

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Third Session
April 6, 2005**

The Committee on Government Affairs was called to order at 8:10 a.m., on Wednesday, April 6, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4412 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Heidi S. Gansert, Assembly District No. 25, Washoe County
Assemblywoman Debbie Smith, Assembly District No. 30, Washoe County
Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County

Assemblyman Rod Sherer, Assembly District No. 36, Churchill (part),
Esmeralda, Lincoln, Mineral, and Nye Counties

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Susan Scholley, Committee Policy Analyst
Nancy Haywood, Committee Attaché

OTHERS PRESENT:

Marilyn Skibinski, Regulatory Manager, Bureau of Consumer Protection,
Office of the Attorney General, State of Nevada
Adrianna Escobar Chanos, Bureau of Consumer Protection, Office of the
Attorney General, State of Nevada
Michael Trudell, Manager, Caughlin Ranch Homeowners Association,
Reno, Nevada
Elaine B. Steiner, Vice President, South Hills Association and Southwest
Truckee Meadows Citizen Advisory Board, Reno, Nevada
Barlane Ronald "Ike" Eichbaum, Private Citizen, Reno, Nevada
Steve Walker, Legislative Advocate, representing Truckee Meadows
Water Authority
Jeffrey Tissier, Manager of Financial and Administrative Services, Truckee
Meadows Water Authority, Reno, Nevada
Jon Hutchings, Natural Resources Manager, Eureka County, Nevada
Brent Eldridge, County Commissioner, White Pine County, Nevada
Dean Baker, Private Citizen, Snake Valley, White Pine County, Nevada
Gregory L. James, Esq., Legislative Advocate, representing Inyo County,
California
Michael R. Montero, Legislative Advocate, Nevada Cattlemen's
Association and Nevada Woolgrowers Association
Steve Boies, Former President, Nevada Cattlemen's Association
Susan Lynn, Former Member and Chair, Washoe County Regional Water
Planning Commission, Washoe County, Nevada
Joy Fiori, Private Citizen, Sandy Valley, Clark County, Nevada
Tina Nappe, Member, Nevada Water Network, Reno, Nevada
Abby Johnson, Member, Spring and Snake Valleys Citizens Alliance
Kaitlin Backlund, Legislative Advocate, Representing Nevada Conservation
League
Hugh Jackson, Senior Policy Analyst, Water For All Campaign, Private
Citizen, Henderson, Nevada
Bob Fulkerson, State Director, Progressive Leadership Alliance of Nevada,
Reno, Nevada

Cindy Nixon, Private Citizen, Hawthorne, Nevada

Rod Wolven, Private Citizen, Mineral County, Nevada

Mike L. Baughman, Legislative Advocate, representing Lander County
Economic Development Authority, Lincoln County Regional
Development Authority, and Humboldt River Basin Water Authority

Chairman Parks:

[Meeting called to order and roll called.]

Assembly Bill 323: Requires Bureau of Consumer Protection in Office of Attorney General to conduct audit and investigation of rate-setting practices of Truckee Meadows Water Authority. (BDR S-137)

Assemblywoman Heidi S. Gansert, Assembly District No. 25, Washoe County:

With me, I have Assemblywoman Debbie Smith from District 30 in Washoe County. Assembly Bill 323 has been supported by all the members of the Washoe County contingency, which, I think, is very important to recognize.

The bill is about the Bureau of Consumer Protection performing an audit on Truckee Meadows Water Authority (TMWA). TMWA was formed around October 2000 because Sierra Pacific Water Company decided they were going to sell their water assets, and Reno, Sparks, and Washoe County wanted to own those on behalf of the public. Through the use of an interlocal agreement, TMWA was created. When they purchased it, the cost was about \$415 million. The breakdown of costs included \$250 million for the assets, a \$100 million premium to Sierra Pacific, and about \$100 million to help stabilize water rates for a period of two years, to cover capital improvements, and also any need for rate increases.

In 2003, TMWA's governing board approved the first rate increase, the first of three phases. The net result of that increase was about \$70 million. Since then, they have had another rate increase that went into effect March 1, 2005. In discussions with TMWA, they have typically stated that these rate increases have been caused by the original asset purchase, because it was really an expensive purchase, and that they overpaid for those assets. I think that is true. I think part of the reason for some of their rates is because they paid an excessive premium for the water company. But some financial decisions—even if we look at the last 6 months and the way that they have used their rate methodology—I think are questionable. I think it is time for them to be accountable to their ratepayers.

[Assemblywoman Gansert, continued.] This bill really is about accountability. If you were to even look at their rates, they are about 50 percent higher than a typical residential user in Las Vegas, which again makes users start questioning why rates are so high. I have provided you with a package of material. I'll just reference some of them, and I've had them highlighted in advance, so that you can follow along. The first is a letter ([Exhibit B](#)) that was presented to TMWA by John Guastella, a professional engineer. Mr. Guastella was the Director of the Water Division for the State of New York, where he regulated over 450 water companies and headed a professional staff of 32 engineers. He also has taught and testified extensively on ratemaking regarding water companies.

If you turn to page 4 of his letter, you will see in the areas highlighted, in general, he found that the staff positions were contrary to appropriate rate-paying principles with respect to the establishment of revenue requirements and rate design. Most of this letter has to do with bonding. When TMWA went in for its rate increases, they tended to drop all of their capital improvements—the requirements for those improvements—immediately into the rate base instead of matching the length or duration of their capital improvements with their rates. Instead of amortizing out the cost of capital improvements, they immediately dropped them into the rate base. On pages 9 and 10, there is a discussion and some information regarding the rate principles and the overstatement for rate increases based on the methodologies they have used.

The other thing I brought with me was the March 2005 staff report ([Exhibit C](#)) for the Truckee Meadows Water Authority, which includes a discussion about the need for significant capital projects in the near term. If you look at the first page, it talks about their expected revenues of \$78.3 million for the fiscal year 2005-2006. On page 2, TMWA expects to spend \$68 million on capital improvement in one year. Again, they are trying to do a significant amount of improvements and to drop those dollars into the rate base immediately, instead of amortizing them out.

The third document ([Exhibit D](#)) you have is a list of expenditures they approved over the last 6 months. These are expenditures that immediately go into the rate base. The first items are salaries; wages were increased last September by \$700,000. There is also a special bonus program that was in place when they first purchased the assets from Sierra Pacific, and the bonuses that were approved in October 2004 amounted to \$550,000 for their 160 employees. So that you are aware, those government employees are part of the PERS [Public Employees' Retirement System]. It is very unusual to have bonuses such as that.

[Assemblywoman Gansert, continued.] Truckee Meadows Water Authority also approved the construction of the new main office building; the total cost of the building is \$10 million, and it is budgeted to pay for it in 2 years. They are not amortizing out a large expenditure; they are just dropping it into rate base. The fourth item on that list is a budget allocation to charitable organizations. Last year they had a vast discussion about creating a charitable organization using ratepayer dollars. The plan was to designate about 1.5 percent of the annual budget, up to \$9 million over 10 years, to create a river fund for projects on the Truckee River. In January of this year, the Attorney General came out with an opinion that said they do not have the authority to do that. They cannot use ratepayer dollars for a charitable organization.

The last one on that page is another \$900,000 they plan to spend annually for fire hydrant repair and maintenance. They are basically shifting taxpayer responsibilities. When you pay your taxes, you're paying for things such as that. The governing board decided to shift that over to TMWA, so in effect, you pay for those services as a taxpayer, and they are dropping almost \$1 million more into the rate base. When you add all of those discretionary expenditures up, the total is about \$7 million. Again, this is a company with revenues between \$76 million and \$78 million per year. That equals 10 percent right there. I think the expenditures are out of hand.

I also provided for you the list of the salaries ([Exhibit E](#)) that they provided to me. It is dated February 16, 2005. On this page, it talks about the short-term incentive program, and again, this is very unusual. When they were first created, I could understand why you would have an incentive program to try to keep your employees as, basically, Sierra Pacific Water Company became TMWA. Those people—the head of that division and others—just moved over to TMWA. What happened is that the incentive program has been carried on indefinitely. There was a union contract that was renewed in 2003, two years after TMWA was created. The contract was for another 3 years. In that contract, there were also bonuses available. It doesn't look like there is going to be any end to these bonuses, and as stated on that one sheet, the bonuses last year were up 8 percent. The year before, they were up to 8.5 percent, and last year's costs were up to \$550,000. You also have the cover to the Attorney General's opinion ([Exhibit F](#)) that says that TMWA is not allowed to create charitable organizations with ratepayer dollars.

Finally, I just gave you a summary page ([Exhibit G](#)) concerning the "Audit Cost and Conclusion." The Bureau of Consumer Protection has agreed to do an audit for \$100,000 or less on behalf of TMWA and its ratepayers. I think that is a very reasonable amount. The Consumer Advocate in the Bureau of Consumer Protection is why they were created. They actually represent consumers in rate

cases with the PUC [Public Utilities Commission of Nevada]. That's why we chose them, and the cost, again, is \$100,000. There was an email sent to you by Lori Williams, who is the General Manager of TMWA. In the email, she states that they are confident the Bureau of Consumer Protection can be an objective auditor, and further, TMWA expects the audit would be conducted to the highest professional standards without conflict of interest. We are very confident that the consumer advocate will do an excellent job, and we think that the amount of money spent on that is reasonable for a \$78 million company.

Assemblyman Christensen

I'm trying to digest this as fast as I can. It was quite a bit of information to go through, and I'm just trying to understand the intent of where you are going. In part of your presentation, you mentioned the consumer advocate. I'm just wondering if it is standard for the consumer advocate to take up this kind of issue. Why did you request them and not somebody else?

Assemblywoman Gansert:

We use the consumer advocate, because the consumer advocate represents ratepayers whenever a utility company goes to the PUC. They have the expertise in this area and have been doing it for years. That is why we chose them specifically.

Assemblyman Christensen:

I heard you mention at the end of a sentence that TMWA was doing something instead of the amortizing. Then you referred to two years. Are they doing something on a two-year plan instead of amortizing?

Assemblywoman Gansert:

When you have significant capital improvements, improvements that will last for 20 years, you usually spread the cost over those years. For instance, if you want to buy a house and the house costs \$600,000, you could either pay for it \$200,000 at a time for three years, or you could finance that house for, maybe, \$4,000 per month over the duration you expect to live there. The net effect is that the current ratepayers are subsidizing the capital improvements that will be used for 30 years, because we are paying for them immediately versus spreading the cost over their expected lifetime.

Assemblyman Christensen:

They are going to pay off this capital improvement within 2 years?

Assemblywoman Gansert:

Right. I know they approved a \$10 million building. I gave you the documentation on everything. The last page of the staff report shows \$4,700,000 being immediately dropped into the budget for next year to pay for half of the building. Again, they didn't amortize it over the life of the use of the building; they just dropped it in immediately, over two years. I feel they are past rich, and it just went in for a rate increase, which is actually pretty interesting, because the rate increase is for 3 percent. A 3 percent rate increase equals just over \$2 million for TMWA. Why bother? You have just chosen to make discretionary expenditures of \$7 million in the last 6 months, so why are you asking for a rate increase of another \$2 million? The reason is because they can. There is no accountability right now for TMWA, and the Bureau of Consumer Protection, the consumer advocate, will come in and do an audit for the ratepayers.

Assemblyman Christensen:

I'll be interested in hearing how they respond to that.

Assemblywoman Kirkpatrick:

Mrs. Gansert, how do your rates compare with other rates in Nevada?

Assemblywoman Gansert:

The documentation that I have received is that they are substantially higher—48 percent to 80 percent higher—than other rates for a similar water user.

Assemblyman Christensen:

Because your rates have increased for capital improvements, when those are paid off, would you get a decrease in rates? Have they mentioned that?

Assemblywoman Gansert:

I have not discussed that with them. Sometimes it's hard to back down on your expected revenues once you have them. I know people say that about government, too. Once the money is on the table, it's hard to take it back.

Chairman Parks:

I do have a couple of questions, but it may be better to direct them to TMWA. Is there a collective bargaining unit that negotiates the employee agreements? The second deals with debt structure. When TMWA was created, was there a debt structure established to acquire the assets of the water system? I noticed a couple of other things. You spoke of fire hydrant repair. My concern there is that normally is a part of the public safety functions. The typical fire department has to do all the maintenance on that type of structure.

Assemblywoman Gansert:

They have in the past. I went to a meeting of TMWA in January, and at that time, they made a decision to add some fire repair and maintenance. In the original agreement, they said that they would do some of those repairs, because Sierra Pacific Power Company no longer existed. The counties and the cities were not getting the taxes that they would have had before. At that meeting, however, they were adding services. I asked why they were adding services if, in the original agreement, they were already provided. Again, they compared ratepayers to taxpayers; they equated them. Truckee Meadows Water Authority has 83,000 connections, Washoe County has about 33,000, and there are some other GIDs [general improvement districts] in the area. What happened, truly, is that you have already paid for it in your taxes, then TMWA takes on services. These 83,000 connections and taxpayers are basically subsidizing the rest of the county as far as those services are concerned, and they were adding services at that time. I tried to make my question very clear; these were services in addition to those in the original agreement.

Chairman Parks:

Do you know approximately what the number of users is on a metered water system and pay a metered rate versus a flat rate?

Assemblywoman Gansert:

I do have a diagram of theirs. The number of users on a flat rate looks to be about 27 percent of their water-consuming services. Those who are metered make up 59 percent. There are multi-family users in addition. I do know that their plans are to convert everybody to meters within the next 3 years and probably sooner. I think they have about 10,000 connections where they need to install meters, but TMWA could probably clarify that.

The only thing I wanted to mention is that, sometimes, not everybody shows up to the meeting at TMWA, so they feel maybe there is not that much resistance to the rate increases. I have 25 letters that I didn't give you copies of, because I know you get a lot of paperwork. If you would like these letters, I have 25 of them. I also did a survey during my campaign, and out of 170 respondents, 154 agreed or strongly agreed that TMWA should be out of the jurisdiction of the PUC, and because it has government ownership, we shouldn't put it under the PUC. We thought the next best thing was to contact the consumer advocate. Those respondents on the survey amounted to 92 percent. Another 7.8 percent were neutral, and 0.2 percent said that they didn't want any regulation of TMWA. So it was a very strong statement. Judging by these surveys, many people felt that TMWA needed more accountability, and again, that is what this bill is about.

Assemblywoman Debbie Smith, Assembly District No. 30, Washoe County:

I'm really here as backup this morning for Mrs. Gansert. There has been a lot of concern expressed in the district about these issues, about the ratemaking process, and it just seems like good public policy and good accountability to do this. We have a unique agency here that has been through a transition process. Again, there is nothing wrong with some accountability and just looking at some structure and processes for our constituents. I think it is good policy to do that, and it's not that unusual. Those members here who are also on the Education Committee know that we heard a bill regarding school district audits along these same lines. I believe that, for our constituents and residents in Washoe County, it is a good policy to take a look at what has gone on and to be able to make some changes or reassure our constituents that things look good. I really appreciate you listening to this carefully and hope that you will be able to support it.

Chairman Parks:

Mrs. Gansert, have you seen the fiscal note that was prepared for this bill?

Assemblywoman Gansert:

I actually have not seen that note; do you have it?

Chairman Parks:

I was just going to hand you a copy of it.

Assemblywoman Gansert:

We do have the consumer advocate here, Marilyn Skibinski, who will be testifying on behalf of the note; she also has a slight amendment.

Chairman Parks:

I just wanted to make sure that you have seen the fiscal notes, as sometimes you don't see them until after you are in the middle of your hearing.

Assemblywoman Gansert:

The cost of this audit will be paid by TMWA, so there is no cost to the state. It comes directly from Truckee Meadows Water Authority; that is the way it's written.

Chairman Parks:

I understand that the fiscal note seems a little ambiguous. It's reflecting \$150,000 for each of the biennium. Maybe there needs to be a revision on that.

Marilyn Skibinski, Regulatory Manager, Bureau of Consumer Protection, Office of the Attorney General, State of Nevada:

I will start with the fiscal note and explain that the ambiguity was because I wrote an explanation, rather than trying to chart out what the exact expenses would be for this audit. Frankly, when I read the bill and reviewed it, I was asked to give some input regarding the fiscal note. I had more questions than I had answers. Because of that, I wrote an explanation saying that if the bill intends this, and if it is the legislative intent that we use staff and all of this money on consultants, the cost would probably exceed the \$100,000. I didn't actually see the fiscal note that was submitted until yesterday, and I noticed that. I kind of gasped when I saw the two biennia and the \$300,000 cost.

The amendment ([Exhibit H](#)) we are offering is in Section 3, page 3, lines 16 and 17. We would make the following change. For the word "must," the sentence would read "the scope of the audit and investigation may include, but is not limited to, the following." Then we'll follow with the whole list of everything that it is intended that we review. The consumer advocate felt that would give additional flexibility and focus when we see something that we want to fully develop in recommendations and to add things as we came across them. The cost of \$100,000 is what TMWA is going to transfer to us, and it will cover the audit. We would amend the fiscal note so that it will be just for the first year of the biennium. This will all be completed by December, 2005. We will adjust that; it will be just \$100,000, and the funding source will be the money from the Truckee Meadows Water Authority.

There is a second part of the amendment that we are offering, and again, it has to do with our funding and our statute. NRS [*Nevada Revised Statutes*] 228.380, Section 2 refers to the money that we receive. The funding for our utility work comes from a mill assessment on the customers of regulated public utilities. It very clearly states that the consumer advocate may extend revenues derived from NRS 704.033, mill assessment funding, only for activities directly related to the protection of customers of public utilities. By definition, those are the ones that are under the jurisdiction of the Public Utilities Commission. In order to issue an RFP [request for proposal], execute contracts for expert witnesses, and pay any staff, they are all funded through that same utility mill assessment. At the front end, the bill is written. We would be actually using these mill assessment funds and then replenishing them—paying them back—with the reimbursement at the end of the audit, which caused me some consternation in the way that we manage our funding. We don't want any problems.

I've given the secretary an amendment ([Exhibit H](#)) I drafted yesterday. In Section 6, page 4, we would change it. The essence of this is that TMWA

would give us the \$100,000 that would be deposited into our account at the front end of the audit. On or before July 15, 2005, Truckee Meadows Water Authority would deposit \$100,000 with the State Treasurer to credit to our account for the Bureau of Consumer Protection pursuant to NRS 228.340, which instructs us that all of the funding we receive goes into that account. Then we would eliminate the next sentence that says, "The cost incurred by the Bureau of Consumer Protection, in performing the audit and investigation, must be reimbursed by Truckee Meadows Water Authority not later than 30 days after submission of the report required by Section 5 of this act." We substituted receiving the funding at the front end so we can execute contracts, use personnel, and incur costs and will have the funding to do that.

In the next sentence, take out "reimbursement" and substitute: "The payment must be made out of the existing operating reserves of the Truckee Meadows Water Authority. The Truckee Meadows Water Authority shall not recover the"—again, substitute "payment" for "reimbursement"—"from ratepayers through any new fee or rate change." We then added the following sentence: "In the event that the total cost incurred by the Bureau of Consumer Protection in performing the audit and investigation is less than \$100,000, on or before April 1, 2006, the Bureau of Consumer Protection shall refund, to the Truckee Meadows Water Authority, the unexpended amount remaining from the \$100,000 payment." If it comes in less, we will refund that money back to the Truckee Meadows Water Authority.

Adrianna Escobar Chanos, Bureau of Consumer Protection, Office of the Attorney General, State of Nevada:

I just wanted to add that we support this bill, and we embrace this responsibility. We will do our best to be as thorough as possible and deliver a thorough and complete audit, given the responsibility invested in us.

Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Reno, Nevada:

I have a handout ([Exhibit I](#)) coming around right now. I've been the manager of Caughlin Ranch Homeowners Association for 15 years, when the water utility was under Sierra Pacific Power Company and Westpac Utilities. In 1991, I applied for intervener status and have participated as an intervener in rate cases since then. When the utilities became TMWA, I attended several meetings and was appointed to the ratemaking review committee of the Truckee Meadows Water Authority.

On the second page, under the summary of issues—the second bullet—I just wanted to establish how important this water rate issue is to the Caughlin Ranch Homeowners Association. Irrigation is the single largest line item of our

budget. In 2002, we spent \$278,184; in 2003, we spent \$329,279; and in 2004, \$341,300. In our 2005 budget, we have budgeted \$361,464. I have the percentages of our total expenditures there. You can see it's been increasing over the past three years from 16.84 percent of our total budget to 18.1 percent to 19.3 percent, so it is a significant part of our budget. On page 3, we are concerned that TMWA be operated as a business under generally accepted business practices. Under that, on the third bullet, the items that I have listed include the following:

- The ratemaking methodology just needs to reflect a fair share of the customers' rates, including new construction.
- The TMWA Board should recommend that there be some continuation of the ratemaker review committee.
- The ratemaking review committee previously recommended that an ombudsman position be created in that company.
- That the recommendation be accepted by the TMWA Board.

[Michael Trudell, continued.] Assemblywoman Gansert has covered the items related to the bonuses that are paid by the company. We don't feel that it is appropriate to have bonuses paid for salaried positions when, in fact, it is a significant part of the rate increases that they are requesting. We believe a salary survey should be conducted as part of this audit and that adjustments should be made if needed. We also believe that growth should pay for growth.

Finally, on behalf of Caughlin Ranch Homeowners Association, we believe there is a lack of fiscal and personal accountability, and no credible mechanism exists to ensure public oversight of TMWA's operations. Therefore, we support this legislation.

Assemblywoman Parnell:

I guess I just need to have an example. Could you tell me what the average monthly rate of water was when Sierra Pacific was responsible for your water, versus now with TMWA? Can you give me a ballpark figure of how that's changed?

Michael Trudell:

As far as we are concerned, there was an increase above and beyond what Sierra Pacific was charging us. It just steadily increases, and there are costs that they have to conform to, under the federal government regulations of the Safe Drinking Water Act, the filtration process that they are required to have as part of their infrastructure, and the arsenic compliance that they have to address. There are costs that they cannot avoid, and there will be increases.

[Michael Trudell, continued.] However, we believe that the issue of salaries and bonuses needs to be looked at from a business perspective, and if a company is not making a surplus, a rate increase should not be used to support those kinds of expenditures. That's one of our biggest concerns.

Assemblywoman Parnell:

I still need to have an idea as far as the rates the homeowners are paying for their water. Has that dramatically changed since the transfer of delivery?

Michael Trudell:

Yes. The average increase in 2003, I believe, was about 13 percent. Since then, the average increase that was just approved was 3 percent. Since TMWA has taken over, there have been steady increases, and staff is proposing a steady increase of about 2 percent to 3 percent per year to maintain what they consider to be the cost that they need to deal with. That includes growth and the infrastructure they need to maintain, as well as other costs.

Chairman Parks:

You cited some statistics relative to Caughlin Ranch's irrigation expenses and that they had increased 16 percent, 18 percent, and 19 percent. Is that for the common area? I apologize. I have heard a lot about Caughlin Ranch, but I don't know the specifics of your association. I'm presuming that this refers to common areas as opposed to individual homes.

Michael Trudell:

The Caughlin Ranch Homeowners Association is a bit unique. We own and maintain a number of public parks. There are privately owned public parks, and our common areas are open to the general public. For Caughlin Ranch, those percentages that I cited are percentages of our annual expenditure. The percentages of our annual expenses have gone from 16 percent to 19.3 percent over the past three years.

Assemblywoman Gansert:

Mr. Chairman, if you just look at raw numbers, the \$361,000 budgeted for 2005, versus the \$278,000 for 2002, is about a 35 percent increase over a three-year period.

Elaine B. Steiner, Vice President, South Hills Association and Southwest Truckee Meadows Citizen Advisory Board, Reno, Nevada:

I am here to support the bill. I am a homeowner in Washoe County, and while I support this bill, I think it really hasn't gone far enough. We pay too much for an old system. We bought a 70-year-old system that needs a great deal of work.

We paid too much for it. I feel that the makeup of the board tends to favor one entity over another entity.

[Elaine Steiner, continued.] We are talking about higher costs; all but 27 percent of the people are now on meters. When those 27 percent go on meters, you have to realize they will probably start to conserve, which means revenues will go down. Costs will continue to rise and they are not responsible to anybody other than themselves. I think they need a great deal of oversight.

Another interesting aspect is that you can't tell how much water you use if you are on a meter. When you purchase electricity, they can tell you exactly how many kilowatts you used; it's right on your bill. When we receive our water bill, they can only do it in terms of 1,000 gallon units. They say it's revenue-neutral, and you have three tiers. The first tier is up to 1,000 gallons—you pay a set amount of dollars. Then, if you go to 1501 gallons of water used, you then start to pay for 2,000 gallons, even though you haven't used 2,000 gallons. They still can't tell you how much water you have used. They say their computers will not allow that. Another thing is that we pay by the size of our pipes. Some pipes are three-quarters of an inch and some are 1 inch. If I fill a 5-gallon bucket and you fill a 5-gallon bucket and our pipes happen to be a different size, we are paying a different rate, which doesn't seem exactly fair.

We feel that, in addition to this audit, they should be permanently placed under some type of an auspicious annual public report. In the future, it would also make sure that the public knows what is happening. When it was under Sierra Pacific, it came under the Public Utilities Commission, but because it's now no longer a private entity but with a public one, they have to report to no one, and we don't feel that the public is getting their fair share. We have no one that we can complain to or ask.

Chairman Parks:

I know, having water service in Las Vegas, that we normally have a base fee. Then we have a fee that is based on the size of our pipes as well, three-quarter inch or 1 inch. The 1-inch pipe results in a slightly increased fee. If you have a 1-inch pipe, for whatever reason, then there is a fee for the preset number of gallons of use first, then a higher fee if you have more or use more than that, and an even higher fee once you go beyond another threshold. We do have a tiered system. I think we pay for the water based on how much we use, not that we buy the next increment, as you seem to be indicating.

Elaine Steiner:

Then you also have an administrative fee that goes along with that.

Chairman Parks:

Yes, that's right.

Elaine Steiner:

You are not actually paying for the water; you are paying for the water you use plus administration.

Chairman Parks:

That is correct, but we don't have the jump in our structure where we go to a higher rate. We only have that higher rate for the additional gallons that we use.

Elaine Steiner:

For residential use, we have three tiers. We conserve as much as we possibly can, and most people are taking out their lawns, because in the summer, if you have a small property—one-third of an acre—and it has lawn, you will probably pay about \$200 to \$300 per month for this water, which is quite a bit.

Barlane Ronald "Ike" Eichbaum, Private Citizen, Reno, Nevada:

I live in the southwest area of Reno. I'm a veteran and served in World War II to get justice. Recently I don't think we have been getting it through TMWA. I've been president of Washoe Homeowners, and I've been president of South Hills Homeowners, where I'm trying to help the areas grow properly.

We started out in 1968. When I moved there, the water rate for the 1-inch line was \$7.00. I had it restricted down to the three-quarter inch line to save money. I was retired at that time, and it was \$60. My rate went down to \$47 with the change in the size of the line. I'm now paying \$74 on a flat rate. We are on one-third acre lots that include grass. Years ago when we had trees, if we stopped watering, they were going to die. When he moved in a year ago, my neighbor paid about \$250 on his first bill in May. He is on a meter. In June, his meter rate was \$350. This really hurts the people on fixed incomes and seniors. We have a lot of people out there; there are widows on fixed incomes, too.

In addition to this, it's not just a financial problem; it's a lot of their procedural problems. They weren't supposed to install water meters unless requested. Now they are installed if it's a new house or one that is sold. They illegally came to my house and put a water meter in without consent. They have done this to many other people. I understand they went in and did this to 12,000 people, and they intend to install 6,000 more meters to get their quota of 90 percent. That forces everyone onto water meters. They don't seem to have any concern for the people, not only on the financial end but on the procedural end.

[Ike Eichbaum, continued.] Two years ago, they put a bypass line down in South Hills, down Broken Hill, to supply water to Manogue High School; when they put this in, it affected our water pressures. Our water pressures were at 80 PSI [pounds per square inch]. Afterwards, I was monitoring up to 150 PSI. Now many people have serious problems with their sprinklers. I still have a leak in mine from that. My little water hose to the back of my refrigerator broke. I've since put a regulator in myself. They didn't put it in. There are others who have lost their whole sprinkling systems, and it cost a lot of money. One person did, and they came and fixed it when she complained about the leak and where they put the meter in. It wasn't her fault; they installed the meter. But, they didn't even give us notice when they put this bypass line in, and my wife called down, and they said they had forgotten.

We don't just have those problems; we have the problem of six members from the city of Sparks on this board and only one from the county. We, in the county, have larger parcels—like Ms. Steiner, one-third of an acre. Many have been there a long time and are seniors with fixed incomes. The increase here from \$47 to \$74 in two years' time is a lot different than my Social Security income. I got an increase of \$15.30 per month, with \$5.00 of that deducted for Medicare. That leaves \$10.30. Well, they immediately gobbled that up, plus the other things we have.

I think, basically, we have a problem with the number of people on that board, the board is not accountable to anybody, and there is no consumer advocate, which is supposed to be on that. We need an accountability report for that organization.

Steve Walker, Legislative Advocate, representing Truckee Meadows Water Authority:

Here to speak to the issues are Jeff Tissier, the General Manager of TMWA, and John Oren, the Resource Manager of TMWA. I will turn it over to them.

Jeffrey Tissier, Manager of Financial and Administrative Services, Truckee Meadows Water Authority, Reno, Nevada

We have a packet ([Exhibit J](#)) for everyone on the Committee. It is comprised of a written copy of our testimony that we will present today. TMWA also has some responses to the recitals and the preamble. We have a strong difference of opinion in the writing. Also, we provided a copy of the interim compliance order that was issued by the Public Utilities Commission on the divestiture of the water assets, which is referenced in our testimony.

For the record, TMWA welcomes the audit and investigation proposed in A.B. 323. It believes it will not only provide an independent support of rate

increases, but will provide a forum to review how the utility's financial situation rose out of the purchase. It will also explain the basis for previous rate increases. We recommend that this audit/investigation include an open review of the decisions and opinions issued when TMWA was formed, including the impact of prior regulatory decisions. Truckee Meadows Water Authority's concern is that the TMWA ratepayers will be paying for the audit, since the only source of funding for TMWA is revenue from customer rates and development fees. We have no taxing authority and no other ability to raise revenues. The Truckee Meadows Water Authority staff and the TMWA Board of Directors are charged with a delicate balance to maintain water rates as low as possible, and at the same time meet our fiduciary duties to our current and future bondholders. The State of Nevada is a foreseeable bond holder. We have applications for the Drinking Water State Revolving Roll Loan Fund (DWSRLF) available through the U.S. Environmental Protection Agency. TMWA wants to extend assurances to the State of Nevada that TMWA can honor future principal and interest payments.

[Jeffrey Tissier, continued.] During the course of the last several years, TMWA became aware of severe financial challenges that were looming. The potential for technical default on the current TMWA bond was very real. The Bureau of Consumer Protection was involved in the water asset divestiture and did express concerns in the interim compliance order of the Public Utilities Commission of Nevada, docket number 001-1044. The water revenues were not sufficient to cover the operating expenses of the Water Authority in addition to the principal interest payments on \$400 million dollars of acquisition debt. TMWA subsequently issued \$452 million of debt.

It appears that the concerns of the Bureau of Consumer Protection were well-founded. If the local governments had not had the courage and foresight to acquire the water utility water resources, these important assets would have slipped into private hands with a profit motive and no vested interest in the community. All decisions made to date have been in the long-term interest of TMWA's customers and bondholders. Though painful, changes in rates have ensured the financial stability of the utility, while allowing necessary investment and existing infrastructure to continue. These actions are more closely matched water rates to the cost of production for those customers who put the greatest demand on the system. TMWA feels it is appropriate to address certain inaccuracies contained in the bill, since it appears that the bill may have been prompted in part on erroneous information. The bill's sponsor provided copies of her information during her recital. We will just go through those very briefly.

There is a recital that says, "Whereas in 2001, TMWA issued more than \$450 million in bonds and power water assets to Sierra Pacific Power."

Basically, that was to stabilize rates. The bond issuance was not intended to stabilize rates. The issuance of \$452 million in 2001 by TMWA was to purchase the water system, fund initial working capital, fund various minimum required reserves—as required by the bondholders—and fund capital improvements for at least 2 years. The commitment by the acquiring agencies not to raise water rates for 2 years after the acquisition was given prior and independent of the issuance of the bonds.

[Jeffrey Tissier, continued.] The other recital where we have some difference of opinion is that the first water rate increases by TMWA raised substantially more revenue than estimated by Truckee Meadows Water Authority. We counter that the first water rate increase actually generated slightly less revenue. Prior to any rate adjustment, the deficit between the projected 2005-2006 fiscal year and the current revenues was \$22.4 million. The first rate increase proposal in October of 2003 sought to reduce the revenue deficit by 50 percent, or \$11.2 million. The approach by TMWA staff is to incrementally work our way out of the revenue deficiency in a measured approach, whereby we can adjust for growth and also for meter change-outs that never occurred under Sierra Pacific, to the best of my knowledge. A comparison of audited results for fiscal years 2002-2003 and 2003-2004 show that after the first rate increase, revenues increased from \$62.2 million to \$73.1 million, or by \$10.9 million, which was slightly less than the targeted revenue increase. For the fiscal year ending June 30, 2005, projected revenues are expected to be \$74.4 million, which is still \$10 million less than the total cost of service or the cost to operate the system.

Another recital said that TMWA implemented, first, its rate increase and announced its intention to implement a phase two rate increase during subsequent years. TMWA's Board of Directors did take action to implement a second or third phase of the increase in subsequent years. Future rate adjustments would occur only after sufficient review and analysis indicated the need for further increases. Subsequent to the first rate increase, a ratemaking review committee was formed, per direction of the TMWA Board of Directors, to take in a number of customers' comments and interests. The committee was comprised of 17 members.

We have another recital where we strongly disagree—that TMWA approved a second water rate increase in 2005, even though a committee established by TMWA to review its ratemaking process and a national expert on water rate utilities recommended no rate increase. Both also found that the rates and related rate design proposed by the staff of TMWA were not consistent with well-established rate-setting principles or a need to create equitable rates between existing and future customers. The recital incorrectly suggests TMWA

used inappropriate methodologies in establishing rates contrary to the recommendation record of the review committee.

[Jeffrey Tissier, continued.] Since its inception, TMWA has and will continue to have highly experienced, nationally recognized, and registered financial advisors to advise TMWA on fiduciary responsibilities to existing and future bondholders. The advisors will also advise on the ability of TMWA to cost-effectively access the bond market and improve TMWA's credit worthiness. If I may add, TMWA in 2003, had \$462.2 million in revenue. We expect to have about \$33 million in operating costs, and our debt service is \$30 million a year. Even with growth, we would not have been able to limit covered requirements on the existing bonds, let alone even reinvest in the system. We have to point out that even though I did not work for Sierra Pacific, it is my understanding that reinvestment in the water system was not as high a priority as it is today. We are reinvesting anywhere from \$15 million to \$20 million in the water system in main replacement, correcting storage deficiencies, replacing meters, and replacing service lines that have all been left to us to repair. Needless to say, with all the rehabilitation required by the system and a deficient bonding capacity, it is necessary to raise rates to expand our bonding capacity so that we can approach the credit markets and issue bonds in a manner that assures that we can repay principal and interest.

Finally, the last recital that we take exception to is that TMWA has indicated it intends to require existing residential customers who pay flat rates to convert to metered rates in the next several years. Since July 1, 1988, the state required all new construction in the state of Nevada to have water meters. State law also allows TMWA to meter its flat rate customers. Installation and conversion of flat rate water services to metered billings was begun as the result of decades of negotiating a settlement of the Truckee River issues between 5 primary signatories: the United States, State of Nevada, State of California, TMWA, and Pyramid Lake Paiute Tribe. In exchange for securing an interstate allocation of the Truckee River, expanded drought supplies, enhancing water supplies for wildlife, expanded water supplies, fisheries, and the settlement of numerous lawsuits, installation of water meters as a means to conserve water was required. The program, which began in 1995 and has been funded solely from new development, will allow the system to be converted to meter billing once 90 percent of the services requiring retrofit of a water meter is completed—some time in 2005. At present, over 81 percent of TMWA's customers pay based on a water meter.

The other items that were brought up, we were unaware of. We don't disagree with Assemblywoman Gansert's position regarding amortizing the cost of new construction. That is done by issuing bonds and paying for that new

infrastructure with bonds. That is the intention of TMWA at this time. We have approached the State Treasurer's Office to utilize the state bond bank to help fund the construction of the new operations facility. The present facility no longer has sufficient square footage to house our personnel, nor does it have adequate areas for our distribution personnel to clean up after repairing leaks. We also have approached the State of Nevada Drinking Water State Revolving Loan Fund for a low interest loan of \$49.3 million to help fund the arsenic compliance projects. Actually, the liability for that was never modeled in the acquisition model.

[Jeffrey Tissier, continued.] We also looked at other appropriate sources of importing capital dollars to help fund other capital projects. The last rate increase and decision by the board has increased our senior lien debt capacity in a meaningful way so that now we can approach the bond market. We are going to have our rating agency presentations in the next 3 months.

With respect to employee salaries: in the interim compliance order, it was considered essential, for a seamless transition of the water authority from Sierra Pacific to TMWA, that the existing compensation structure be transferred in a like way. Towers Perrin, a compensation consulting firm, prepared the comparative analysis, and TMWA, since that transfer, has strictly adhered to that compensation structure. Notwithstanding that transfer of the compensation structure, TMWA will be embarking upon a comparative salary and benefits survey with like water utilities with similar operating complexities to ensure we are not over market in our salary structure, or under market with respect to some of our engineering salaries, because we cannot recruit civil engineers at this time.

With respect to the River fund, it was decided by the TMWA board to reserve part of our operating monies to contribute to the Western Community Foundation of Western Nevada. The goal here was to try to leverage with other charitable groups to provide extra money so that we can do river enhancement projects along the Truckee River, with the sole purpose of benefiting TMWA customers. With growth, demands, and pressures on the river, it is becoming essential that we address some of the environmental pressures that are being placed on the river and on the watersheds.

With respect to fire hydrant repair and maintenance: yes, it is true that the local governments are transferring the responsibilities of fire hydrant maintenance to TMWA, because it is felt that TMWA can better serve that obligation.

TMWA asked for the standing advisory committee for rates perpetually into the future. The TMWA board is agreeing to this, and we are formalizing that

committee as we speak. TMWA also has a bargaining unit contract with the International Brotherhood of Electrical Workers (IBEW) Local 1245. This contract was transferred from Sierra Pacific to TMWA. We will be reopening labor negotiations with IBEW. We have also informed them that we will be comparing other labor contracts of western water utilities to ensure that our pay scales are not out of line with other comparative utilities of similar complexities.

[Jeffrey Tissier, continued.] In closing, we welcome an audit, and our board does not feel that it is appropriate that the ratepayers pay for it. But, then, the decision will be made by the Legislature on the disposition of this bill. John Irwin and I are both here today and will probably be the primary contacts for the audit. We will work essentially in a very cooperative manner and provide all the information on a timely basis so that we can minimize the impact of the cost to the ratepayers.

Assemblyman Christensen:

In reference to your financial strategy, or how you are funding your capital projects, am I understanding correctly that you are funding this capital project by paying it off in just 2 years?

Jeff Tissier:

No, we'd like just clarify that. Our position is that we have every intention to finance that particular project and other major expenditures with bonds. One of the difficulties that this water utility has is that we are one of the most highly leveraged utilities in the United States. That means we have some of the highest debt per capita and per service connection. Contra Costa County [California] is one that is comparable to us. What we want to be able to do is use debt very judiciously. What we would like to use it for is to smooth out peaks in our capital spending program.

As Assemblywoman Gansert had pointed out, we see a large amount of capital projects slated for this upcoming fiscal year. In those \$68 million of expenditures, about \$4 million is for building, which we intend the bond for; we have about \$14 million in the arsenic compliance, which we intend the bond for; and those are the two projects that are upcoming that we prefer to bond. That's what she meant by amortizing that cost. We want to use the bonding capacity judiciously, because not only are you paying for the cost of building the asset, but you have the cost of carry. In other words, interest costs are on top of this. So that's why we would propose that we use debt service, future debt service, very judiciously.

I do want to thank State Treasurer Brian Krolicki for offering to us the ability to subordinate the SRF [State Revolving Fund] loan to our senior lien debt

capacity. We asked for this because the senior lien debt capacity is our lowest-cost bonding capacity, and the DWSRF is a federally subsidized loan that has, usually, an interest rate that is two-thirds of the going rate on bonds. You don't want to use your senior lien capacity for something that is already inexpensive. And by his graces, we are able to subordinate that debt and not use our senior lien capacity. What I just want to assure everyone is that we are working hard to try to mitigate the impact of prior decisions on our water rates. Also, we are approaching various federal agencies for assistance of either grants, through the Corps of Engineers or the Bureau of Reclamation. Our federal senators are working with us. We are looking at every avenue possible.

Assemblyman Christensen:

That was a lot of explanation, but I appreciate that, because the pay increase was another concern of mine, and suddenly I was aware, as you pointed out, that you brought in an outside firm. Which firm was it?

Jeff Tissier:

The firm that was used at the time of the transfer was Towers Perrin, Inc., headquartered in San Francisco, California.

Assemblyman Christensen:

Were they the ones who came in and advised you on how you compensate?

Jeff Tissier:

There was an agreement in the interim compliance order that you can read. It stated that offers would be made to Sierra Pacific personnel on like salaries and benefits. Towers Perrin, Inc. did that compensation analysis.

If the audit ensues, we have that document ready and available. It was done not only for the management/professional class, but also for the bargaining unit.

Assemblywoman Kirkpatrick:

Tell me about this bonus structure and how it works.

Jeff Tissier:

In the structure that was transferred from Sierra Pacific—especially with the management/professional administrative people—you get a base salary, and there is no overtime. At TMWA, we put in a lot of hours. If we meet financial and operational goals for the year or meet only a portion of them, there is a certain percentage of your base salary that's awarded to employees and is considered an incentive system. It's called the Short Term Incentive Plan. That is exactly the same plan that exists at Sierra Pacific today.

Assemblywoman Kirkpatrick:

Because you are a newly formed board, does it state anywhere that you will audit yourself? It seems there needs to be a check and balance system for yourselves.

Jeff Tissier:

Pursuant to state statute, we are required to have an annual financial audit each year. Kafoury, Armstrong & Company performs that audit. We come under all the local finance and budget statutes, and we comply with those statutes to the letter. At no time have we been in violation of any state statute, and we have those audits on our website at <www.tmh2o.com>. We post those on our website, as well as our capital improvement plans, the entire inter-compliance order, and testimony related to the divestiture of the water assets.

Assemblywoman Kirkpatrick:

Who pays for those?

Jeff Tissier:

That is part of the cost of operating the business. Our financial audit cost \$35,000 last year.

Assemblywoman Gansert:

If you go over the staff report, it has a lot of the information regarding bonding, which demonstrates how they are dropping their capital expenditures in the amount of \$68 million in one year, including \$4.7 million for their new building. Even though the intent may be to bond, it's not there right now.

Chairman Parks:

We will close the hearing on A.B. 323. We have two bills that we'll put together, A.B. 253 and A.B. 434, and we will now open the hearing on those bills.

Assembly Bill 253: Makes various changes concerning provisions governing water. (BDR 48-548)

Assembly Bill 434: Makes various changes concerning environmental resources. (BDR 48-206)

Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County:

We all know that Nevada has had the most dramatic population growth rate over the past 20 years of any state in the nation. It has put unprecedented pressure on our scarce water resources. This bill, A.B. 434, has had much of Mr. Goicoechea's bill, A.B. 253, incorporated into it. Some of my remarks are related to both.

These bills reflect the input of many citizens from all over the state who have contacted their lawmakers over the past few years. It's an attempt to find some cooperative ways of meeting our water needs without damaging the environment in any part of the state. It is not an anti-growth bill. It is a proactive water management bill that attempts to bring the discussion and debate about Nevada's future into the open and to determine if the statutes are in place to ensure that our children's children and their grandchildren can enjoy all that Nevada has to offer today. It is more important than ever. We, the state's policymakers, must provide the necessary leadership to help solve the water policy challenges our state is facing. We've all heard Mark Twain's words: "Whiskey is for drinking; water is for fighting." I hesitate to frame a legislative hearing as a place for fighting, but there will be substantial contention in the room today, as there always is when the topic of water comes up. That is nothing new. The combination of rapid population growth, significant drought, and the difficulty and expense of developing new water supplies has created one of the largest public policy challenges in Nevada's history.

We need to make sure that our decisions made about water policy, such as interbasin transfers, occur with effective public participation, and that all deliberations are made openly and thoughtfully. In fact, informed decision making is really the crux of our bills. They are intended to assure broad and open participation, more sophisticated planning for shared water management, and, most importantly, safeguards to ensure that the public's interest is served as we determine the allocation of our scarce water. These bills are not intended to be a battle between jobs and the environment, although it may be portrayed as such by some. Certainly this is not intended to be disrespectful to the State Water Engineer—although he may be defensive about some of the suggestions—and it's not an attempt to overturn the water law that has served us well for the past century. I'd like you to think of it more as recognition that our booming state must grapple with the reality of an expanding population and the subsequent increasing demands on our water. I encourage you to keep an open mind.

The opposition is going to tell you the status quo is just fine, and they will warn you that it's a bad idea to change anything at all in Nevada water law. I know what typically happens when you have this much dissent within the Legislature;

we go to an interim study. Anticipating that, you'll see an interim study is included in our bills. We know that you probably won't decide to change very much of Nevada water law over the next hour and a half. We've included the interim study because we think it is important to have a debate in a setting that does encourage public input and thoughtful reflection, in the hope that, perhaps, some consensus can be developed through legislation in the next session.

[Assemblywoman Leslie, continued.] As all of you know, I've worked on contentious issues before, like the death penalty, and I know it takes a lot of talking and a lot of work to bring people together on some of these issues where there are polarizing points of view, and where many, indeed, see the problem as a life and death issue that affects their quality of life. I have to tell you, even in the death penalty debate over the last four years, I have never encountered people who thought the status quo was perfect and that the issue did not warrant more discussion—not ever. So I have to say that I'm stunned that at least some of the people in the room today don't think an interim study is necessary. I leave that to you, the Committee, to deliberate.

Of most importance today is that, hopefully, you have time to hear from the citizens of our state who don't think Nevada's water law is perfect and who have a different point of view. I know you'll listen carefully to their opinions and take their views into consideration as you review these bills.

Assemblywoman Peggy Pierce, Assembly District No. 3, Clark County, Nevada:
Assemblywoman Leslie has spoken for both of us and has spoken eloquently about the challenges facing our state. My hope is that this bill, among other things, widens the conversation about the future of our state. How much will it grow, and how much do we want it to grow? Are there any choices to be made in terms of growth? Who gets to make those choices? What resources are needed for that growth? Where will we get those resources? What will be the impact on our resources for the growth we choose? These decisions should be made with as much input from as many citizens as possible.

In the south, we are considering plans to acquire from the rural counties an amount of water that dwarfs any previous plan. This will require the largest building project that has been proposed in this state since Yucca Mountain, and it will have price tag to match. For this Legislature to meet for 120 days and not mention growth and water would be an act of gross negligence on our part.

Lastly, I would like to speak of two things about which we, as Nevadans, often live in denial of. The first is that we live in a desert. I would suggest that the rules of growth and resource use that are true in Minnesota are not true here. The second point is that this is the twenty-first century. We should consider all

options in the discussion and the challenges facing our state. We must not limit ourselves to solutions that are comfortable because they come from the last century or the century before.

Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka, Pershing, White Pine, Churchill (part), Humboldt (part), Lander (part), and Washoe (part):

Today, I am going to focus on A.B. 253, which contains two major changes and a very large appropriation.

It is evident that our water resources are being stretched as we try and meet the tremendous growth in Nevada. I'm not a hydrologist or a geologist, so I'll stay focused on state policy. I will leave the data to the gentlemen who surely will follow. Our water resources are clearly being stretched by the state's growth. We need to know what our water budget is across the state. We can't continue to write checks on our water budget when we don't know what we have in the bank. Regional plans are great, but there is always a certain amount of overlapping between regions and groundwater basins; there is an interconnection. I think that why, truly, regional plans won't work is that some of those water resources are coming from the same area, and we end up considering them as a water resource for our area.

How much will a statewide inventory cost? That's about as mysterious as how much water we have. It's going to cost some money. In A.B. 253, we've asked for \$12 million to fund a statewide water inventory. We are not proposing any extensive drilling or pumping project, but are just trying to bring together all existing data in one place. There is a lot of information available from some private and some public sectors, and there is a lot of data in place. We just really need to compile it and see what it tells us.

We do have some State money available. I feel it would be a wise expenditure of some of the excess or surplus money we have on hand this year to ensure our future. The State Engineer's staff is undermanned, as are a number of other State agencies. I am proposing that we go to an unbiased contractor over the next biennium to compile existing data and determine what gaps there are in that data. I am not so naïve as to think that would be a quick fix. It's going to take years to come up with a true inventory.

The other major component of the bill is its adjudication, and that is drawing most of the heat. I know there is opposition to the provisions, as it will require the State Engineer to consider adjudicating a basin before he can consider that basin for an interbasin transfer. It's really the only way that we can quantify the discharge from a groundwater basin. We have to establish what the existing

rights are. Adjudication brings all water rights to a whole new level; it elevates them. Once you have your water right adjudicated, it's beyond perfected.

[Assemblyman Goicoechea, continued.] I have a list ([Exhibit K](#)) of all the basins that have been adjudicated or partially adjudicated. The only basin that has been totally adjudicated in this state is Las Vegas Valley. There are portions of Duck Valley and the Indian Reservation that were adjudicated in response to the State of Idaho's request, as they are presently adjudicating the Snake River Plain. Idaho recognizes the need for adjudication.

I won't argue that it's not costly and time consuming, but we can either adjudicate the water up front or litigate it after the fact, and we know what that costs and what that takes. At this time, the State Engineer's Office, I believe, only has one and a half persons dedicated to adjudication. Many of the petitions for adjudication in the state of Nevada were petitioned 50 years ago, and there is still no action on them. The \$3 million appropriation contained in this bill to the State Engineer's Office would be the money to ramp the State Engineer's Office and give him the additional staffing that would be required to proceed on adjudication in this state before we fall further behind.

In the interest of time, I will close there, but I will ask the opposition if they truly believe that we can continue to appropriate waters in the state of Nevada without adjudicating those water resources that we have in hand.

Jon Hutchings, Natural Resources Manager, Eureka County, Nevada:

The purpose of my being here this morning is to try and offer some broader insights—to set the stage, if you will—for the discussion that is likely to follow. I've prepared a PowerPoint presentation ([Exhibit L](#)) that offers some consideration that I think this Body should consider in deliberating on groundwater development in Nevada. I will end with some of the recommendations that are before you in both Assemblyman Goicoechea's and Assemblywoman Leslie's bills.

To get everybody on the same page to begin, there are several options for groundwater development in Nevada or anywhere in the country. We can approach development as a term use in which we agree to extract large amounts of water for the short term and reap the economic benefits up front with the understanding that those benefits won't be available after that term use has expired. There are a couple of instances in the state where Nevadans have decided to do that. Mine dewatering is one instance, and the Las Vegas Valley is another instance, in which that community decided to overappropriate their groundwater resources for a specific purpose.

[Jon Hutchings, continued.] The other option is sustained use, where we endeavor to provide a greater number of citizens the ability to use that water economically, to improve or maintain their natural environment, and to provide them with the same quality of life that we enjoy today. The idea is that our use of that water is indefinite.

In terms of groundwater development and the many basins that make up Nevada's groundwater regime, the state water law has focused on the idea of perennial yield. I offer two definitions of perennial yield that come out of the State Engineer's ruling for reference. The first is an economic consideration of what perennial yield is: It is the maximum amount of water that can be consumed economically over an indefinite period of time. The second is more of a system's hydrologic definition: It limits water extraction to the maximum amount of natural discharge that can be salvaged for beneficial use. Note that those definitions don't offer any change—they don't consider short-term versus long-term implications of groundwater management, nor do they consider fully the social and, perhaps, natural resource impacts of groundwater development. They are largely focused on economics, which, of course, is not necessarily bad, but it can be an issue.

I would like to give an example of what happens when you develop a basin, and I would like to base that discussion on an in-depth investigation that was conducted by D. E. Prudic and M. E. Herman from the USGS [United States Geological Survey] in 1996 in the area north of Winnemucca known as Paradise Valley. Paradise Valley itself is largely typical of the basins in Nevada, in that it is basically a hard rock bathtub filled up with gravels, sands, silts, and clays. In hydrologic terms, we call that alluvial material. If you envision a bathtub filled up with sand, filling that bathtub with sand and partially with water, and in this case, if you run a leaky pipe through the bottom end of the bathtub, you have Paradise Valley with the Humboldt River running through the south end of the valley.

The purpose of the investigation was to ascertain what the long-term impacts of development would be on Paradise Valley, and it was actually in response to some issues that were reoccurring related to irrigation. What I have before you now are the results of that investigation. The modelers, the scientists, predicted what would happen over a 300-year period if the present level of pumping—which, by the way, is about half of what the perennial yield of the basin is—were to continue for 300 years. What this series of two graphs shows you is that in the short term, perhaps 0 to 50 years, the majority of the water that leaves the basin is consumptively used in the basin; it comes out of storage. It's that amount of water that is retained in the sand, silts, and gravels. In an alluvial basin, when you take water out of storage, you lower the groundwater

table. In other words, there is less water left in that basin than there was under the original conditions, and it's taken out of the top of the basin.

[Jon Hutchings, continued.] The result is that there is less water available for the native plants to access with their roots. Those plants take up that water through their roots, respire the water, and it leaves to the atmosphere. In fact, in Paradise Valley, 96 percent of the water that leaves the basin under natural conditions leaves there by transpiration. You see that one of the other short-term changes in the dynamics of the basin is a reduction of vapor transpiration and the loss of a fair amount of native plants.

In the longer term, the inflow from the Humboldt River basin was increased, and the outflow to Humboldt River Valley was decreased. It's a little complicated. Looking at this in a different way, these pie graphs show you the source of water that was pumped over a given period of time. Early in development—the first couple of years—80 percent of the water came from storage, and 20 percent came from the reduction in evapotranspiration that the reduction in land area that had native plants. After about 100 years of pumping, only 18 percent of that water came from storage, 65 percent came from evapotranspiration, and the remainder came from inflows—from reductions in outflow—from the adjacent basin. The bottom line is that there are several impacts that we can expect from any development of a basin. The key, of course, is to understand how big those impacts are and over what time frame.

To review: in the short term, we expect to see water removed from storage, resulting in the lowering of the water table. We expect to see reductions in evapotranspiration by plants, causing a reduced vegetative land area and possibly resulting in dust problems. Then, we expect to see in the longer term—50 years to 100 years, perhaps—diminished resources in adjacent basins, and those are unaccounted withdrawals, under the present management regime, from connected groundwater or surface water resources.

I would like to now put all this together. You have seen what the impacts can be on a basin when we develop it, and the idea is to fully disclose those impacts, to fully understand who's going to be affected, and to make decisions about what is best for the local community and the state as a whole.

The conceptual framework that I have come up with is exhibited here ([Exhibit L](#)). The chart shows the results of increasing pumping or withdrawal from that basin on the Y-axis, and 150 years laid out on the X-axis from 1900 to 2050. The first thing that happened during early development in Nevada was that people put water to beneficial use, and they did so before any water law was in place. We talk about those water rights as being pre-statutory or vested

under the law in many basins that are today being targeted for new development. Those water rights are yet undetermined—nobody knows the full scope of who has what and who can use it where. What they do know, however, is that, generally, they're small, relative to the total volume of water that may be available in the basin.

[Jon Hutchings, continued.] The second thing that occurs is that the State Engineer has to somehow come up with an estimate of what this idea of perennial yield is and what can economically be taken out of the basin without causing undue environmental impacts, as well as other things. That was largely done in the 1930s, 1940s, and 1950s by the USGS.

Then came more intensive development of these basins in some cases. In agriculture, that was largely initiated by the advent of line shaft turbine pumps that had the technology to extract large amounts of water from the ground. In many basins, that's just happening now as a result of the increased demand on water resources to fuel our growing population. But the bottom line is that the second phase of development happens very rapidly, and it's a struggle for water resource managers to be able to, stepwise, allow development so that they can watch the developing impacts and how those impacts pan out with time.

It's likely that in the development of the basin, there are going to be some small water conflicts, and often the State Engineer has to make the decision about whether or not his initial estimation of perennial yield is accurate, and he may have to adjust it. The ultimate goal is that the basin be developed in a manner that will ultimately hone in on what the value of perennial yield is, so that there will be as much water going out as can be reasonably expected to be developed. Unfortunately, as I showed you before, some of those impacts of development don't happen for a period of 100 years, maybe 200 years, and it may be, once those impacts are felt, that we recognize that the sustainable level of pumping is less than what we have allowed to be developed.

Then we are in a regulatory mode, and we ask the Office of the State Engineer to do something about that, to curtail pumping. Yet, the water that has been developed has been institutionalized. It's being used by farmers, or it's being used by communities to run their bathtubs, and it's very difficult, politically, to take that water away. That's a weakness in the system, I believe. On top of that, in many of these basins, we still have these early water rights that are yet undetermined, which is another weakness in the program.

The success of this regulatory model, I believe, requires adequate and accessible information. The State Engineer, his staff, and the other entities involved in water resource management decisions have to have the ability to

predict those impacts, recognizing full well that the predictions are not fully accurate. There also has to be an active regulatory monitoring program. We certainly have to have full determination of existing water rights to fully regulate this groundwater regime. Of course, I strongly believe that we could use some help in developing technical and policy support for those non-water resource professionals—the local governments, businesses, water consumers, and local planning agencies—who make land use decisions that are related, and have a collateral impact on water management as well.

[Jon Hutchings, continued.] My last slide ([Exhibit L](#)) boils that down in terms of recommendations. These are largely what you see in both Assemblyman Goicoechea's and Assemblywoman Leslie's bills—a focus on full determination or adjudication of pre-statutory water rights before allowing large-scale consumptive development. Let's figure out what the scope of those rights is before institutionalizing the use of the remaining water. Of course, in order for that to be successful, we have to fully support the Division of Water Resources in that effort.

Let's consider a statewide inventory of water resources. There is a lot of information on water resources out there, but it's not evenly distributed. Most of the basins that are being scrutinized for development today are weak in that regard. Gathering that information and putting it in a managed clearinghouse in which local governments and other folks can access information to help make their good decisions, I think, is key to good decision making in general.

Finally, I think that this Body should consider, in the interim, ways to extend technical policies, as well as policy support, to local governments, businesses, water consumers, and others. I hope that helps set the stage for the remaining discussion this morning. The key point to remember is that the impacts of developing water can't be fully determined in the short term. Many of them take 100 years to see.

Brent Eldridge, County Commissioner, White Pine County, Nevada:

I'm a member of a century-long ranching family in Spring Valley, White Pine County, Nevada. I also serve on the White Pine County Board of Commissioners. My comments today are on my own behalf only.

[Read from [Exhibit M](#).]

I support most of A.B. 434—primarily for the same reasons I support A.B. 253—because it would require adjudication of valid vested rights held in any basin which has been targeted for export of water. In the absence of adjudication, it is impossible to

ascertain or analyze export impacts upon the numerous unrecorded valid existing rights prior to 1905.

[Brent Eldridge, continued.] I'd like to quote from *Water Law in a Nutshell*, by Professor David Getches, University of Colorado, page 155. He says, "The ability to exercise a constitutional right to divert water means almost nothing unless one has it validated through the statutory system of the administration and adjudication." The adjudication mandate in this bill affords holders of those rights the protection, which the spirit of Nevada's water law guarantees them. I do, however, request that you consider amending the wording in line 36, page 2, from "any surface water that is related to or would be impaired or impacted," to this wording: "any surface water that is related to or could be impacted."

In my view, adjudication of all vested rights in the affected basin should occur to adequately protect those rights. I also support the bills' establishment of the interbasin transfer adjudication fund. Currently, the State Engineer has a backlog of adjudication petitions, which, according to his office last year, he had neither the funds nor the staff to initiate. My family petitioned for the adjudication of Cleve Creek in Spring Valley a few years ago. That request is now listed among the many statewide that are pending but not initiated.

Only through establishing such an adjudication funding mechanism will further adjudications be likely, whether or not basins are targeted for export. This measure is a big step toward honoring provisions in existing law and properly prioritizing adjudication needs in targeted basins. The statewide inventory of water resources mandated in this bill is essential for long-term community planning and development. It would identify locals in need of conservation measures and provide invaluable information to local and state decision makers in affecting growth patterns.

I strongly support the provisions in this bill that establish the water rights protection fund, but I believe it should be accessible by all water rights holders in an affected basin. After all, water rights are pertinent to almost every parcel, which constitutes a county's or tribe's economic base and tax base. Protecting private rights is also protecting the local government's interests.

[Brent Eldridge, continued.] I have no strong opinions on changing provisions relating to the environmental commission, but I do believe that any documents, including third-party agreements in the State Engineer's office, should be public record, open for business, and open for review. I appreciate this opportunity and respectfully urge the Committee's consideration of these bills.

Dean Baker, Private Citizen, Snake Valley, White Pine County, Nevada:

[Read from [Exhibit N.](#)]

I'm a long-term rancher in Snake Valley, near the Utah-Nevada border and near the town of Baker. I am here to support A.B. 253 and parts of A.B. 434, particularly the adjudication and perennial yield.

Our valley is divided by the Utah-Nevada line. The future of an area such as ours depends on, and is limited by, the water that is available. The present surface water has been in place, and used for over 100 years, predating the water law. The groundwater has largely been developed and used and limited by the amount of land available in the last 80 years, mostly in the last 40 or 50 years.

There is underground water, but it is in balance now. Where is it going now except through evaporation? To stop evaporation, you have to dry up the land and with it, some of the existing vegetation. Some current wells have reduced spring flows and vegetation, so it's evident that this is a factor.

In our valley, one of the large meadow areas has been in use well over 100 years. Some of the first white people that came into the area used this meadow. It's a natural meadow, and it supports several thousand cattle. It is irrigated with surface water, but it depends very heavily on subsurface water becoming wet during all the winter years.

In the summer it dries up so you can drive over some of it, and in the fall as it cools off, it wets up again so you can't drive over it. A lowering of the water table in a meadow like this would severely impact its ability and its productivity, even if it drops a little bit. If water is to be exported out of a valley like ours, all of the surface water, the water table, the springs, and the groundwater need to be clearly defined. It needs to happen on both sides of the state line, because a large part of the irrigation is within a mile of the

state line, and then it flows on out into the valley and the basin where it covers parts of Utah. Nevada covers just the mountain edge of the valley.

[Dean Baker, continued.] Adjudication is the accepted process to complete this bill. This goal needs to be accomplished if they're going to export water. If water were not to be exported out of this valley, the land limitations would probably mean adjudication was not a necessary part for this valley. Part of the water is adjudicated now, but other than whether pumping is reducing the ground table or not on either side of the valley, it is not much of a concern. It is a concern that can be dealt with locally because of the limitations of the land.

If the water goes out, then it becomes a whole new ballgame, and I think, rightfully, as this bill outlines, it should be the responsibility of the ones who take the water out of this valley. As I say, I believe it is in balance now, and there will be impacts. If you lower the water table, you dry springs up. Those things need to be clearly defined. When the water is gone, the future is gone.

I will agree and I believe that our water law is one of the outstanding examples of water law in the state of Nevada. The law has served the state well. I think the State Engineer has many good tools, and perhaps, it can be argued that he has all the tools that are needed. The withdrawal of the water from the valley without adjudication, and without it being processed by the exporter, is not a fair situation.

Assemblyman Grady:

Mr. Baker, do you get all of your water from Nevada, or do you get some water for your ranch properties from Utah?

Dean Baker:

Our ranch literally straddles the Utah and Nevada state lines. We have water rights in both states. We probably don't pump much from Utah into Nevada. We can do that, but we don't do that. A large part of our water comes from Nevada and flows into Utah, with the same uses as the earliest settlers put it to that came in the valley in 1800s. A big part of the water we deal with comes out of Utah or out of Nevada and is used in Utah. That does not make for a simple kind of defining. The prior owners and we have not done as good a job as we should have on this, but then, we hadn't faced this kind of water exportation or conflicts with water before.

Gregory L. James, Esq., Legislative Advocate, representing Inyo County, California:

[Provided written testimony, [Exhibit O](#).] I've been asked to speak in support of A.B. 434, particularly to its provision to address the interbasin transfer of groundwater and perennial yield.

I come from the Owens Valley, an area that has had a long history with the interbasin transfer of water. Living in the Owens Valley for nearly 30 years, I've served as a lawyer for the local county that encompasses the Owens Valley, the County of Inyo. I've served as the Director of the County's Water Department, which had the responsibility for the tough duty of trying to protect the environment of the Owens Valley from the impacts of water gathering and water exports, while at the same time providing a reliable water supply to the City of Los Angeles.

Los Angeles came to the Owens Valley at the turn of the century, built an aqueduct from the Owens Valley, and began an interbasin transfer of water that has gone on now for nearly 100 years. There have been many impacts of Los Angeles's activities. Los Angeles, to protect their water resources, essentially bought the entire Owens Valley. They own approximately 240,000 acres of land. They dried up the Owens River for a reach of about 60 miles, which completely ruined the fishery, riparian, and aquatic habitats that depend on the river. Los Angeles dried up the 100-square-mile Owens Lake, which resulted in large amounts of blowing dust, and Los Angeles commenced a large amount of pumping in the 1970s, which lowered the water table and affected native vegetation throughout the Valley.

You have a unique opportunity here, in considering these pieces of legislation, to afford the state of Nevada the opportunity to try to avoid some of the impacts that Owens Valley has experienced with the interbasin transfer of water, particularly in regard to the addition that the State Engineer consider the views of other agencies. Obviously, the State Engineer does a very good job with administrating the water rights here in Nevada, but it certainly would add to the process and improve the process to allow other state resources agencies to have the opportunities to submit their views to the State Engineer concerning a proposed interbasin transfer of water. There may be some need to address how those views are presented to the State Engineer, but it certainly would bring in more expertise in an obviously very complicated area. Also, this would be true in regard to a provision of the interbasin transfers that deal with findings.

At the present time, state law provides that many very important considerations have to be evaluated by the State Engineer before a permit can be issued for an

interbasin transfer. The effect on the environment in the basin in which the water is being transferred, the future of growth, and a need for water all have to be evaluated. However, at present, it only requires that the State Engineer consider these impacts. It doesn't require that he actually issue findings that are supported by facts. The addition of a findings requirement would greatly strengthen the law in this regard.

[Gregory James, continued.] Regarding the protection that could result from these impacts: as you have heard, sometimes the impacts from an interbasin transfer of groundwater pumping may not be known for some time, perhaps 100 years. Recently, in hearings involving Southern Nevada Water Authority in northern Clark County, the State Engineer actually required that the Water Authority do monitoring. That requirement is not currently a part of state law—it's a very good idea, and the State Engineer should be congratulated for his efforts to try to protect against some of the long-term effects of potential groundwater pumping and export.

I would suggest that the Committee consider an amendment of the bill to add a requirement that, if the State Engineer determines that monitoring and/or mitigation are necessary, the State Engineer can condition a permit. This would give an opportunity to keep an eye on the long-term effects of these potential transfers so that they don't turn into major problems. In the Owens Valley, the major problems have had to be addressed by decades of very expensive litigation and negotiation. Simply having some long-term reporting in place would be a very strong step in preventing some of this.

In regard to the perennial yield, the bill offers a very strong protection, which states that the State Engineer must consider the cumulative impact on every stream and all underground water in any basin that will be affected by issuance of a permit. Some of the most significant impacts in the Owens Valley regarding Los Angeles's export have had to do with the drying up of Owens River, and Owens Lake, springs and seeps being dried up, and groundwater pumping affecting vegetation and the valley by the lowering of the water levels. The interrelationship between groundwater and surface water is a real interrelationship, and asking the State Engineer to evaluate that as a part of an issuance of a water right permit would greatly improve and strengthen the existing provisions of the law. Unlike the Owens Valley, where these impacts had to occur and then there had to be a fight over how to address them, it would give the State an opportunity to consider these in advance, before they occur.

Finally, one last recommendation: in the same hearings involving southern Nevada, the issue came up as to whether the State Engineer had an opportunity

to reconsider a ruling, an order, or a decision after he had issued it, and the answer is that the only way to reconsider is to take it to court. Often, when a State Engineer puts out a decision, there may be an opportunity for the public or the people involved in protesting to make some suggestions to the State Engineer. These may very well be good suggestions that the State Engineer would consider and add to his decision or ruling. Also, the State Engineer himself may take a look at it, based on comments, and then make a decision.

[Gregory James, continued.] I would suggest the Committee consider amending the bill to add a provision to allow reconsideration of the decision or order for a period of maybe only 30 days. That would allow the opportunity to consider any improvements to the order and potentially avoid the expensive and time-consuming litigation that is required now under this state law. I support the bill with these areas I've addressed, and overall, I commend you for considering such a valuable piece of legislation.

Michael R. Montero, Legislative Advocate, Representing the Nevada Cattlemen's Association and the Nevada Woolgrowers Association:

I am a third-generation Nevada rancher, and my family ranches up in Humboldt County, Nevada. By way of profession, I'm now an attorney in Reno. I am not a water lawyer, and I make that admission upfront.

The reason I'm going to take the lead here this morning, on behalf of Cattlemen's Association, is to briefly explain some policies developed by the Nevada Cattlemen's Association this past year at our annual convention. It's a one-page resolution ([Exhibit P](#)).

This was, I think, mentioned earlier. When talking about water issues, these are very difficult issues and were much discussed and debated this year at our annual convention. As a result of that, this was the policy that was developed by our association.

Our primary concern, and the focus of this policy, is to oppose the interfacing transfer of water to urban areas from rural communities. It's with this policy in hand that I testify here today in support of A.B. 253.

Steve Boies, Legislative Advocate, Nevada Cattlemen's Association:

I am from the family ranch in Elko County, in the northeastern corner of the state. I'm fifth generation, and the sixth generation is in that back row. We have ranched in Nevada and northern Nevada for many years. I'm the immediate past president of the Nevada Cattlemen's and Ranchers' Association. We discussed the transfer of water in this state at our annual convention and came out with the policy in front of you. It's clear and concise, and hopefully, it will

help you in your deliberations. Just briefly, Nevada, as we all know, is the most arid state in this United States, and for over 100 years, the livestock industry has been acquiring land and water rights. Without the limited water we have, our industry truly would not survive.

[Steve Boies, continued.] It's not unusual, doing business in this environment, to spend days developing water with less than a gallon-a-minute flow for livestock, installing floats and bird ladders so the natural wildlife are taken care of. In those areas, many operations in the state are actually hauling water. Providing transportation of water to the livestock is important, is vital, and is one of the most expensive activities performed on the ranch. We feel the removal of those waters from a basin has the potential to reduce all other uses of water for agriculture and domestic future growth. We support A.B. 253. It seems to be the logical and reasonable first step in dealing with the issue. Funding for an extensive inventory of the existing waters and those water rights must be done to ensure the existing uses and any future growth in these basins in the state. Hopefully, these actions will support the Nevada State Water Engineer—and the Water Department—in his job of administering and protecting our state's waters.

I am going to take off my association hat and put on my working cap as a resident of the state. I live in a separate watershed that drains into the Snake River and the Columbia River Basin. In the late 1960s, there were two deep water wells that were drilled. We saw an immediate loss of water and, in some cases, a total loss of water on the surface in those areas. What happened then was that the Nevada State Water Department stepped in and closed that basin for any future development. I'm not sure if that action was necessary, but without an accurate inventory, there was really nothing else to do. There have been some of these deep water wells drilled, and sometimes, it doesn't take long to see the effects of what can happen.

I've traveled a lot, and I've spent a few years on the State Wildlife Commission. I've spent hours and miles discussing things like sagebrush and spear fishing striped bass in Lake Mead, and believe me, I was literally over my head on those issues. But water trumps all of these. Without water, we don't have livestock, and we don't have wildlife. Most of what we enjoy in our livelihood, in these rural communities, could cease to exist.

Susan Lynn, Former Member and Chair, Washoe County Regional Water Planning Commission, Washoe County, Nevada:

[Presented and paraphrased [Exhibit Q.](#)]

I am a former member of the Washoe County Regional Water Planning Commission serving as the Chair for one year. I also served as chairman for its Conservation subcommittee.

I would like to support both bills in their entirety. Nevada water law was developed early in the last century and is still evolving, but it is now time to give the State Engineer some new tools fit for the 21st century. Earlier water law never envisioned the population, the growth, and the complexities that we are experiencing. While things may be working pretty well right now, we need to have much that is in these bills formalized for the future of good water management. I think both bills seek to do that.

I would particularly like address a couple of issues on [A.B. 434](#), Section 1, on conservation of water efficiency. That is something I know about. In urban areas, we are required to have conservation plans, and I believe that both southern Nevada and Washoe County have very good water conservation plans. But we did so in compliance with the previous piece of legislation that required plans. Most conservation plans are over 10 years old in other areas outside of Washoe and Clark Counties. When we have a growing population that is nearly doubled, and when we have urban areas, there needs to be a continuous update of water conservation plans. I understand that those may now go to the State Engineer, since the State Division of Water Planning no longer exists.

I would also like to support some water efficiency goals for agriculture, and this is not—and I repeat, not—to the detriment of existing water rights. We recognize those existing water rights. We think it is important to recognize those existing water rights, and we want to stay there, but we do think there are some benefits in efficiency. It is not intended at all to infringe on anybody's existing water rights.

Section 1, in turn, also allows for county commissioners of each county to adopt ordinances to achieve goals in each category of water users set by the State Engineer. I might recommend to you that the State Engineer not set those water goals, but allow the counties to set those water goals and send them to the State Engineer. I have confidence that the counties will act to preserve current water rights and, yet, will look for ways to use water more efficiently in each category. In turn, each county will learn more about its water resources.

[Susan Lynn, continued.] In conjunction with water efficiency and conservation, Section 6 of A.B. 434 addresses allowing the State Engineer to assess penalties. I will read you the current law, NRS [*Nevada Revised Statutes*] 533.460: "The unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, shall be a misdemeanor, and the possession or use of such water without legal right shall be prima facie evidence of the guilt of the person using or diverting it." Then it says that the State Engineer and his assistants may make arrests, and that's really as far as it goes.

I don't think this will be needed often, but we do have abuse, and we do have overuse of water in some areas of the state. It would allow the State Engineer a process by which to define this and, also, penalties other than "You are arrested." It's a misdemeanor. I would encourage you to consider that section. Dancing around wasting water is no longer acceptable. It is time for teeth.

Finally, in Sections 3 and 11, I strongly support the Interbasin Transfer Water Adjudication Fund. I strongly support Section 15, which provides for water resource inventories. I think there is so much that we don't know about water, about groundwater especially. We can pretty much gauge surface water, but we can't guess the amount of groundwater. A lot of that groundwater, once it is taken out of the earth, will not return. I think we need to be very, very careful about how we do that.

While the United States Geological Survey (USGS) is doing many studies around the state, we should be doing more for ourselves at the state level. We desperately need more science. We are finding out that the water we thought was there, at least in Washoe County, isn't there. We are over-pumping our groundwater in many instances and, therefore, supplementing our water with Truckee River water, which is indeed an interbasin transfer. There are positives and negatives.

The costs of infrastructure to export or import water are pretty high, so I think we need to be very careful about that. We have seriously lowered our water tables in some areas of Washoe County, and I think, again, we need to be very careful. I think these bills begin looking at that issue, and if nothing else, I really hope that the public interest and the interim study committee will be established so that we can further discuss these details in a more open, efficient, and detailed way.

Joy Fiori, Private Citizen, Sandy Valley, Clark County, Nevada:

We fully support A.B. 434 and A.B. 253. Sandy Valley has been targeted by Vidler Water Company, Inc., and we organized to fight that. In Section 5 of

A.B. 434, we agree that the State Engineer should have the power to reject applications for water speculation. Attendant to this, the State Engineer should have the power to reject an applicant that will not personally be putting the water to beneficial use. If the applicant is not putting the water to beneficial use themselves, then they are selling the water to a third party. Sale of the water cannot be considered a beneficial use. The waters of Nevada are public waters.

[Joy Fiori, continued.] In Section 7, I agree that applicants should pay for adjudication. In Section 8, too, under current law, the State Engineer can easily ignore the California usage of shared Nevada-California basins that abut the western border of the state. That also applies to Utah. This section requires that the State Engineer consider the cumulative impact in any basin affected by the proposed source. Since the borders between Nevada and California/Utah have many shared basins, the law must apply to total usage, not just Nevada usage. Ignoring this out-of-state usage means that safe yields calculated by the State Engineer are incomplete. I would urge the Committee to seriously consider Greg James's two proposed amendments to this law.

Tina Nappe, Member, Nevada Water Network, Reno, Nevada:

[Presented written testimony, [Exhibit R](#).] I will be addressing Section 7, beginning on page 5, subsection (a), where the State Engineer must consider any analysis of the proposed interbasin transfer of groundwater submitted to the State Engineer, and a list of agencies is provided. Before I begin my testimony, I would like to have State Parks added to that list of agencies. It would be number six on that list.

My background, like Steve Boies, is with experience on the State Wildlife Commission, where we had the opportunity to travel the state at length, and as a lifetime resident of Nevada, we have also visited many of the parks.

Nevada is a great state, as we all know. Many people want to live here, and even more want to visit. We want them to come, we want them to visit, and we want them to live here. We have millions of acres of land for them to live on, if we could just use that land to wash our clothes, cook, maintain golf courses, fish in parks, drink our 8 glasses of water a day, and maintain our homes and businesses. We would be very rich indeed. But, as we know, the reason the federal government administers so much land is that we don't have the water. Our early Nevada pioneers selected the lands with easy water and left the rest to the federal government. We have, over the years, developed and acquired state park lands and wildlife management areas that are owned by the State. These areas are wonderful places for us, as residents and as visitors, to enjoy. They are the repository of many of our key wildlife species. They provide fishing. They are critical waterfowl habitats. They are places to picnic, to camp,

and to go birding. Many of them are in rural counties. I do not feel comfortable, but this law, A.B. 434, will help us, as will Assemblyman Goicoechea's bill, identify whether we have ever acquired sufficient water for these areas. We do not know whether we have sufficient water, and very frankly, looking at the Department of Wildlife and State Parks, they really do not have the resources to help identify those needs or to acquire sufficient water if more is needed.

[Tina Nappe, continued.] One of my concerns about these real jewels in our state is that, with the groundwater development that is occurring throughout the state, this will add pressure and reduce the amount of water available for many of these areas that have reservoirs in them, have key streams in them, and protect wetlands for both our fishing and waterfowl. We really need to have and prioritize these areas. I look at this bill as ensuring more specifically that the State Engineer, who now does consider them informally, will be considering them more formally. That is the reason that I really support this legislation. It is not that anything bad has happened to the state, it's just that, as we go forward and into the future, we want to make sure that we protect our investment and our future in our state parks and our wildlife management areas.

Abby Johnson, Member, Spring and Snake Valleys Citizens Alliance:

[Presented and read from [Exhibit S](#).]

I live in Carson City, but I am also a part-time resident of Baker, Nevada. You've heard from some of us from Baker already. I'm speaking on behalf of the Spring and Snake Valleys Citizens Alliance. We support this bill and Assemblyman Goicoechea's bill, A.B. 253.

Today I am going to focus on A.B. 434, Section 12, page 10. The Water Rights Protection Fund will help local governments protect existing water rights against the impacts and effects of interbasin water transfers. This would assist the rural counties in obtaining the hydrology expertise and non-legal technical assistance to participate in the process effectively. The fund will encourage effective resource management by providing essential technical and policy support for water systems statewide. This provision is necessary for rural community and economic development.

Last spring, I attended a Baker Water and Sewer General Improvement District (GID) meeting in Snake Valley. That GID needs additional water rights in order to serve an area within its district where residents are on individual wells that are going dry. Since all the unappropriated water has been filed on for massive

long-distance interbasin transfers, the GID is challenged to find a way to use Snake Valley water in the Snake Valley to serve Snake Valley residents whose wells are no longer dependable.

[Abby Johnson, continued.] Assembly Bill 434 would help to level the playing field, to enable rural and less well-funded communities to obtain the expertise needed to protect their water rights and, hence, community and economic development interests in the future.

Using the board to finance water projects as the grantor is appropriate, as that board is very familiar with the water infrastructure needs of rural communities and understands the interconnected relationships between water supply, water service, and community development.

Kaitlin Backlund, Legislative Advocate, Representing Nevada Conservation League:

The Nevada Conservation League wishes to go on record as supporting both A.B. 253 and A.B. 434. With respect to the State Environmental Commission language that is contained within this bill, I have circulated an amendment ([Exhibit T](#)). This language of the bill, on page 10, Section 13, lines 42 and 43, is currently held in another bill that is in another committee. I think it's important for the Committee to know that. That bill has been heard in another committee and is pending.

This amendment was not offered at that time, so this is a different amendment that the other committee has not heard yet. What this does is adjust the composition of the State Environmental Commission—currently, the Governor appoints five members to that Commission—and this amendment proposes that one of those people possess experience and expertise in advocating issues relating to conservation.

Hugh Jackson, Senior Policy Analyst, Water For All Campaign, Public Citizen, Henderson, Nevada:

I'm here to speak in favor of A.B. 434, and I want to specifically address Section 5, dealing with water speculation. Thanks go to the helpful staff up there. I know that a handout ([Exhibit U](#)) has been distributed to you, so I won't go through all of this. I just want to underscore some points very quickly.

Speculation is a genuine threat in Nevada. If you look at some of the annual reports from the companies that are trying to enter water speculation in Nevada, they do not look at water as belonging to the public of Nevada or as a shared

interest that should be managed in the long-term public interest. They view it as “an attractive business opportunity.” They also do not rule out the prospect of their customers, not just in growing municipalities—which we typically think of with regard to these folks—but also exporting Nevada’s water out of state.

[Hugh Jackson, continued.] Again, quoting from one of those annual reports from the so-called leading water resource developer in the southwestern United States, “Currently, there are not effective procedures in place for the transfer of water from private parties with excess supply in one state to end users in other states. However, regulations and procedures are steadily being developed to facilitate the interstate transfer of water.”

People have been talking and working all over the state for so long to try to manage Nevada’s scarce water resources in a wise way that is in the long-term public interest. Water speculation is not in the long-term public interest. It is not cost effective, as we can see from what is happening with oil prices and southern Nevada real estate. Speculation raises prices and it is certainly not in gain of a conservation ethic, because speculators, of course, are in business to make as much money as they can. The way that they make money is by selling as much water as they can. The economic incentives are exactly contrary to environmental conservation.

Finally, Nevada is absolutely not alone in wrestling with the threat of water privatization. Throughout the region, the nation, and the world, there is a growing push by private companies to control water for profit, accompanied by consolidation, merger, and acquisition, led primary by three giant European multinational corporations. A.B. 434 protects the public resource from the pitfalls of ceding control to today’s speculators, but the legislation also may prove crucial for protecting the public resource from much larger, more aggressive, and more sophisticated private operators in the future.

Bob Fulkerson, State Director, Progressive Leadership Alliance of Nevada (PLAN), Reno, Nevada:

I’m here to speak just to Sections 4 and 16 very briefly. Both of these sections speak to the need for more transparency and for more improved public participation in these issues. When you have arcane issues like Nevada water law, a combination of a somewhat closed process, and then you add how highly controversial these are, you have the recipe to make people very angry. We want them to get involved in a clearer and more direct participatory way.

Section 4, regarding the public hearings, speaks to that need. People impacted by these decisions are unable to participate in a meaningful way in these decisions, unless they go through the expense of filing a public protest. We

don't think you should have to hire a lawyer and go through that expense when you are impacted by a decision like this, to speak and to be able to have influence and an impact on these decisions. Simply opening up these deliberations to the light of public scrutiny, public debate, and participation should not be feared by anybody.

[Bob Fulkerson, continued.] On the interim study, clearly, I think we do not have all the answers on water. And, clearly we do not have consensus. We need the information; we need to develop consensus. Long term, serious discussions about water policy and its implications on the quality of life, now and in the future, can be arrived at and talked about in a more deliberative process through this interim study, or possibly by rolling this into S.B. 320, Senator Maurice Washington's bill, to create a statutory committee on water.

I just want to end by saying that we have been very lucky in Nevada to have a series of very intelligent, well-meaning, dedicated, and talented state water engineers. God forbid that changes in the future. What happens if we have a State Engineer who does not use his discretion to cancel pumping in one basin? What happens if we have a State Engineer who is more beholden to the powerful and the muddled interests, and not to the public interest? We think that these laws will help to solidify good public policymaking and provide better protections in statute for our state.

Chairman Parks:

We haven't exhausted the individuals who want to speak, especially those individuals speaking against either A.B. 253 or A.B. 434.

I'm going to close the hearing on A.B. 253 and A.B. 434, and we'll put those as the first bills on the agenda for tomorrow. [Opened the hearing on A.B. 111.]

Assembly Bill 111: Requires Department of Administration to conduct study concerning feasibility and desirability of relocating certain state agencies to rural communities under certain circumstances. (BDR S-989)

Assemblyman Rod Sherer, Assembly District No. 36, Churchill (part), Esmeralda, Lincoln, Mineral, and Nye Counties:

Assembly District 36 is a small district—only 37,000 square miles. We have a little of everything, from Fallon Naval Air Station to Yucca Mountain to Area 51. It's a pretty amazing little area.

[Assemblyman Sherer, continued.] What I'm bringing you today is A.B. 111. I brought it forward last session, but what is different this session from last session is that I took the fiscal note off of it. The fiscal note last session was \$2,600. What I am going to do is keep my statements brief, and let the other two next to me talk a little bit about the bill.

We are basically looking at being able to relocate or expand even a little department of state government, since it's growing so fast, into a little town in a rural area. Even five or six jobs that earned \$35,000 to \$40,000 a year would be a tremendous spike in the economy of any rural town. What is nice about that is the culture out there. You can look at the schools in Lincoln County and Mineral County, and the great education that they are getting in those schools is a totally different experience than in the bigger schools.

Cindy Nixon, Private Citizen, Hawthorne, Nevada

[Presented written testimony, ([Exhibit V](#)).] I'm here, on my own behalf, in support of A.B. 111. I spoke on favor of this bill last session.

Enacting A.B. 111 is a progressive and necessary step for the equalization of Nevada's growth. The study for relocation or expansion of some of Nevada's state agencies is an opportunity to plan for diversified growth in Nevada's rural areas. This is an absolutely necessary first step in paving the way for economic renewal in some of our struggling communities, as well as providing the needed expansion of state offices.

Enacting A.B. 111 will require the State to look into the resources within our rural communities. Our community, like many others, has available affordable locations for business, and unlike Nevada's urban cities, our county does not have the water availability problems that many are experiencing. We have available property for the future homes of State employees, as well as existing housing. The valuation of rural real estate is far less than in urban Nevada. Young families employed by our State may have a better chance of acquiring a home of their own. Even when they rent, they are going to be paying less while they are saving for that down payment on a first home and it is far easier to meet.

As our communities grow, so will the market base for countless service industries, increasing the tax base for the entire state and its many programs. As stated in A.B. 111, only 14 percent of our population is located in rural Nevada. That means less traffic, smaller and safer schools, and safer communities, in terms of violent crime. These are just a few of the advantages for the individual looking for a lifestyle different from that in an urban environment. It's very important to note that many of our State employees are

currently commuting, because of nonexistent housing in Carson City, Reno, and other areas. These benefits directly affect the State employee. Having all of the administration and related agencies located in the same community is no longer necessary for the sake of efficient interoffice communication. Communication technology, which is constantly improving, has opened the door for the concept of statewide growth. I would hope that you ladies and gentlemen of this Legislature welcome the opportunity to watch the entire state of Nevada benefit from the diversity that this would surely bring to our small communities.

[Cindy Nixon, continued.] To say no to A.B. 111 would be, I feel, shortsighted and indifferent to the wonderful communities out there that make up rural Nevada. We are out there, ready and willing, and just waiting, and we proudly invite and welcome you. Enacting A.B. 111 is to tap into all of Nevada, allowing all of Nevada to be part of the progress this state is sure to achieve.

Rod Wolven, Private Citizen, Mineral County, Nevada:

I'm the former Executive Director of the Mineral County Economic Development Authority. I retired a little over a year ago. I appeared before this Committee last session in favor of this bill.

I think this requires the full support of the Committee and the Legislature. Years ago, it was feasible to consolidate various activities. It was more efficient to do so. We think that is no longer necessary, as modern communications and technology have allowed people spread all over the world to communicate with each other.

This first came to my attention about three years ago. I was in one of the EPA [U.S. Environmental Protection Agency] offices in Carson City, and I asked a question of a State official with whom I was discussing an issue. She needed to talk to her boss, and all she had to do was look out the door, get his attention, and call him into the room. Rather than do that, she emailed him. It was probably more efficient to do that, because then he could answer when he researched the issue, and he could come up with an intelligent answer. That made me aware, at that time, that these people could be anywhere in the State of Nevada and still be as efficient as they could be if in the same room. As a result, I support this bill. I think it would be wise to establish a committee to do the research and bring it before you in the next session.

Mike L. Baughman, Legislative Advocate, representing Lander County Economic Development Authority, Lincoln County Regional Development Authority, and Humboldt River Basin Water Authority:

This bill, I think, is essential and a great idea. On page 2, line 43, where it says "feasibility and desirability of relocating," we would recommend inserting,

before relocating, "expanding and/or relocating." We do not want to miss the opportunity to look at growth in state government and the possibility of relocating or expanding those growing agencies into these rural areas.

The biennial budget you are going to be considering right now has proposed 1,188 new staff positions in the state. If each of those persons had 100 square feet of office space, that would equal about 118,000 square feet. I would suggest to you that we are going to be adding new space to create those work spaces. We ought to locate that new space in rural Nevada if we can. Office space for 10, 15, or 20 persons located in Ely, Battle Mountain, or Caliente would make a significant difference in that small community and would not stress resources that we see stretched in some of the metropolitan areas any further.

Chairman Parks:

I don't think there is anything further to come before the Committee, so we are adjourned [at 11:02 a.m.].

RESPECTFULLY SUBMITTED:

Paul Partida
Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 6, 2005

Time of Meeting: 8:10 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	*****	Agenda
	B	Assemblywoman Gansert	Letters from John Guastella, American Water Works Association, National Association
	C	Assemblywoman Gansert	Staff Report, March 10, 2005, Truckee Meadows Water Authority.
	D	Assemblywoman Gansert	TMWA List of Expenditures.
	E	Assemblywoman Gansert	Truckee Meadows Water Authority Salary Survey, Feb. 16, 2005.
	F	Assemblywoman Gansert	Attorney General's Opinion, January 21, 2005, First page only.
	G	Assemblywoman Gansert	TMWA Audit Cost and Request.
	H	Marilyn Skibinski / Bureau of Consumer Protection	Amendment
	I	Michael Trudell / Caughlin Ranch Homeowners Association	Report
	J	Jeffrey Tissier / TMWA	TMWA Response
	K	Assemblyman Pete Goicoechea	Nevada Division of Water Resources, Adjudication Section
	L	Jon Hutchings / Eureka County	PowerPoint presentation handout
	M	Brent Eldridge / County Commissioner, White Pine County	Written testimony <u>A.B. 253</u> and <u>A.B. 434</u>
	N	Dean Baker / Private Citizen	Written testimony
	O	Gregory James / Nevada Cattlemen's Association	Written testimony
	P	Michael R. Montero / Nevada	Resolution

		Cattlemen's Association	
	Q	Susan Lynn / Washoe County Regional Water Planning Commission	Written testimony
	R	Tina Nappe / Nevada Water Network	Written testimony
	S	Abby Johnson / Spring and Snake Valleys Citizens Alliance	Written testimony
	T	Kaitlin Backlund / Legislative Advocate, Nevada Conservation League	Amendments
	U	Hugh Jackson / Public Citizen's Water for All	Written statement
	V	Cindy Nixon, Private Citizen	Written testimony