

RE: Documents presented previously and on Jan, 25, 2024 for the NID Plan For Water (PWF) in context with Professional Engineering standards in the State of California for State Agency Public Works.

Dear Chair Rich Johansen and Board members,

There are some questions that concern me as a civil engineer, Nevada Irrigation District (NID or District) rate and taxpayer, and concerned participant in the PFW planning effort that I have tried to summarize below with other meaningful context in the form of professional business codes and regulations pertaining to the planning activities of the District as a State public works agency.

Recommendation and Questions:

I recommend that that Board actively discuss in the open PFW forum and consider adopting the following definition I prepared from the governing laws pertaining to the District in an effort to foster a shared understanding that the District, as the local trustee of water resources, is a state agency, and a regulator responsible for ensuring the proper planning, management, and operations of our public works.

Recommended Definition

"**Water Supplier—NID— State Agency**" means the Nevada Irrigation District (NID or District) is and reaffirms that it is a state agency formed and existing for governmental purposes. Among its various governmental functions, as the operator of public works, is its local-trustee roles and responsibilities of state-owned water resources as defined in California (CA) Constitution (CON), CA Water Code (WAT) and other applicable federal, state, county/city, and District laws, regulations, and policies. (WAT §[20570](#), WAT §[10521](#)(c) plus added context for primary function as state governmental trustee.)

Questions for the PFW Forum in open dialogue:

Please provide information by answering these questions I have:

1. Who is the professional engineer (PE) in responsible charge of NID's Plan for Water (PWF) Planning document(s)?
2. Is there a list of the PFW planning documents being prepared, the status of each document with the author of the document identified? If so, please make it public. If not, why not?
3. Are the PFW Planning presentations or any elements of the presentation such as the tables, graphics, data, and recommendations provided part of a proposed PFW Planning document? If not, what are they considered in context to California Professional Engineer's Act (CPEA) and any applicable California Code of Regulations (CCR)?

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Abbreviations Used:

Board for Professional Engineers, Land Surveyors, and Geologists ([BPELSG](#))
California Business and Professional Code (CA-BPC)
California Code of Regulations (CCR)
Section (§)

Context Content:

Highlighting provided to enhance summary understanding.

The District Board should keep in mind that there are no PE Police, just [complaints](#) to BPELSG's; there are no Brown Act Police, just the people, and the judicial system; there are no CEQA police, just the people and the judicial system. The Board would be wise to fully understand professional engineer's responsible-charge roles and responsibilities under the prevailing laws and regulations. I have provided pertinent excerpts as a summary of sort below for the Board.

CA-BPC § [6701](#).

Professional engineer," within the meaning and intent of this act, refers to a person engaged in the professional practice of rendering service or creative work requiring education, training and experience in engineering sciences and the application of special knowledge of the mathematical, physical and engineering sciences in such professional or creative work as consultation, [investigation, evaluation, planning](#) or design of public or private utilities, structures, machines, processes, circuits, buildings, equipment or projects, and supervision of construction for the purpose of securing compliance with specifications and design for any such work.

CA-BPC § [6731\(e\)](#) Civil engineering embraces the following studies or activities in connection with fixed works for irrigation, drainage, waterpower, water supply, flood control, inland waterways, harbors, municipal improvements, railroads, highways, tunnels, airports and airways, purification of water, sewerage, refuse disposal, foundations, grading, framed and homogeneous structures, buildings, or bridges:

(e) The preparation or submission of designs, [plans and specifications and engineering reports](#). Civil engineering also includes city and regional [planning insofar as any of the above features are concerned therein](#).

CCR §[404.1](#). Responsible Charge– Professional Engineering.

CA-BPC § [6735](#). (a) All civil (including structural and geotechnical) engineering plans, calculations, specifications, and reports (hereinafter referred to as "[documents](#)") shall be prepared by, or under the responsible charge of, a licensed civil engineer and shall include [his or her name and license number](#). Interim documents shall include a notation as to the intended purpose of the document, such as "preliminary," "not for construction," "for plan check only," or "for review only." All civil engineering plans and specifications that are permitted or that are to be released for construction shall bear the signature and seal or stamp of the licensee and the date of signing and sealing or stamping. [All final civil engineering calculations and reports shall bear the signature and seal or stamp of the licensee, and the date of signing and sealing or stamping](#). If civil engineering plans are required to be signed and sealed or stamped and have multiple sheets, the signature, seal or stamp, and date of signing and sealing or stamping shall appear on each sheet of the plans. If civil engineering specifications, calculations,

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CCR §404.1 (a). Responsible Charge— Professional Engineering. (continued...)

...and reports are required to be signed and sealed or stamped and have multiple pages, the signature, seal or stamp, and date of signing and sealing or stamping shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

(a) As used in the Professional Engineers Act, the term “responsible charge” directly relates to the extent of control a professional engineer is required to maintain while exercising independent control and direction of professional engineering services or creative work and to the engineering decisions which can be made only by a professional engineer.

(1) Extent of Control. The extent of control necessary to be in responsible charge shall be such that the engineer:

(A) Makes or reviews and approves the engineering decisions defined and described in subdivision (a)(2) below.

(B) In making or reviewing and approving the engineering decisions, determines the applicability of design criteria and technical recommendations provided by others before incorporating such criteria or recommendations.

(2) Engineering Decisions. The term “responsible charge” relates to engineering decisions within the purview of the Professional Engineers Act.

Engineering decisions which must be made by and are the responsibility of the engineer in responsible charge are those decisions concerning permanent or temporary projects which could create a hazard to life, health, property, or public welfare, and may include, but are not limited to:

(A) The selection of engineering alternatives to be investigated and the comparison of alternatives for the project.

(B) The selection or development of design standards or methods, and materials to be used.

(C) The decisions related to the preparation of engineering plans, specifications, calculations, reports, and other documents for the engineered works.

(D) The selection or development of techniques or methods of testing to be used in evaluating materials or completed projects, either new or existing.

(E) The review and evaluation of manufacturing, fabrication or construction methods or controls to be used and the evaluation of test results, materials and workmanship insofar as they affect the character and integrity of the completed project.

(F) The development and control of operating and maintenance procedures.

(3) Reviewing and Approving Engineering Decisions. In making or reviewing and approving engineering decisions, the engineer shall be physically present or shall review and approve through the use of communication

devices the engineering decisions prior to their implementation.

(b) Responsible Charge Criteria. In order to evaluate whether an engineer is in responsible charge, the following must be considered: The professional engineer who signs engineering documents must be capable of answering questions asked by individuals who are licensed by the Board in the appropriate branch of professional engineering relevant to the project and who are fully competent and proficient by education and experience in the field or fields of professional engineering relevant to the project.

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CCR §404.1 (c). Responsible Charge– Professional Engineering. (continued...)

...These questions would be relevant to the engineering decisions made during the individual's participation in the project, and in sufficient detail to leave little question as to the engineer's technical knowledge of the engineering performed. It is not necessary to defend decisions as in an adversarial situation, but only to demonstrate that the individual in responsible charge made, or reviewed and approved, them and possessed sufficient knowledge of the project to make, or review and approve, them.

Examples of questions to be answered by the engineer could relate to criteria for design, **methods of analysis**, methods of manufacture and construction, selection of materials and systems, **economics of alternate solutions**, and **environmental considerations**. The individual that the engineer is answerable within said extent of control.

(c) [omitted, see full text at **CCR §404.1. Responsible Charge– Professional Engineering**]

(d) [omitted, see full text at **CCR §404.1. Responsible Charge– Professional Engineering**]

(e) The term "responsible charge" does not refer to any of the following:

- (1) the concept of financial liability;
- (2) **management control in a hierarchy of professional engineers except as each of the individuals in the hierarchy exercises independent engineering judgment and thus responsible charge;**
- (3) such administrative and management functions as accounting, labor relations, personnel performance standards, marketing of services, or goal setting. While an engineer may also have such duties in this position, it should not enhance or decrease one's status of being in responsible charge of the engineering.

[It is advised to always use the official version of CCR §[404.1](#). Responsible Charge– Professional Engineering and other laws and regulations (CA-BPC § [6701](#), CA-BPC § [6735](#).) so that inadvertent omission or mistakes are avoided.]