jeopardize the continued existence of an endangered or threatened species or cause the destruction or adverse modification of a critical habitat. With respect to the water resources of White Pine County, the Endangered Species Act provides protection not only to threatened or endangered species, but also to the water resources that support the habitat for these, and other sensitive species. There are a number of threatened and endangered bird species, and a fish species that has been relocated to a habitat in White Pine County to protect it from extinction, as well sensitive species and species of concern including the Bonneville Cutthroat Trout and the Relict Dace (if not already extinct). The State of Nevada has a number of statutes governing the protection of imperiled species that are administrated by the Department of Wildlife. The State has a listing of sensitive plant and wildlife species that have been designated as state protected species.

**Policy of Compliance** It is the policy of White Pine County to cooperate and comply fully with Nevada Water Law and its implementing regulations as well as federal law governing water resources, water quality, and environmental quality, to encourage business and industry to comply fully with applicable regulations; and to foster a spirit of cooperation between the regulatory agencies and all of the stakeholders in White Pine County. White Pine County believes that the sound long-term planning and management of the development and use County’s water resources is in the best interest of both the County and the State.

2006 WHITE PINE COUNTY WATER RESOURCES PLAN

ATTACHMENT 1: RESOURCES

1. Lumos and Associates, White Pine County Water Rights and Water Regulations Workshop, May 11 and 12, 2006
2. Nevada Administrative Code, (<http://www.nv.leg.state.us>)
3. Nevada State Legislature, 2005 Session, bills, (<http://www.nv.leg.state.us>)
4. Nevada Revised Statutes, Chapters 533, 534, 540A, 541, (<http://www.nv.leg.stat.us>)
5. White Pine County, 1999 White Pine County Water Resources Plan, July 1999.