

## Opinion No. 93-47

### BEFORE THE NEVADA COMMISSION ETHICS IN THE MATTER OF THE OPINION REQUEST REGARDING STEVEN BRADHURST, Washoe County Commissioner

This Opinion is in response to a request filed with the Nevada Commission on Ethics ("Commission") by Washoe County Commissioner Stephen Bradhurst. A subsequently filed opinion request by Mr. Franklin Jeans involving similar questions of fact and law regarding Mr. Bradhurst was consolidated with this matter.

The issue in general is whether Mr. Bradhurst has a conflict of interest in voting or otherwise acting on the Honey Lake Water Importation Project (also known as the Truckee Meadows Water Importation Project) in his public capacity as a Washoe County Commissioner, because of his private employment as a planning and management consultant for Nye County, Nevada.

A hearing on the merits of the requests was held on February 24, 1994 in Reno, Nevada. Washoe County Commissioner Stephen Bradhurst was present and represented by Washoe County District Attorney Dorothy Nash Holmes. Franklin Jeans was present and represented by Attorney Gary Sheerin. The following persons also were present and testified: Michael Turnipseed, State Engineer, Nevada Division of Water Resources; Timothy Durbin, Hydrologic Consultant; Dick Carver, Nye County Commissioner; Lyle Lough, Lassen County Board of Supervisors; Jim Chapman, Lassen County Board of Supervisors; Robert K. Sorvaag, Director, Lassen County Community Development Department; Devrej Sharma, Principia Mathematics; Attorney George Benesch; Ellen Riley; Attorney Marialice Galt; Robert Schultz, Jameskin Associates; Rose Strickland, Sierra Club; Attorney Craig Howard; and Larry Beck, Washoe County Commissioner.

Mr. Bradhurst waived his right to a confidential proceeding pursuant to NRS 281.511(4) and the hearing was open to the public. Subsequent to the hearing, counsel for Mr. Bradhurst and Mr. Jeans submitted written briefs to the Commission. The Commission reconvened on March 21, 1994 to allow counsel to present oral argument and Mr. Bradhurst to make an oral statement to the Commission. Immediately thereafter the Commission deliberated in open session and orally rendered its decision on the record, which is now expressed more fully in this written Opinion.

The Commission has jurisdiction over this matter pursuant to the provisions of NRS 281.511(1) and (2). The Commission makes the following Findings and renders the following Opinion.

#### FINDINGS

1. Stephen Bradhurst was elected as a Washoe County Commissioner on November 3, 1992 and was a public officer, as provided by NRS 281.4365, during all relevant times concerning this matter.
2. Since July of 1983, Mr. Bradhurst, in his private capacity, was a paid consultant of Nye County, Nevada pursuant to a written contract. In that capacity Mr. Bradhurst provided planning, management and consultant services to the Nye County Board of County Commissioners. In October 18, 1989, the Las Vegas Valley Water District announced its intent to secure ground and surface water rights in Clark, Lincoln, Nye and White Pine Counties for an inter-basin transfer for use in the district. In November of 1989, the Nye County Commission requested that Mr. Bradhurst include in his services to the County an assessment of the impact on Nye County of the Las Vegas Valley Water District Importation Project. The Las Vegas Valley Project involved a proposed inter-basin transfer of 864,000 acre-feet of water requiring 146 water rights and change of use applications from 26 different water basins, covering a 20,000 square mile area in Nye, White Pine, Lincoln and Clark Counties to the Las Vegas Valley. Mr. Bradhurst had no contractual or consulting relationship with any other county with respect the Las Vegas Water Importation Project. In December 1990, the Nye County Commission created the Nye County Department of Water Resource Planning, which Mr. Bradhurst thereafter directed. Nye County formally protested the Las Vegas Valley Water Importation Project and over a period of time contracted with numerous consultants for the purpose of preparing and filing its objections to water rights and change of use applications necessary for the

project, which were then pending before the Nevada State Engineer for approval. The consultants worked under the direction of Mr. Bradhurst and included Attorney George Benesch and Dr. Devrej Sharma of Principia Mathematica, Inc.

3. Since 1989, the Lassen County Board of Supervisors in California had also retained Attorney Benesch as its legal counsel. In June of 1990, Lassen County directed Mr. Benesch to represent Lassen County in filing objections with the Nevada State Engineer regarding approval of water rights and transfer of use applications necessary for the Honey Lake Water Importation Project. The Honey Lake Water Importation project involved a proposed inter-basin transfer of water from the Honey Lake Water Basin in Lassen County, California and Washoe County, Nevada, north of Reno, to the Reno, Sparks, and northern adjacent areas in Nevada. Lassen County had also retained the professional services of Dr. James Slassen, Dr. Allen Mayo, and Dr. Devrej Sharma to provide hydrological and geological consulting services and evidence in support of Lassen County's opposition to the Honey Lake Water Importation Project. Dr. Sharma's primary contribution to the Lassen County effort was reviewing and preparing a mathematical water modeling response to a report prepared by the United States Geological Service (USGS) on the Honey Lake Water Basin. Dr. Sharma had a policy in his private consulting practice to reserve a percentage of his time and resources to devote to non-billable projects which expand and challenge his professional capability and expertise. The Honey Lake Water Importation Project offered Dr. Sharma such an opportunity, and he accepted only \$500 in payment from Lassen County for professional services valued at approximately \$24,000. Dr. Sharma completed his consulting services for Lassen County on or around September 23, 1992.

4. In March, 1992 Dr. Sharma submitted a proposal to Nye County to assist the County in preparation of its case in objecting to approval of the Las Vegas Water Importation Project's water transfer applications with the Nevada State Engineer. Dr. Sharma with Attorney Benesch thereafter made a presentation of the proposal to the Nye County Commissioners in April, 1992. Nye County accepted Dr. Sharma's proposal and between July 1, 1992 and June 30, 1993, Dr. Sharma prepared four separate reports for Nye County in relation to its efforts to oppose the Las Vegas Water Importation Project.

5. There were 3,612 formal protests filed with the State Engineer opposing the Las Vegas Valley Water District's 146 water transfer applications. Nye County opposed each of the applications. Other Protestants included local governments, federal agencies, environmental groups, farmers, ranchers, sportsmen, Indian tribes and residents of Clark, Lincoln, White Pine and Nye Counties. In early 1990, meetings and an informal alliance of groups in opposition to the Las Vegas Water Importation Project formed to prepare for the State Engineer's hearings on the District's water applications. Mr. Bradhurst and Nye County participated in such efforts, largely coordinated by Lincoln and White Pine Counties. There has been little contact between Nye County and the other opponents since the summer of 1990.

6. From the outset of his employment by Nye County, and most particularly between 1989 and 1991, Mr. Bradhurst educated himself on other water Importation projects to obtain information on issues, concerns and related matters associated with inter-basin transfers of water in general. Mr. Bradhurst sought to determine how the State Engineer evaluated applications for water rights and their transfer for use in other water basins. In this effort Mr. Bradhurst attended local government meetings on the Washoe County Honey Lake Importation Project and two meetings held by the State Engineer related to the Honey Lake Project. Mr. Bradhurst also gathered information on other inter-basin transfer of water projects in California, Arizona and Colorado.

7. The Honey Lake Water Importation Project considered by the Washoe County Commission proposed an inter-basin transfer of 13,000 acre feet of water from the Honey Lake Valley to the Reno-Sparks metropolitan and north valley areas for quasi-municipal use. Washoe County had entered into joint venture agreements with Northwest Nevada Water Resources, Fish Springs Ranch and Western Water Development Company, in which Mr. Franklin Jeans held substantial interests, for the use of those water rights in the Honey Lake Water Basin as a water resource for the Truckee Meadows and adjacent areas of Washoe County.

8. The Honey Lake Project required approval from the Nevada State Engineer for water rights and change of use applications filed by Washoe County and by Mr. Jeans' business entities, namely Fish Springs Ranch and Northwest Nevada Water Resources. On March 1, 1991, the State Engineer issued his ruling on the applications to transfer water from the Honey Lake Water Basin to the Truckee Meadows areas in Washoe County. In his decision, the State Engineer approved 13,000 of the originally requested 28,000 acre feet of water for the inter-basin transfer from the Honey Lake Basin. After an appeal of his original decision, the State Engineer amended his decision on October

9, 1992, leaving intact the original findings and making additional findings that the importation and change of use of 13,000 acre feet of water from the Honey Lake Basin to the Truckee Meadows was not detrimental to the public interest.[\[1\]](#)

9. Decisions rendered by the Nevada State Engineer in approving, disapproving, limiting or otherwise restricting applications for appropriation of water or change in use, place or point of diversion from one basin or separate basins have no precedential force or binding effect with respect to another separate and distinct water importation project. For each application to appropriate or change the place of use of water, the state engineer must consider three criteria peculiar to each application, namely: (i) whether there is any unappropriated water left in the proposed source of supply; (ii) whether the proposed use or change in use conflicts with existing rights; and (iii) whether the proposed use or change is detrimental to the public interest. NRS 533.370(3).

10. Irrespective of the State Engineer's decision on the water applications, Washoe County had not voted on final approval of the Honey Lake Water Importation Project. Mr. Bradhurst had expressed his concern over the viability of the project during his election campaign for Washoe County Commissioner and continued to express such concern after election to that office. Specifically, Mr. Bradhurst questioned the need for the Honey Lake Project, its cost, the actual availability of water to be yielded by the project, the taxpayer liability for the project, and the impact of the exportation of water upon the Honey Lake Basin. Mr. Bradhurst took the position as a county commissioner that once his concerns were adequately addressed, it should be the Washoe County voters, rather than the County Commissioners, who ultimately decide whether to approve the Honey Lake Water Importation Project.

## OPINION

The issues presented in this matter are whether because of his private consulting contract with Nye County, Nevada which involves in part, opposing the Las Vegas Valley Water Importation Project, Washoe County Commissioner Stephen Bradhurst (i) is required to disclose his Nye County employment and in addition, (ii) is prohibited from discussing, advocating, voting or otherwise acting on matters related to the Honey Lake Water Importation Project, and (iii) whether a reasonable person in Mr. Bradhurst's position would tend to be improperly influenced to depart from the faithful and impartial discharge of his public office in relation to the Honey Lake Project. The standards found in NRS 281.501(2) and (3) and NRS 281.481(1) are relevant to these issues and provide the following in pertinent part:

**NRS 281.501. Additional standards: Voting by members of legislative branch and other public officers or employees; effect of abstention from voting on quorum; required disclosures.**

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2 In addition to the requirements of the code of ethical standards, a member of the legislative branch shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) his pecuniary interest; or
- (c) his commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest where that resulting benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.

3. A public officer or employee shall not approve, disapprove, vote, abstain from voting, or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
- (b) Which would reasonably be affected by his commitment in a private capacity to the interests of others; or
- (c) in which he has a pecuniary interest, without disclosing the full nature and extent of the gift, loan, commitment or interest.

Such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of such a body which makes decisions, he shall

make the disclosure in public to the chairman and other members of the body. If the officer is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected.

NRS 281.481(1) states, "a public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties."

NRS 281.501(2) and (3) provide the standards public officers performing legislative functions must follow in discussing, advocating, voting, or otherwise acting on a matter with respect to which the independence of judgment of a reasonable person in his or her situation would be materially affected by the acceptance of a gift or a loan, a pecuniary interest, or a commitment in a private capacity to the interest of others. NRS 281-481(l) is a standard of conduct public officers must follow in ensuring that their private interests and public responsibilities do not conflict.

Opinion requester Franklin Jeans argued that Mr. Bradhurst could not vote as a Washoe County Commissioner on issues involving the Honey Lake Water Importation Project. Mr. Jeans asserted that Mr. Bradhurst had a pecuniary interest and a private commitment to the interests of another, in preventing the Honey Lake Water Importation Project from succeeding because of his consulting agreement with Nye County with respect to its opposition to the Las Vegas Water Importation Project. However, the opinion requester offered no evidence and the record does not contain any support for the proposition that Mr. Bradhurst's ongoing employment as a consultant for Nye County was related to or affected by the approval of the Honey Lake Project by the Washoe County Commissioners or the State Engineer.

Mr. Bradhurst's employment as a consultant to Nye County began in 1983, well before the Las Vegas Valley Water District announced its intention in the Spring of 1989 to pursue a groundwater importation project from Nye, Lincoln, and White Pine Counties, well before December 1990 when Mr. Bradhurst was appointed by Nye County to direct the Nye County Department of Water Resources planning, and well before he was elected County Commissioner in Washoe County in 1992. Although Mr. Bradhurst was involved in opposing the Las Vegas Valley Importation Project pursuant to his private employment with Nye County, there is no evidence of any connection between his private contractual duties to Nye County and his opposition to the inter-basin water importation project from Honey Lake to the Truckee Meadows in Washoe County.

Mr. Bradhurst was not involved in the retention of Dr. Sharma by the Lassen County Commission. Nye County did not supplement Dr. Sharma's payment by Lassen County as a part of any cooperative or concerted effort to join forces with Lassen County to defeat the Honey Lake Water Importation Project. There was no shared plan between Nye and Lassen Counties to attack the credibility of the USGS Report prepared for the Honey Lake Project in hopes that it would undermine the credibility of the USGS report for the water importation project in Nye County. The USGS reports with respect to each inter-basin transfer of water were separate and distinct, involved different facts and circumstances, were relevant only to the specific water importation project about which each was written.

For each project for the inter-basin transfer of water, the State Engineer's determinations were required to address: (1) The presence or lack of unappropriated water available in the Honey Lake Basin for transfer to the Truckee Meadows, (2) whether such transfer would conflict with existing water rights in the Honey Lake Basin, and (3) whether the proposed transfer of water would be detrimental to the public interest because of its effect upon the Honey Lake Basin and/or the Truckee Meadows. The determination of these issues had no relevance to a hearing upon the specific facts and circumstances of the Las Vegas Valley Importation Project for the transfer of water rights from areas in Nye, White Pine, Lincoln and Clark Counties to the Las Vegas Valley. The two separate subject matters have no geographical or hydrological connection. The State Engineer's determinations with respect to the Honey Lake Project have no relevance to his determination of those issues of the Las Vegas Valley Project.

Similarly, Mr. Bradhurst's involvement in his private capacity as a consultant for Nye County with respect to the Las Vegas Valley Water Importation Project has no connection with or bearing upon his acts and decisions as a Washoe County Commissioner with respect to whether the Honey Lake Water Project is in the public interest of the citizens of Washoe County.

Further, there was no evidence that Mr. Bradhurst's actions and/or decisions as a County Commissioner with

respect to the Honey Lake Water Project had any connection or bearing upon the interests of Nye County or his activities in his private capacity or a consultant to Nye County in its opposition to the Las Vegas Valley Water Project. While Mr. Jeans argues that such connection existed, the allegations were supported by no credible evidence and were entirely without merit.

The disclosure provisions of NRS 281.501(3) and abstention provisions of NRS 281.501(2) therefore do not apply to preclude Mr. Bradhurst from voting on Honey Lake Project issues. There was no credible evidence that Mr. Bradhurst's independence of judgment with respect to the project would be either reasonably or materially affected by any private pecuniary interest or any commitment in his private capacity to the interests of others.

Mr. Jeans also argues that Mr. Bradhurst's employment by Nye County, especially that relating to Nye County's objections to water applications necessary for the Las Vegas Valley Water Importation Project would, as provided by NRS 281.481 (I), tend to improperly influence Mr. Bradhurst to depart from the faithful and impartial discharge of his public duties as a Washoe County Commissioner voting on the Honey Lake Project in that the State Engineer's disapproval of the Honey Lake Project would assist Nye County in its opposition to the Las Vegas Valley Project. As discussed above, the decision of the State Engineer on the Honey Lake Project has no factual connection with or legal effect upon the State Engineer's decision with respect to the Las Vegas Valley Project.

### **CONCLUSION**

Stephen Bradhurst did not and will not violate the Ethics in Government Law at NRS 281.501(2) and (3) and NRS 281.481(I) by voting or otherwise acting in his public capacity as a Washoe County Commissioner on the Honey Lake Water Importation Project or matters related thereto.

### **COMMENT**

Immediately following oral argument to the Commission on March 21, 1994, the Commission deliberated and orally rendered and explained at length its decision in this matter, which is restated at greater length in this written opinion. It is specifically noted that the foregoing Opinion applies only to these specific circumstances, and may not apply to other circumstances. The provisions of NRS 281.481 and NRS 281.501 quoted and discussed above must be applied on a cast-by-case basis on the specific facts and circumstances involved.

DATED: September 14, 1995

NEVADA COMMISSION ON ETHICS

By: /s/ THOMAS R. C. WILSON, Chairman

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[\[1\]](#) *Pyramid Lake Paiute tribe of Indians v. R. Michael Turnipseed*. Case No. CV 91-2231, CV 91-2232, CV 91-2245, consolidated, August 31, 1992, *United States v. Alpine Land and Reservoir Co.*, 965 F.2d 731 (9th Cir. 1992) Amended 983 F.2d 1487 (9th Cir. 1992)