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OPINION NO. 2011-01

GUZZLERS, STATE ENGINEER;
WATER: Water rights holders who can show that their adjudicated, pre-statutory vested, or permitted water rights cannot be satisfied because excessive precipitation is being intercepted by guzzlers should petition the State Engineer to stop the capture of precipitation to the extent necessary to protect the senior water rights.

Ramona Morrison, Vice Chairman
Nevada Board of Agriculture
405 South 21st Street
Sparks, Nevada 89431

Dear Ms. Morrison:

You have asked for an opinion from this Office based on the following question: Does the State Engineer have the authority to allow Nevada Department of Wildlife, Bureau of Land Management, or United States Forest Service to install rainwater catchments commonly known as guzzlers without a water right permit?

Peter G. Morros, State Engineer, wrote a letter to both the Nevada Department of Wildlife and the Bureau of Land Management on July 23, 1982, in which he stated, "the placement of guzzlers as watering sources for wildlife only falls within the authority of NRS 533.367 and therefore need not comply with the statutory requirement of appropriation of public waters under the provisions of NRS Chapter 533." (Emphasis in original.)

Interpretation of Nevada's water law by the State Engineer, the official with the authority to administer the provisions of the law, is entitled to deference. See *Town of Eureka v. State Engineer*, 108 Nev. 163, 826 P.2d 948 (1992). The impact of guzzlers on existing water rights is important to the analysis of this question. The 345 large guzzlers in Nevada average 32 by 40 feet square.¹ The 1,269 small guzzlers average eight by twelve feet. All together the guzzlers cover approximately thirteen acres. The average precipitation at the sites averages less than one foot per year.² The average infiltration rate to aquifers is about three percent of the precipitation. Thus, cumulatively, the guzzlers intercept about thirteen acre feet of precipitation, but capture only about four-tenths of an acre foot of potential groundwater recharge per year.³ Hydrologists with the Nevada Division of Water Resources believe that this amount is too small to be measured in most hydrographic basins in Nevada.

The question you posed should be analyzed as two separate and distinct questions.

QUESTION ONE

Does the State Engineer have authority to allow the Nevada Department of Wildlife; the United States Department of the Interior, Bureau of Land Management; or, the United States Department of Agriculture, Forest Service to adversely affect pre-statutory vested water rights and State permitted water rights by allowing the capture of precipitation for wildlife?

ANALYSIS

The State Engineer does not have authority to allow capture of water with guzzlers for use by wildlife in a way that would impact existing water rights. NRS 533.370. However, the facts presented with this opinion contain no indication that the pre-statutory vested water rights or permitted water rights in the area are not being satisfied. The State Engineer has consistently ruled that junior water right users interfere with senior rights when the senior right cannot be served because of the water use by the junior user. See State Engineer Ruling 5875, p. 22 (reversed on other grounds).

¹ Data obtained from the Nevada Department of Wildlife.

² Data obtained from the Nevada State Engineer.

³ Any rainwater catchment of any kind that also intercepts surface water would require a permit from the State Engineer.

CONCLUSION TO QUESTION ONE

If it can be shown factually that vested water rights or state permitted water rights cannot be served because precipitation is being captured by guzzlers, the water right holder should petition the State Engineer to take action to enforce the vested or permitted water right.

QUESTION TWO

Does Nevada recognize the general legality of capturing rainwater in any form?

ANALYSIS

The capture of rainwater for use on the capture site is not addressed by Nevada's current water law. See NRS Chapters 533 and 534. The topic of rainwater catchments, including guzzlers and the related topic of rainwater harvesting, has been gaining interest around the world.⁴ In the United States, some states regulate the capture and use of rainwater in any form⁵ while other states allow for or encourage rainwater harvesting.⁶

The Nevada Legislature has declared that the "water of all sources of water supply within the boundaries of the State whether above or beneath the surface of the ground, belongs to the public." NRS 533.025. The Legislature has not extended the jurisdiction of the State Engineer to include precipitation captured directly from a structure that has been legally emplaced, whether a building or a guzzler. The Legislature has the authority to enact laws to prevent, control, or regulate the capture of precipitation for use under the Legislature's police power to protect the health and welfare of the people of this State because water is vital to the health of Nevada.

CONCLUSION TO QUESTION TWO

The practice of capturing precipitation from legitimate structures is not prohibited under current Nevada Law.

⁴ See generally Critchley, Will; Klaus Siegert, *Water harvesting: A Manual for the Design and Construction of Water Harvesting Schemes for Plant Production*, Food and Agriculture Organization of the United Nations, Rome, 1991.

⁵ See 2010 Utah Senate Bill 32 at <http://le.utah.gov/~2010/bills/sbillenr/sb0032.pdf>

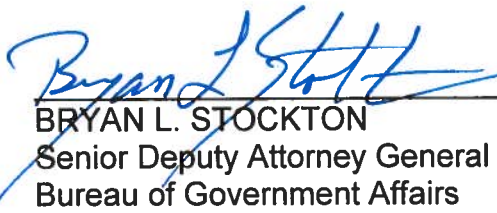
⁶ See The Texas Manual on Rainwater Harvesting at http://www.twdb.state.tx.us/publications/reports/rainwaterharvestingmanual_3rdedition.pdf

CONCLUSION

Water rights holders who can show that their adjudicated, pre-statutory vested, or permitted water rights cannot be satisfied because excessive precipitation is being intercepted by guzzlers should petition the State Engineer to stop the capture of precipitation to the extent necessary to protect the senior water rights.

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