

BDR 48-183 (Northern Nevada Water Authority) Analysis

by
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GENERAL COMMENTS:

1. The BDR is a) **unnecessary**, b) **likely to be costly** to Washoe County, Truckee Meadows Water Authority (TMWA), Sun Valley General Improvement District (SVGID) and South Truckee Meadows General Improvement District (STMGID) water customers, and c) **contrary to the action taken by Washoe County voters in the November 7, 2006 general election** when they rejected a ballot question that would increase the Washoe County sales tax to help pay for the impacts of growth. The revenue from the sales tax increase was to be used for additional law enforcement personnel, additional fire fighters, additional prosecutors, additional public defenders, additional jailers and law enforcement facilities. If Washoe County voters are opposed to paying for the impacts of growth they will not likely support the expenditure of public funds to support a new water organization that is to acquire, develop and manage new water resources – water resources that in turn will produce growth impacts.
2. The SCR 26 Subcommittee is required by Senate Concurrent Resolution 26 “to study the feasibility and advisability of consolidating the water-related services in Washoe County,” and the Subcommittee’s study “must include, without limitation: 1. An analysis of relevant financial considerations, ownership, and operation of facilities, and potential management and staffing structures.” The **Subcommittee did not consider the financial impacts of its recommendations** – recommendations voted on and recommendations not voted on but in the BDR – even though the BDR gives the new regional water organization significant powers (including acquisition, development and conservation of water resources and determination of rates) that will require funds for administration and implementation.
3. **The BDR is special legislation and it may be unconstitutional.** It is special legislation because it only applies to Washoe County. The justification for the special legislation is questionable because it could easily be applied to other counties. The Nevada Constitution states special legislation for a specific area is not allowed if it can be applied to other areas in Nevada. For example, the legislative act that created Bull Frog County out of a portion of central Nye County was special legislation, and a district court ruled the legislative act to be unconstitutional. Also, the legislature passed special legislation to give only the Pahrump Town Board planning authorities held by a county. This law was declared unconstitutional by the Nevada Supreme Court since those authorities were not given to all Nevada town boards.

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BDR COMMENTS:

1. **Sec.5.1(b)** states the “unique hydrological conditions of the area described in section 22 of this Act and the complex legal framework governing the use of water within that area are special circumstances and conditions to which a general law cannot be made applicable and necessitate this special Act which provides for a special structure for the coordinated planning and management of water resources in that area.” The BDR states the reason the area is hydrologically unique is the presence of Lake Tahoe, the Truckee River and a water system governed in large part by federal law.

Comments:

- a. **There are other Nevada counties with a lake, a river and a water system governed in large part by federal law. An example is Clark County with Lake Mead, the Colorado River and the federal Law of the River governing the waters of the Colorado River – the U.S. Secretary of Interior is the water master for the Colorado River.**
 - b. **In addition, Douglas County, Carson City, Lyon County, Churchill County and Mineral County have a lake, a river and a water system governed in large part by federal law. All of these counties, like Washoe County, are dealing with bi-state water issues, federal endangered fish species, tribal issues, water quality issues, multiple jurisdictions and federal court decrees. Like Washoe County, they are addressing the issues with competence and effectiveness, and they do not need a special structure or organization created by the Nevada Legislature to assist them with their responsibilities.**
2. **Sec.5.2(b)** states “The acquisition, development, management and conservation of regional water resources by the Authority is for a public and governmental purpose and a **matter of public necessity** [emphasis added].”

Comments:

- a. **The creation of the Northern Nevada Water Authority is not a public necessity. At the November 30, 2005 SCR 26 Subcommittee meeting a representative of a Washoe County developer organization told the Subcommittee the primary problem is the hyperinflation taking place in the Truckee Meadows with the value of water rights. He said the Truckee Meadows area was experiencing a short term crisis in the value of water rights. The cost of Truckee River water rights peaked at approximately \$60,000 per acre-foot in 2005, and at the end of 2006 a public water purveyor in Washoe County purchased Truckee River water rights for \$10,406 per acre-foot. It is apparent the market place (free enterprise system) is addressing the issue of the cost of water rights.**
- b. **It is doubtful Washoe County residents feel it is a public necessity for a government organization (i.e., the proposed Northern Nevada Water**

Authority) to be involved with the acquisition of water resources. In fact, Washoe County was involved with the acquisition and development of a new water resource in the early 1990's by way of the controversial Honey Lake Water Importation Project (Project).

Washoe County residents and the Cities of Reno and Sparks told the Washoe County Board of Commissioners to not implement the Project; that is, stop spending public funds on the Project. Washoe County terminated its involvement with the Project in 1995, and the private sector was told to implement the Project; that is, take all Project risks.

- c. **Cooperative management of the area's water resources exists in Washoe County, as witnessed by the excellent work of the Washoe County Regional Water Planning Commission, the Truckee River Water Quality Settlement Agreement, the Truckee River Operating Agreement, the Central Truckee Meadows Remediation District Program, conjunctive management of water resources, and the agreements between water purveyors to provide emergency water and water resources.**
 - d. **The Washoe County integrated water resource management program has received high praise from the State of Nevada, EPA Region IX and recently a high-ranking Canadian government water official who visited water agencies throughout the U.S. on a State Department sponsored tour. The Canadian official said Washoe County's integrated water resource management program should be a model for the future.**
 - e. **The bottom line is there is not a public necessity for the Nevada Legislature to create the Authority, an organization that has the appearance of a mega-bureaucracy.**
3. **Sec. 22.** states the Authority's area of responsibility (planning area) does not include the Lake Tahoe Basin, land located in an Indian reservation (e.g., Pyramid Lake Indian Reservation) or Indian colony (e.g., Reno-Sparks Indian Colony) and land in the Gerlach General Improvement District. **Sec.37.(h)** states if the Authority's planning area contains an Indian reservation then the Indian reservation which is the largest in the planning area can appoint a person to the Northern Nevada Water Planning Commission.

Comments:

- a. **If all lands located in an Indian reservation are excluded from the Authority's planning area then there will not be an opportunity for an Indian reservation (Pyramid Lake Indian Reservation) to have a member on the proposed Northern Nevada Water Planning Commission.**
- b. **The Pyramid Lake Paiute Tribe has been an active and important participant in addressing Washoe County water resource, management and planning issues for a number of years.**

- c. **Today, the Tribe has a representative on the highly successful Washoe County Regional Water Planning Commission, an organization that would be eliminated by the BDR.**
4. **Sec. 28.8.** states the Authority is to “Establish a mechanism for scheduling the delivery of water resources held by public purveyors before January 1, 2008, to maximize the yield of regional water supplies and facilitate the cooperative administration of regional water conveyance and treatment facilities for the benefit of the public purveyors.”

Comments:

- a. **This is a duplication of existing water service agreements between the public purveyors. It has been shown that these purveyors have maximized the yield of regional water supplies by way of conjunctive use in the south Truckee Meadows, Lemmon Valley, Spanish Springs Valley and Sun Valley. These areas have experienced significant growth the last 10 years, and this growth would not have happened without the cooperative administration of the region’s water resources and water facilities. If there is room for improvement in maximizing the areas water resources, the water purveyors are more than capable of making those improvements.**
 - b. **The Nevada Legislature does not need to create another government entity that will duplicate existing efforts and add costs to water customer bills.**
5. **Sec. 28.9.** states the Authority is to “Designate water service territories of public purveyors for customers seeking water service on and after January 1, 2008, pursuant to section 31 of this Act.” **Sec. 31** states “The Board shall establish the service territories within the planning area in which the public purveyors and all systems for the supply of water which are controlled or operated by the public purveyors will, on and after January 1, 2008, provide new retail or wholesale water services or provide existing retail or wholesale water services to new customers.” This section goes on to say the public purveyors can continue to provide water service to the customers they have before January 1, 2008. Finally, the section states the Board will determine the boundaries of service areas based on three specific considerations.

Comments:

- a. **This section is a duplication of existing water service area agreements that have worked superbly over the years. For example, TMWA and Washoe County have a water service area agreement that has been in place since 1996. This agreement allows for their service areas to be revised, using the three specific considerations in the BDR. In 11 years the two utilities have agreed to amend their service areas approximately 45 times, involving over 100 parcels, and they have never had a**

- disagreement on the proposed amendments. Why change an agreement and process that has worked so well?
- b. **Determination of water service areas needs to be under the control of purveyors since they build capital facilities in anticipation of customers, and these facilities could be stranded investments for their ratepayers if the Authority (that will have some members not in the utility business) determines the location of service areas.**
 - c. **The water purveyors have shown they are more than capable of determining the location of their service areas, and the Nevada Legislature does not need to create another government entity that will duplicate the existing service area agreements and add costs to water customer bills.**
 - d. **This provision was not discussed by the SCR 26 Subcommittee, but it was voted on at the Subcommittee's last meeting, in work session, when a TMWA consultant said from the audience it should be added to the BDR.**
6. **Sec. 32.2.** states the Authority will not “Fix rates of a public purveyors for retail delivery of water service by the public purveyor, acquire, without the consent of the public purveyor, ownership of any water supplies, facilities or other assets of a public purveyor **which were acquired by the public purveyor before January 1, 2008** [emphasis added], or take any action which will impair any bond obligation of a public purveyor existing before January 1, 2008.”

Comments:

- a. **This section means the Authority will be able to fix the rates of a public purveyor for those retail water service customers acquired after January 1, 2008. That means water purveyors will have two entities determining the retail water service rates of their customers, the purveyor will fix rates for customers in place prior to January 1, 2008 and the Authority, with some members not in the utility business, will fix rates for new customers starting January 1, 2008.**
 - b. **The public purveyors have at least 25 years of determining rates for their retail water customers, and they do not need the proposed Authority to determine their water service rates.**
 - c. **The Nevada Legislature does not need to create another government entity that will duplicate existing efforts and add costs to water customer bills.**
 - d. **This provision was not discussed or voted on by the SCR 26 Subcommittee.**
7. **Sec. 32.3** states the Authority cannot provide wholesale water services to a public purveyor if “Wholesale water services are already provided to the public purveyor by the Truckee Meadows Water Authority or its successor” or TMWA has additional unused capacity to provide wholesale services or the Authority determines it is more economical or efficient for TMWA to provide such services.

Comments:

- a. **This provision means Washoe County and the SVGID can only receive wholesale water from TMWA, even if the Authority's wholesale water is less expensive than TMWA's wholesale water.**
 - b. **Washoe County provides wholesale water service, but there is no mention of it in the BDR.**
 - c. **This provision was not discussed or voted on by the SCR 26 Subcommittee.**
8. **Sec. 36.** states "To fund the planning and administration required by this Act and the implementation of the Comprehensive Plan, the Board may impose a fee at a rate not too exceed 1.5 percent of the amount otherwise billed, to be collected by each public purveyor and supplier of water from customers within the planning area."

Comments:

- a. **Since 1996 there has been a Washoe County Regional Water Planning Commission (RWPC), comprised of a City of Reno representative, a City of Sparks representative, a Washoe County representative, a Pyramid Lake Paiute Tribe representative, a general improvement district representative, a Washoe-Storey Conservation District representative, a TMWA representative, a domestic well owner representative and an environmental community representative; hence, a nine member commission. The RWPC meets at least monthly, and it receives administrative support from Washoe County and legal counsel from the Washoe County District Attorney's Office. The RWPC has accomplished a lot over the years, including producing a Comprehensive Regional Water Management Plan that has been updated, and it is scheduled to be updated again in early 2008.**
- b. **The revenue for the RWPC comes from the same source referenced in Sec. 36. This revenue source generates approximately \$1,200,000 a year, and over the last seven years (FY2000 to FY2006) RWPC expenditures have averaged \$1,126,609.71 per year.**
- c. **The question that begs an answer is how can this revenue source continue to fund regional water planning activities, and at the same time fund the Authority's significant responsibilities, as well as its administration and legal fees?**
- d. **During the work session at the SCR 26 Subcommittee's last meeting (June 20, 2006), the Subcommittee, at the prompting of TMWA consultants in the audience, recommended the Authority have private legal counsel.**
- e. **It can be estimated that private legal counsel for the Authority, not to mention the new Northern Nevada Water Authority, will take a good bite out of the above revenue source. Keep in mind the difference**

between the revenue source and the average RWPC expenditures over the last seven years is a plus \$73,390.29.

- f. **It is clear the Authority will need a lot more than \$73,390.29 to operate and fund its significant responsibilities. Where will the Authority obtain the additional funds?**
 - g. **The fiscal impact of creating the Authority was not discussed by the SCR 26 Subcommittee, even though Senate Concurrent Resolution 26 calls for this de termination.**
9. **Sec. 37.** creates the Northern Nevada Water Planning Commission. The membership of the Commission differs from the existing Washoe County Regional Water Planning Commission (RWPC) in that it will have at least seven of its nine members working for local governments. Today, the RWPC has four of its nine members working for local governments. The Pyramid Lake Paiute Tribe will not be represented, nor will domestic well owners be represented on the new planning organization.

Comments:

- a. **The Northern Nevada Water Planning Commission is a duplication of the RWPC, except it will be controlled by local government employees; hence, the community loses the independence and expertise of the RWPC.**
 - b. **The new Northern Nevada Water Planning Commission and its membership was not discussed or voted on by the SCR 26 Subcommittee.**
10. **Sec. 41. 1.** states the Northern Nevada Water Planning Commission shall develop, and as necessary recommend revisions to, a Comprehensive Plan for the planning area covering the supply of municipal and industrial water, quality of water, sanitary sewerage, treatment of sewerage, drainage of storm waters and control of floods. **The initial Comprehensive Plan must be developed on or before January 1, 2011 [emphasis added].”**

Comments:

- a. **The BDR calls for the existing Regional Water Management Plan to be repealed January 1, 2008, and to be replaced by a new plan on or before January 1, 2011; hence, the fast-growing Truckee Meadows and its adjacent valleys could be without a regional water management plan for as much as three years – from January 1, 2008 to January 1, 2011.**
- b. **The question that begs an answer is why does the BDR create this hiatus for a regional water resource plan, at a time when the local governments are required, by a judge’s ruling, to have the area’s regional land use plan conform to the water resource constraint policies in the existing Regional Water Management Plan?**
- c. **This provision was never discussed or voted on by the SCR 26 Subcommittee.**

11. **Sec. 42.** identifies the elements that must be in the Comprehensive Plan, and many of these elements are required elements in the existing Washoe County Regional Water Management Plan.

Comment: **The new elements added to the existing Regional Water Management Plan (i.e., Sec. 42.8. and Sec. 42.9.) can easily be addressed by the Washoe County Regional Water Planning Commission.**

12. **Sec. 43.1.** states “The Comprehensive Plan must be **consistent with** [emphasis added] and carry out the provisions of the Comprehensive Regional Plan adopted by the Governing Board for Regional Planning in Washoe County pursuant to NRS 278.0276 and the master plans and any other plans for the use of land which are adopted by governmental entities within the planning area.”

Comments:

- a. **A recent district court judge’s ruling relative to land use planning in Washoe County calls for the Comprehensive Regional Plan (regional land use plan) adopted by the Governing Board for Regional Planning in Washoe County to be consistent with the policies of the Regional Water Management Plan. That means, the regional land use plan should be consistent with the water resource constraints identified in the water plan’s policies.**
 - b. **Aside from the judge’s ruling, it is just good public policy and common sense to have the regional land use plan be in conformance with the regional water resource plan, not the opposite.**
 - c. **The recently amended Comprehensive Regional Plan (regional land use plan) adopted by the Governing Board for Regional Planning in Washoe County will accommodate approximately 1.2 million people at Plan build out. The current Washoe County population is approximately 410,000 people. There appears to be water resources in Washoe County for approximately 600,000 people. The water needed to go from 600,000 people to 1.2 million people is approximately 200,000 acre-feet. The question that begs an answer is where will this water come from and who will pay for it? The additional water is not available in Washoe County, and United States Geological Survey water reports indicate that amount of water is not available in nearby counties.**
 - d. **This provision was never discussed or voted on by the SCR 26 Subcommittee.**
13. **Sec. 43.3.** states “The Comprehensive Plan must be consistent with any plan or recommendation of the State Engineer concerning the development, conservation and use of water resources existing at the time that the Comprehensive Plan is adopted.”

Comments:

- a. **This provision could eliminate Washoe County’s determination of sustainable water resources in its hydrographic basins. For example, the State Engineer has allocated resources by way of water rights (permits and certificates) that are significantly in excess of a hydrographic basin’s sustainable water resources (e.g., Lemmon Valley, Spanish Springs Valley, Warm Springs Valley, Washoe Valley, Truckee Meadows, etc.).**
 - b. **The Nevada Supreme Court ruled in *Serpa v. County of Washoe* (August 24, 1995) that “Nevada law clearly directs county governments to maintain the quality of our natural resources and protect the public health by adopting long-term comprehensive plans for rational development and growth and rejecting any development proposals inconsistent with the relevant regional plan or the public welfare objectives underlying it. County governments are vested with discretion to the extent that a county government can independently define orderly physical growth and development. *We believe that such discretion necessarily includes the ability of a county government to determine water availability for itself* [emphasis added].” Since 1982 Washoe County has down zoned lands in certain hydrographic basins due to limited groundwater resources, even though there were water rights for these basins far in excess of the basin’s sustainable yield. Therefore, Washoe County has over the last 22 years developed land use plans for hydrographic basins in concert with the basin’s sustainable water resources; hence, taking steps to preclude the depletion of a basin’s sustainable water resources.**
 - c. **Sec. 43.3 could side-step local determination of sustainable water resources and require the new Comprehensive Water Plan to use water rights issued by the State Engineer as a basin’s sustainable water resource.**
14. **Sec. 53.** states “The Board **may** [emphasis added] create a district for remediation of the quality of water if the District Health Officer of Washoe County or the Administrator of the Division certifies in writing to the Board that a condition exists in an area of the planning area which is affecting or will affect the quality of water that is available for municipal, industrial or domestic use within the planning area. If such district was created before January 1, 2008, the Board shall assume the administration of that district and administer any money held by Washoe County to pay the costs of developing and carrying out the plan for remediation subject to existing bonds or other obligations issued before January 1, 2008.”

Comments:

- a. **Existing law (NRS 540A.250(1)) states the Washoe County Board of County Commissioners “shall [emphasis added] create a district for**

remediation of the quality of water if the county or district health officer or the administrator of the division certifies in writing to the board that a condition exists in an area of the region which is affecting or will affect the quality of water that is available for municipal, industrial or domestic use within the region.”

- b. In 1995 the Washoe County Board of Commissioners created the Central Truckee Meadows Remediation District (CTMRD) in response to a widespread perchloroethylene (PCE) groundwater contamination problem recognized by the Nevada Division of Environmental Protection and the Washoe County Health Officer.
 - c. Since 1998 Washoe County has funded the CTRMD program through “Remediation Fees” assessed against water using parcels (approximately 99,000 parcels today) served by water purveyors with wells in the impacted area – central Truckee Meadows.
 - d. The highly successful CTMRD program has been critical to the economic viability/future of downtown Reno and Sparks, by preventing this area from being designated a federal Superfund Site.
 - e. The BDR would abolish the CTMRD program on January 1, 2008, and the Authority “may”, instead of “shall”, create a replacement program.
 - f. The question that begs an answer is why abolish a highly successful and praised program – praised by EPA Region IX and the State of Nevada – that has been conducted by Washoe County for eleven years? This program is not only critical to the economic future of Reno and Sparks, but is also critical to the health and welfare of Washoe County residents and visitors.
 - g. The bottom line is Section 53. allows for discretionary utilization of remediation district funds that could delay progress on the CTMRD program, result in increases in remediation fees and possibly result in increased risk to the groundwater resource and/or human health.
 - h. This provision was never discussed by the SCR 26 Subcommittee nor was it voted on.
15. **Sec. 62.** states “The Board may issue bonds for the purpose of acquiring, managing, delivering or improving water supplies, and the bonds must be made payable out of the revenues of the Authority, including those derived from the sale, delivery or operation of such water supplies or the furnishing of services.”

Comments:

- a. This provision needs considerable attention since it is estimated the cost of bringing just 40,000 acre-feet of water to the Truckee Meadows area is \$1 billion (with financing).
- b. The customers of the public water purveyors may find themselves responsible for significant Authority costs and debt, and for Washoe County and SVGID customers, if their governing boards decide to opt-out of projects, they could still be responsible for project administrative, management and operation costs.

- c. **It is likely the Authority will need to go to the Legislature for taxing authority (see Number 8 above) to obtain a guaranteed revenue stream. Otherwise how can the Authority bond without a guaranteed revenue stream?**
- d. **Will the Authority have to use the Washoe County bonding capacity; that is, will all Washoe County residents be responsible for the Authority's bonded indebtedness?**

16. **Sec. 69.** states "There is hereby created the Legislative Committee to Oversee the Northern Nevada Water Authority."

Comment: **There is no need for the Northern Nevada Water Authority, and therefore there is no need to create this committee, at taxpayer expense.**

RECOMMENDATIONS:

1. It is recommended the 2007 Nevada Legislature reject BDR 48-183 for the primary reason the creation of the proposed Northern Nevada Water Authority is a duplication of the excellent water resource management programs in Washoe County, and the BDR is not a matter of public necessity.
2. It is recommended the 2007 Nevada Legislature reject BDR 48-183 because the SCR 26 Subcommittee did not consider the fiscal impacts of its recommendation, and a good portion of the BDR was never discussed and/or voted on by the Subcommittee.
3. If there is a need to pass something in the 2007 Legislature from the SCR 26 Subcommittee then it is recommended the Legislature first determine if the proposed Northern Nevada Water Authority is constitutional, and if it is, then the 2007 Legislature should ask Washoe County voters in the 2008 general election if they support the creation of the Northern Nevada Water Authority. Also, the ballot question needs to contain the fiscal impacts of creating the entity.