

**MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES**

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

The Senate Committee on Natural Resources was called to order by Chair Dean A. Rhoads at 1:30 p.m. on Wednesday, April 6, 2005, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Dean A. Rhoads, Chair
Senator Mike McGinness, Vice Chair
Senator Mark E. Amodei
Senator Bob Beers
Senator Michael Schneider
Senator Maggie Carlton

COMMITTEE MEMBERS ABSENT:

Senator Bob Coffin (Excused)

STAFF MEMBERS PRESENT:

Linda Eissmann, Committee Policy Analyst
Jonathan Sherwood, Committee Secretary

OTHERS PRESENT:

Mike Howell
Hugh Ricci, P.E., State Engineer, Division of Water Resources, State Department
of Conservation and Natural Resources
Doug Busselman, Nevada Farm Bureau
Gordon DePaoli, Truckee Meadows Water Authority; Walker River Irrigation
District
Michael Montero, Nevada Cattlemen's Association
Steve Lucas, Chairman, Nevada Beef Council
Don Henderson, Director, State Department of Agriculture
Robert Buonamici, Chief Game Warden, Department of Wildlife

Senate Committee on Natural Resources
April 6, 2005
Page 2

Steve Albert, Staff Game Warden, Department of Wildlife
Chris MacKenzie, Board of Wildlife Commissioners, Department of Wildlife
Joseph Guild, Southern Nevada Water Authority

Chair Rhoads opened the hearing on Senate Bill (S.B.) 62.

SENATE BILL 62: Revises provisions governing appropriation of public waters.
(BDR 48-681)

Mike Howell spoke in favor of S.B. 62. He said his support of the bill came from a court decision in which his adjudicated water rights had been stripped by a permit issued by the State Engineer. Mr. Howell said the water rights for his ranch were adjudicated in 1876 and in 1944. Pacific Reclamation Water Company applied with the State Engineer for a transfer of water rights from various properties in the Bishop Creek area to their canal system. He said two of the water rights involved in that transfer were from his ranch and that of a ranch currently owned by Dalton Livestock. He said the previous owners of his ranch or the owners of the Dalton ranch saw the published notices for the water transfer in the newspaper at the time and did not protest the transfer. The State Engineer approved the permits from Pacific Reclamation Water Company. He said Dalton Livestock became aware of the water-rights issue for their ranch in 1995 and filed a record of conveyance with the State Engineer. He said the State Engineer returned Dalton Livestock's water rights to them. He said when he purchased his ranch in 1997, he asked the prior owners to file a record of conveyance with the State Engineer. Mr. Howell said the State Engineer approved the record of conveyance and returned the water rights to the Howell ranch. He said 45 days after the return of his water rights, the State Engineer rescinded the decision and gave the water rights over to Pacific Reclamation Water Company. He said he believed Dalton Livestock's water-rights decision had not been rescinded. Mr. Howell referred to a handout given to the Committee regarding his recent court cases about the water rights ([Exhibit C](#), original is on file at the Research Library). He said Deputy Attorney General Paul Taggart had testified in court and some of his testimony was in [Exhibit C](#). Senator Beers asked for what side Mr. Taggart had spoken. Mr. Howell said Mr. Taggart had testified on behalf of the State Engineer, but stipulated to Mr. Howell's clear chain of title. Mr. Howell continued with his presentation of [Exhibit C](#).

Mr. Howell said the decisions by the courts established a dangerous precedent when the State Engineer is able to remove previously adjudicated water rights. Chair Rhoads asked what S.B. 62 would do. Mr. Howell said the bill would provide a channel to protect water rights if the State Engineer mistakenly issues a permit which would damage existing water rights on a property. Senator Beers asked if Mr. Howell currently had his water rights. Mr. Howell said his water rights had been stripped away and his headgate had been closed. Senator Carlton asked if Mr. Howell was still in the appeal process with the courts. Mr. Howell said his case had been filed with the U.S. Supreme Court as a due process issue and the Court declined to hear the case.

Hugh Ricci, P.E., State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources, spoke from a prepared statement in opposition to S.B. 62 ([Exhibit D](#)). Mr. Ricci said ownership of the water right was never the issue. He said the issue was the issuance of the permit in 1944. He said it is not the State Engineer's jurisdiction to be a court of equity and that any issues of that nature needed to be filed with the appropriate court. Chair Rhoads asked if the State Engineer in 1944 had made a mistake regarding the transfer of water rights in this case. Mr. Ricci said he was not in a position to say whether a mistake had been made because he had not had a chance to review the chains of title. He said he believed people prior to Mr. Howell had petitioned for the water rights on the same property and had also been told the property no longer had water rights.

Senator Beers asked if water rights were inviolable. Mr. Ricci said the water rights had been transferred in 1944 and those types of transfers were common in Nevada. Senator Beers asked if the owners at the time knew of their property being seized. Mr. Ricci said nothing was ever appealed in 1944. Senator Beers asked how water rights could be taken without permission from the owners of the water rights. Mr. Ricci said ownership was not the issue. Senator Beers said the transfer of property without the permission of the owner was theft. Mr. Ricci said he was not going to call this case theft. Senator Beers asked if the State Engineer should be able to unilaterally remove an individual's property. Mr. Ricci said the water right was removed in 1944. Senator Beers asked if the State Engineer could currently remove an individual's water rights without their knowledge or agreement. Mr. Ricci said no. Senator Beers asked if the State Engineer had the right to remove an individual's water rights without their knowledge or permission in 1944. Mr. Ricci said he did not know what the State Engineer was thinking when he made his decision in 1944. Senator Beers

said it was Mr. Ricci's responsibility to enforce the law. Senator Beers asked how the owner of the water rights could lose in this case. Mr. Ricci said the case had been appealed by Mr. Howell. Senator Beers asked why Mr. Howell would have to appeal the case. Mr. Ricci said Mr. Howell appealed his rejection of the report of conveyance. He said Mr. Howell had another avenue in a court of equity to resolve the case.

Mr. Howell said Dalton Livestock had filed the same report of conveyance and had their water rights restored. He asked why Mr. Ricci had approved Dalton Livestock's report of conveyance and rejected his. Mr. Ricci said he was not in a position to make any comment on the issue. Senator Beers asked why the State Engineer had not looked at the record of ownership for the water rights on Mr. Howell's ranch and determined who had the earlier established beneficial use of the water there. Mr. Ricci said he did not look at any of those issues. He said he looked at the finality of the decision and not the ownership. He said if two parties are disputing ownership of the same property, they needed to go to a court of equity to have the issue resolved. Mr. Ricci said Mr. Howell would have been better off if he had challenged the State Engineer's decision rather than challenging the party in dispute of the water right. Senator Beers asked if Mr. Ricci had any ideas on how to fix the current water law. Mr. Ricci said he did not feel the situation with Mr. Howell could occur today with the existing water law. Mr. Ricci said he would look at the issue of the Dalton Livestock decision at a later time.

Senator Carlton asked if the changes made in S.B. 62 would create problems in the future for other water-rights holders. Mr. Ricci said she was correct in her view. He said if the bill passed, there would not be any finality to water rights in the State.

Doug Busselman, Nevada Farm Bureau, spoke from a prepared statement ([Exhibit E](#)) in opposition to S.B. 62. Senator Beers asked if Mr. Howell's case was a miscarriage of justice under the current water law. Mr. Busselman said the idea of rectifying an individual's case is best settled in another venue instead of changing the existing state law which would apply to everyone in the future. Senator Beers asked if the same set of circumstances occurred to someone else as they did to Mr. Howell, was there a way to change the existing water law to prevent that from happening. Mr. Busselman said he did not know.

Senate Committee on Natural Resources
April 6, 2005
Page 5

Gordon DePaoli, Truckee Meadows Water Authority; Walker River Irrigation District, spoke against S.B. 62. He said the provisions in the bill were not intended to deal with a conflict in ownership. He said they are intended to deal with conflicts involving one or more existing water rights and changes to those rights.

Chair Rhoads closed the hearing on S.B. 62 and opened the work session on S.B. 26.

SENATE BILL 26: Revises provisions governing distribution of money in Pollution Control Account to local governmental agencies. (BDR 40-397)

Linda Eissmann, Committee Policy Analyst, gave a brief overview of S.B. 26 using a work session document provided to the Committee ([Exhibit F](#), original is on file at the Research Library). She introduced a letter from the Washoe County District Health Department in support of S.B. 26 ([Exhibit G](#)). She introduced a letter from the Clark County Department of Air Quality and Environmental Management in support of S.B. 26 ([Exhibit H](#)).

SENATOR BEERS MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 26.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR COFFIN WAS ABSENT FOR THE VOTE)

Chair Rhoads opened the work session on S.B. 263.

SENATE BILL 263: Adopts Uniform Environmental Covenants Act.
(BDR 40-359)

Ms. Eissmann gave an overview of S.B. 263 using [Exhibit F](#). Senator McGinness asked if the proposed amendment would concede anything to the U.S. Environmental Protection Agency. Ms. Eissmann said the amendment was specifying the state-agency authority and not conceding anything.

Senate Committee on Natural Resources
April 6, 2005
Page 6

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 263.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR COFFIN WAS ABSENT FOR THE VOTE)

Chair Rhoads opened the work session on Senate Joint Resolution (S.J.R.) 12.

SENATE JOINT RESOLUTION 12: Urges President of United States to direct Secretary of the Interior to provide full funding for Clark County Sport Shooting Park. (BDR R-1358)

Ms. Eissmann gave an overview of S.J.R. 12 using [Exhibit F](#).

SENATOR MCGINNESS MOVED TO DO PASS S.J.R. 12.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR COFFIN WAS ABSENT FOR THE VOTE)

Chair Rhoads opened the hearing on S.B. 208.

SENATE BILL 208: Requires State Department of Agriculture to establish and administer program of education, research and information on beef under certain circumstances. (BDR 50-535)

Michael Montero, Nevada Cattlemen's Association, spoke in support of S.B. 208. He proposed an amendment to the bill, which he distributed to the Committee ([Exhibit I](#)). He said the bill would create a state beef-promotion program. He said the current federal beef-promotion program was being challenged in the U.S. Supreme Court. He said proponents of the state beef program were hoping to establish the program in case the federal program is

deemed unconstitutional. He said beef producers would pay \$1 per head of cattle at the time of sale which would fund the state beef-promotion program. He said currently the \$1 fee is collected by the State Department of Agriculture, but S.B. 208 would change that so the Nevada Beef Council would collect the fee. Mr. Montero said a suggested amendment to allow for a refund of the collected fee was written because the mandatory fee on the federal level was why it was being challenged in the U.S. Supreme Court.

Steve Lucas, Chairman, Nevada Beef Council, spoke in support of S.B. 208. He said the beef-promotion program was beneficial to Nevada and the bill would ensure it remained if the federal program was ended. Chair Rhoads asked when the decision from U.S. Supreme Court would be made. Mr. Lucas said it was supposed to have been given in March but, no later than June. Senator McGinness asked if the programs supported by the Nevada Beef Council were related to the beef industry. Mr. Lucas said money was donated for the purchase of beef, courses in culinary classes and other programs for the support of beef.

Senator Beers asked if the option for a refund would remove any problems with the \$1 fee in the courts. Mr. Montero said the bill was intended to avoid a compelled-speech issue as was happening on the federal level. He said 27 other states had passed legislation for beef-promotion programs. Senator Carlton expressed concern about the \$1 fee per head. Chair Rhoads responded the \$1 fee could be refunded if requested. Senator Carlton asked why the \$1 could not be voluntary from the beginning. Mr. Montero said the bill language was tailored from similar programs in Nevada requiring a fee. He said the other programs seemed to be working. Chair Rhoads said the trouble with a voluntary fee is a lot of money would be collected the first year and not much after that. Mr. Lucas said the beef producers voted in 1985 to have the fee collected and it passed at a rate of nearly 80 percent.

Mr. Busselman spoke in support of S.B. 208.

Don Henderson, Director, State Department of Agriculture, spoke in support of S.B. 208. He said if the fee were collected at the time of brand inspections, an audit trail would be there when the audits were done on the Nevada Beef Council. Senator Beers asked if the amendments and the option for the refund would remove the two-thirds majority requirement from the bill. Ms. Eissmann said the fee is still being charged and so the requirement would remain.

Chair Rhoads closed the hearing on S.B. 208 and opened the hearing on S.B. 397.

SENATE BILL 397: Makes various changes relating to wildlife. (BDR 45-324)

Robert Buonamici, Chief Game Warden, Department of Wildlife, spoke in support of S.B. 397. He said the bill addressed roadblocks and check stations. He said the bill clarified the Department of Wildlife's authority for roadblocks on dirt roads. He said another section of the bill addressed failure-to-appear (FTA) issues. He said another portion of the bill would increase the number of demerits required for a warning notification from six to nine. He described another section of the bill which stated if an aircraft was used to hunt game, that aircraft could be seized by the Department of Wildlife. Chair Rhoads asked if the game boards throughout the State had discussed the bill. Mr. Buonamici said the game boards had seen the bill but, not in the present form. Chair Rhoads asked if the Board of Wildlife Commissioners had seen the bill. Mr. Buonamici said Chris MacKenzie, Board of Wildlife Commissioners, Department of Wildlife, was present to testify about the bill.

Senator Beers asked why the restriction of hunting from a snowmobile was being removed. Steve Albert, Staff Game Warden, Department of Wildlife, said the word "snowmobile" alone was problematic. He said it pinpointed that type of vehicle, but there were many other types of vehicles used in the snow. He said the use of the word "motor-driven-vehicle" included snowmobiles and other vehicles potentially used in hunting. Senator Beers questioned purpose of the 48-hour provision in the bill. Mr. Albert said the existing language seemed too impossible to follow and so a simple rule of 48 hours between flying and hunting seemed more realistic.

Senator Carlton asked about suspensions of licenses as described in a handout provided to the Committee ([Exhibit J](#)). She asked if an FTA would allow for a mandatory suspension of someone's driver's license. Mr. Albert said the sheet she was looking at was just an example and that only hunting, fishing and trapping licenses were subject to suspension. Senator Carlton asked if the judge in a case could issue a warrant for an FTA. Mr. Albert said that was the case.

Senator McGinness asked if the 48-hour provision in the bill was to primarily prevent communication of any hunting done after flying within 48 hours. Mr. Albert said the communication provision has always been around, but the

48 hours give it some basis for time. Senator McGinness asked if one could fly somewhere, hunt and not tell anyone about it in 48 hours, would that person be okay? Mr. Albert said there was another provision in the bill that made that scenario illegal.

Senator Beers asked if there could be an amendment proposed for the work session regarding the seizure of aircraft, because he said seizure was too draconian for the offense. He also recommended page 6, lines 19 and 20 be changed to include both postal mail and electronic mail. Mr. Buonamici said the issue of aircraft was not intended for fixed-wing aircraft but, for power parachutes. He said people would use these, fly at about 26 miles per hour and chase wild game until the animals tired out. He said the people would then find and kill the animal when they were too exhausted. Mr. Albert said *Nevada Revised Statute* (NRS) 501.376 contained a clause which said if people hunt using certain methods unlawfully, it is categorized as a felony.

Chris MacKenzie, Board of Wildlife Commissioners, Department of Wildlife, spoke in support of S.B. 397.

Mr. Montero said there were some parts of S.B. 397 that were problematic for him. He said section 7 would allow any employee of the Department of Wildlife to take any wildlife from any place and in any manner for any purpose. He said he was concerned about the possibility of Department employees coming onto private property and seizing wildlife. He said the issue could be corrected and he was currently working with the Department of Wildlife on correcting the issue. He said the next area of concern was in section 11. He said the issue of collecting biological samples on private lands needed some work. He said the final issue he had was in section 16. He said the provision in the bill would require both posted warning signs and a verbal warning to trespassers before action could be taken against the trespasser. Senator Beers asked what Mr. Montero wanted in section 16. Mr. Montero said posted signs should be sufficient warning for trespassers.

Mr. Busselman said he had been working through the issues he had with S.B. 397 and was nearly finished with those.

Chair Rhoads closed the hearing on S.B. 397 and reopened the hearing on S.B. 62.

Joseph Guild, Southern Nevada Water Authority, spoke against S.B. 62. He said he echoed the comments made by Mr. DePaoli earlier in the meeting with the exception of the proposed language because he had not had a chance to read it yet. He said S.B. 62 would create too much uncertainty for the future. He said Mr. Howell's issue could have been solved had he brought a title question to his water rights in an adverse possession action in the district court. Chair Rhoads asked if Mr. Guild could remember what Mr. DePaoli had proposed. Mr. Guild said he could not, but thought the solution to Mr. Howell's problem was in Mr. DePaoli's idea. Senator Beers asked if there was a statute of limitations on adverse possession. Mr. Guild said there was not a statute of limitations on adverse possession. Senator Beers asked if water rights could be treated as real property. Mr. Guild said the Nevada courts have ruled that water rights are not real property unless they are in the midst of a dispute between parties, at which time water rights would be considered real property.

Chair Rhoads closed the hearing on S.B. 62 and opened the work session on S.B. 208.

SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 208.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.
SENATORS COFFIN AND SCHNEIDER WERE ABSENT FOR THE VOTE.)

* * * * *

Senate Committee on Natural Resources
April 6, 2005
Page 11

Chair Rhoads adjourned the meeting of the Senate Committee on Natural Resources at 4:19 p.m.

RESPECTFULLY SUBMITTED:

Jonathan Sherwood,
Committee Secretary

APPROVED BY:

Senator Dean A. Rhoads, Chair

DATE: _____