

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

**Seventy-Third Session
April 21, 2005**

The Committee on Government Affairs was called to order at 8:11 a.m., on Thursday, April 21, 2005. Vice Chairwoman Peggy Pierce presided in Room 3143 of the Legislative Building, Carson City, 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:

None

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Susan Scholley, Committee Policy Analyst

Nancy Haywood, Committee Attaché

OTHERS PRESENT:

Leo Drozdoff, Administrator, Division of Environmental Protection,
Department of Conservation and Natural Resources, State of
Nevada

Bjorn Selinder, Legislative Advocate, representing Churchill County and
Eureka County, Nevada

Kaitlin Backlund, Political Director, Nevada Conservation League, Reno,
Nevada

Steve Walker, Legislative Advocate, representing Truckee Meadows
Water Authority, Lyon County, Carson City, and Douglas County,
Nevada

Mike Baughman, Legislative Advocate, representing the Humboldt River
Basin Water Authority and Lincoln County, Nevada

Andy Belanger, Legislative Advocate, representing the Southern Nevada
Water Authority

Robin V. Reedy, Deputy Treasurer, Debt Management, Office of the State
Treasurer, State of Nevada

Vice Chairwoman Pierce:

[Meeting called to order and roll called.]

**Senate Bill 18 (1st Reprint): Revises provisions governing program that provides
grants for water conservation and capital improvements to certain water
systems. (BDR 30-707)**

**Assemblyman Tom Grady, Assembly District No. 38, Lyon, Storey, Carson City
(part), and Churchill (part):**

Senator McGinness had the same language or very similar language in A.B. 20,
and that has been taken out of this bill. On the first reprint, you will see what
the Senator is trying to do to expand the use of the A.B. 20 money.

**Leo Drozdoff, Administrator, Division of Environmental Protection, Department
of Conservation and Natural Resources, State of Nevada:**

National Estuary Program (NEP) has overseen the work of the Board for
Financing Water Projects since 2000. However, the program has been in place
since the 1991 Legislative Session. Through the years, this program has also

been referred to as the "A.B. 198 Program" because of the initial enabling legislation.

[Leo Drozdoff, continued.] Senate Bill 18 expands the kinds of projects that may receive grant funding from the Board. Presently, grants are provided to predominantly small community water systems in order to build necessary infrastructure, to ensure their customers are provided with a safe supply of drinking water, and to comply with the requirements of the Nevada Safe Drinking Water Program. Grants are issued to public water systems that serve 15 or more customers. Very small systems, serving fewer than 15 customers and individuals, are not eligible to receive grant funding.

There are areas in Nevada where the source of drinking water for very small systems does not meet the requirements of the Safe Drinking Water Program. Senate Bill 18 would allow the Board to provide grants to public water systems to pay, in part, the cost to connect these very small systems and individual domestic well owners to a community water system. This would help ensure that Nevada citizens, presently served by domestic wells and very small systems that currently don't meet drinking water standards, will have a safe and reliable drinking water supply.

Since the program began in 1991, it has expanded in scope to meet the needs of Nevada. In 1995, the program grew to include irrigation districts to fund water conservation projects. Again, in 2003, the program grew to allow local governments to pay for wastewater connections in areas where septic system density has caused problems.

Therefore, NEP supports S.B. 18 as amended, because we believe it will allow local government to provide safe drinking water to reach more Nevadans in a cost-efficient way.

Bjorn Selinder, Legislative Advocate, representing Churchill County and Eureka County, Nevada:

I want to thank Senator McGinness and Assemblyman Grady for coming together on S.B. 18, as well as A.B. 20, in regard to the ability to finance and hook up small water systems and individual wells to achieve greater water quality standards.

One of the problems that became evident here over the years is that developing small water systems, especially in the rural areas, is sort of like a "daisy chaining" of systems that get hooked up. In between those systems are individual well owners who certainly could benefit from improving their domestic water system capabilities and water quality. Senate Bill 18 was written to

expand the provisions under which an individual well owner and small well owners' domestic systems could hook into a municipal system.

Assemblywoman Kirkpatrick:

On line 39, is that 300 feet? What is the definition of that?

Leo Drozdoff:

That is the federal citation.

Kaitlin Backlund, Political Director, Nevada Conservation League, Reno, Nevada:

We would like to add our support to this bill. We supported it in the other house and would like to see the Committee's support today.

Steve Walker, Legislative Advocate, representing Truckee Meadows Water Authority, Lyon County, Carson City, and Douglas County, Nevada:

All entities support S.B. 18.

Vice Chairwoman Pierce:

I will now close the hearing on S.B. 18 and open the hearing on S.B. 35.

**Senate Bill 35: Revises provisions governing certain transfers of water.
(BDR 48-425)**

Mike Baughman, Legislative Advocate, representing the Humboldt River Basin Water Authority and Lincoln County, Nevada:

Senate Bill 35 was brought to the Legislature through the Interim Committee on Natural Resources, your Public Lands Committee. During the interim, the committee heard testimony on the need to consider raising the export fees contained in NRS [*Nevada Revised Statutes*] 533.438. The Committee saw fit to do that. The Humboldt River Basin Authority brought this to the attention of the Committee as well. I also represent Lincoln County, which is also very interested in this. Both of the entities, the Humboldt River Basin Authority—which includes Elko, Eureka, Lander, Humboldt and Pershing Counties—and Lincoln County support S.B. 35 as passed out of the Senate.

Prior to 1991, there had been a proposal in the southern part of our state to export water from three counties down into the Las Vegas metropolitan area. In the early 1990s, there was a proposal to export water from the Humboldt River basin area, which constitutes a region of five counties, into the metropolitan Reno-Sparks area. In response to these proposals, in 1991, the Legislature enacted the provisions contained in NRS 533.438 to provide a mechanism

wherein principally rural counties, it was envisioned, had adequate, non-appropriated water resources available. As these waters were identified for transfer to the metropolitan communities, there would be some measure of economic benefit that would remain with the rural areas—for example, to help recognize that water does drive economic growth, and once that water is gone, the areas' ability to capture some growth associated with that water is also gone. This bill and the legislation provided for that mechanism.

[Mike Baughman, continued.] If you look at the statute itself, there are two parts to the statute. It provides for a fee or tax to be imposed upon water moved from one county to another county. It is an option, and basically, it is not a requirement, but the source county can impose the tax. Alternatively, the parties can agree to undertake a development of a mitigation plan, and if both agree to adopt and implement that plan, the tax or fee would not be imposed.

It is a voluntary measure; if imposed by the county, then obviously, the exporting entity would be paying. It was set at \$6.00 at the time. We went back and looked at the records, and I am not quite sure where the \$6.00 came from. That's what they enacted, and that is what has been in statute ever since. This bill would raise the cost from \$6.00 to \$10.00, and in our opinion, this is simply going to adjust for inflation. That is all we are after, in terms of the monetary increase. It is to keep this fee level consistent with the value at the same level it was when enacted back in 1991.

In addition, this bill would change the reference from "tax" to "fee." The motivation of the River Basin Authority and Lincoln County in seeking this change is that we are concerned that, perhaps, many of the entities that will be exporting water from one county to another are ultimately government entities. Usually, these government entities are tax exempt. It raises in our minds a bit of ambiguity about whether or not these entities—for whom the original legislation was clearly intended—might ultimately not have to pay because they are tax exempt. I think the legislation was clearly intended to access this thing. We envision that if that situation arose, we would find ourselves in court having to try to sort that out. In the rural governments' perspectives, we have a hard enough time just keeping our governments afloat. If we have to go to court over something like this, we think it is a waste of time. We are simply asking that it be changed from fee to tax and sort of sidestep that ambiguity.

I provided you with two documents today. The first ([Exhibit B](#)) is a series of talking points. Let me roll through those quickly. The second document ([Exhibit C](#)) is the research that was developed by the LCB [Legislative Counsel Bureau] staff for the Senate hearings, which really addresses the issue of tax and fee. I can tell you that on the Senate side, there was really not a lot of

testimony about this bill; there was no opposition, but there were questions asked about the change from "tax" to "fee." This piece of research that was provided helped to address that.

[Mike Baughman, continued.] By way of background again for S.B. 35, Section 5 of NRS 533.348 requires, in the current law, that all the money be deposited in a trust fund for the county, and the use of the principal and interest is restricted to purposes of economic development, health care, and education. The use of the money is narrowly defined in statute and is not a part of the county's general fund.

When you look at the second document, one of the characteristics of a "fee" versus a "tax" is the revenues are limited in terms of how they can be used. They don't just get dumped into the general fund where they can be used for any purpose. The definition of how it can be used is very limited. That is the case in NRS 533.348.

We talked about the potential for local governments to be tax exempt. We also talked about inflation in the past 14 years. The average annual inflation rate has been about 2.9 percent, if you look at the Consumer Price Index. We basically took that index and inflated the thing and also anticipated that the Legislature would not probably visit this for some years to come. I think a simple application of the Consumer Price Index brings it up to about \$8.50. If you figure that the Legislature will not be revisiting this for a few years, we think clearly we will get through the \$10.00 threshold fairly quickly. We think that is a fair number.

We note at the bottom of the talking points ([Exhibit B](#)) that the acre foot of water is enough to supply two households. If you then apply this, which would then be \$10.00 per acre foot fee, if passed on to consumers, the cost of the export fee to a consuming household would be \$5.00 per year, or 42 cents per month. We think it is important for you to note that so that you can see that it is not an exorbitant cost on ratepayers, wherever they might be. It is a relatively small amount of funding.

Turning to the issue of "tax" versus "fee," and in the second document that I provided to you ([Exhibit C](#)), take a look at the second page. Look towards the bottom, and there is a series of four bullets, and the heading going into that is "The Factors Courts Use to Distinguish Taxes from Fees," according to *State Taxation, 3rd Edition*. They include:

- Whether the payment was voluntary, which would make it a fee, or involuntary, which would make it a tax

[Mike Baughman, continued.] As I mentioned to you previously, this is an option. The source county can choose to impose the tax. It is not required. It's voluntarily imposed, and it's also voluntarily imposed from the perspective of the exporting entity, because they can also then choose, rather than pay the tax or fee, to negotiate a mitigation plan. Clearly, we see it as voluntary.

- Whether the payment for specific governmental benefit—fee—or for general government purposes—tax

We have already noted that the current statute requires these funds to be deposited in a trust fund and to be used for limited specific purposes. They are not to be used in the general fund or for general government purposes.

- Whether the payment was made into a segregated fund—a fee

Again, it is going into a trust fund and not into the general treasury, and that would appear to meet the test of a "fee."

- Whether the payment was imposed by regulatory agency upon those subject to regulation—fee—or to defray general government expenditures—tax

That one is a bit of a toss-up. Clearly, the other three seem to suggest that, in reality, this fits the test of "fee," rather than "tax."

If you were to read this entire document, you would see that when the Legislature considered this in 1991, they used the terms "tax" and "fee" interchangeably. As I read this, the staff was not able to conclude why, ultimately, they chose "tax" over "fee." There is no clear indication in the record.

Assemblyman Christensen:

Did I hear you say it has been 14 years since the rate has been \$6.00 per acre foot?

Mike Baughman:

Yes, that is correct. This bill was enacted in 1991, and it was set at \$6.00, and it has never been adjusted since that time.

Assemblyman Christensen:

You mentioned that this is enabling, but if the counties did decide to enable this, then how much is this increase expected to raise?

Mike Baughman:

As far as we know, this bill and this provision of statute have not been implemented, in terms of imposing the fee on anyone, so there are not any current revenue streams being generated as a result of this. It is all anticipatory. For example, we are now going forward in southern Nevada with the NEPA [National Environmental Policy Act of 1969, as amended] process for the Southern Nevada Water Authorities project. They are hoping that within 24 to 36 months, they can get through that process and get some rights-of-way from the BLM [U.S. Bureau of Land Management]. Then, perhaps, they can get some water rights approved, and that might start moving at that point.

From what I have read, they are looking at around 150,000 acre feet of water, ultimately, maybe 30 years down the road. At build out, 150,000 acre feet of water at \$10.00 per acre foot would be how much revenue it would yield.

Assemblyman Christensen:

So far, even the \$6.00 per acre foot has not been levied?

Mike Baughman:

That is correct.

Andy Belanger, Legislative Advocate, representing the Southern Nevada Water Authority:

I did want to let the Committee know that we are supportive of the increase in the fee. We were supportive two years ago to increase the fee to \$10.00.

I do want to note, however, that the legislation allows a fee to be imposed if a specific mitigation plan can't be implemented between the two parties—the importing county and the county with the basin of origin. We believe, as an organization, that the county of origin is better served through an agreement process or mitigation process where both parties can come together and work out mutually satisfying solutions related to interbasin transfers of water. We believe that in a spirit of cooperation, the two parties can come to an agreement.

We did that in Lincoln County and were able to give the importing county essentially half of the water we had originally filed in that basin, and that was what that community wanted. As a result of that, the community was able to agree. We believe that this is a better process to get to solutions than the imposition of a "fee" at the end. While we support the "fee," the thing we need to note is that the fee is not imposed until the water is actually transferred, so the relief that the county receives comes at the end of the process when we start moving water, rather than through a negotiated process sooner.

[Andy Belanger, continued.] We are supportive of the "fee," and we are supportive of S.B. 35. We applaud the Public Lands Committee that introduced the bill.

Assemblyman Goicoechea:

There has been a mitigation plan imposed, even though there hasn't been the \$6.00 fee imposed. Is that correct?

Andy Belanger:

What the law says is that a mitigation plan can be put in place. What we have done with Lincoln County is to enter into an agreement with them in 2003 whereby we agreed to provide water, to share data, and potentially share costs related to infrastructure development with the county. Yes, we did, in that case, enter into an agreement with the county. Also, a fee has not been imposed. The language of the bill is "either" or "or."

Assemblyman Goicoechea:

I was trying to clarify for the Committee that even though the \$6.00 fee has never been imposed, there has been a mitigation plan in place between Barrick Gold Corporation, Eureka County, and the State Engineer. It was put into place some years back. The mitigation part of this statute has been used.

Bjorn Selinder, Legislative Advocate, representing Eureka County and Churchill County, Nevada:

We do support this bill.

Vice Chairwoman Pierce:

I will now close the hearing on S.B. 35 and open the hearing on S.B. 147.

Senate Bill 147 (1st Reprint): Revises provisions governing issuance of general obligation bonds of State of Nevada to provide grants to certain water systems. (BDR 30-914)

Assemblyman Tom Grady, Assembly District No. 38, Lyon, Storey, Carson City (part), and Churchill (part):

I am requesting that we hold this bill now until possibly next week, and then, after other bills are heard, we would be able to tell you if we would like a full hearing on this bill.

Vice Chairwoman Pierce:

We will go ahead and hold the hearing for anyone that is here.

Bjorn Selinder, Legislative Advocate, representing Eureka County and Churchill County, Nevada:

We are in support of A.B. 20, and we are certainly in support of S.B. 147.

Leo Drozdoff, Administrator, Division of Environmental Protection, Department of Conservation and Natural Resources, State of Nevada:

Our testimony for S.B. 147 is roughly the same as for A.B. 20. Senate Bill 147 would allow the State Treasurer to issue general obligation bonds in an amount not to exceed \$125 million to support the purposes of the board for financing water projects. This represents an increase of \$35 million over what is presently authorized under statute. Additionally, language has been added to allow for an aggregate amount of principal under the bonding authority. This will allow the board to continue funding projects, because bonds are repaid, and thereby alleviate the need to increase bonding authority every two years.

It should be pointed out that, although the \$125 million has been set as a bonding limit, the amount of funding available each year will depend upon the state's affordability as determined by the Treasurer's Office. The Division of Environmental Protection has worked well with the Treasurer's Office through the years in administering this program, and we are confident that we can continue our good work with this outstanding bond concept. With that, the Division supports S.B. 147.

Robin V. Reedy, Deputy Treasurer, Debt Management, Office of the State Treasurer, State of Nevada:

We have been very fortunate to be able to work with the Department of Conservation on this program. We endorse the new language of having the rolling average of bonding. I think it will save everyone a lot of time while still giving the State the ability to review everything and to make sure monies meet the affordability report.

Assemblyman Goicoechea:

How much money would be available in the fund as of July 1?

Robin Reedy:

As far as having the ability to bond, you would have authority of over \$80 million.

Kaitlin Backlund, Political Director, Nevada Conservation League, Reno, Nevada:

We would like to go on record in support of this bill and concur with previous testimony.

Andy Belanger, Legislative Advocate, representing the Southern Nevada Water Authority:

We are in support of the bill also. The Las Vegas Valley Water District has used the small system grant program for small water systems in outlying areas. Areas such as Searchlight, Blue Diamond, Kyle Canyon, and other areas have a separate rate structure and a separate service rule structure and, therefore, have a smaller pool of customers. This can pay for system improvements and water conservation programs.

This fund helps those communities make important water system improvements. We have used funds and have applied for grants for Kyle Canyon. They needed to do some fire flow system improvements, and we anticipate in the future that we might need to use some of this funding for system improvements in the Searchlight area. This is an important piece of legislation, and we are supportive of it.

Vice Chairwoman Pierce:

I will now close hearing on S.B. 147. The meeting is adjourned [at 8:49 a.m.].

RESPECTFULLY SUBMITTED:

Paul Partida
Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 21, 2005

Time of Meeting: 8:11 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	*****	Agenda
<u>S.B.</u> <u>35</u>	B	Mike Baughman / Humboldt River Basin Water Authority and Lincoln County	Talking Points
<u>S.B.</u> <u>35</u>	C	Mike Baughman / Humboldt River Basin Water Authority and Lincoln County	Research: Definition of Terms Relative to Interbasin Water Transfers