

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

**Seventy-Fourth Session
March 26, 2007**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:02 a.m., on Monday, March 26, 2007, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn Kirkpatrick, Chair
Assemblywoman Peggy Pierce, Vice Chair
Assemblyman Kelvin Atkinson
Assemblyman Bob Beers
Assemblyman David Bobzien
Assemblyman Chad Christensen
Assemblyman Jerry D. Claborn
Assemblyman Pete Goicoechea
Assemblyman Ruben Kihuen
Assemblyman Harvey J. Munford
Assemblywoman Bonnie Parnell
Assemblyman James Settlemeyer
Assemblyman Lynn D. Stewart
Assemblywoman RoseMary Womack

GUEST LEGISLATORS PRESENT:

Assemblywoman Sheila Leslie, Assembly District No. 27
Assemblyman Harry Mortenson, Assembly District No. 42
Assemblyman Joe Hogan, Assembly District No. 10

Minutes ID: 666



STAFF MEMBERS PRESENT:

Amber Joiner, Committee Policy Analyst
Scott McKenna, Committee Counsel
Cheryl Williams, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Dean Baker, Private Citizen, Baker, Nevada
Gary Perea, Private Citizen, Ely, Nevada
Jo Anne Garrett, Private Citizen, Baker, Nevada
Steve Walker, representing Truckee Meadows Water Authority
Jon Hutchings, Executive Director, Central Nevada Regional Water Authority
Andy Belanger, Senior Management Analyst, Southern Nevada Water Authority
Simeon Herskovits, representing Advocates for Community and Environment, Taos, New Mexico
Gordon DePaoli, representing Walker River Irrigation District
Doug Bierman, representing Humboldt River Basin Water Authority
Tracy Taylor, State Engineer, Division of Water Resources, State Engineer's Office
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation
Susan Lynn, Executive Director, Public Resource Associates
Glenn Bunch, Private Citizen, Hawthorne, Nevada
Patti Bakker, Truckee River Project Manager, The Nature Conservancy
Don Alt, representing The Nevada Livestock Association
Kyle Davis, Policy Director, Nevada Conservation League
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada
Dennis Ghiglien, representing Sierra Club, Toiyabe Chapter
Taryn Hutchings-Cabibi, Water Policy Analyst, Western Resource Advocates
Edwin James, General Manager, Carson Water Subconservancy District

[Roll Call – quorum present]

Chair Kirkpatrick:

We will start with a BDR we need to introduce.

BDR 19-543— Revises provisions governing notaries public. (Later introduced as **Assembly Bill 533**.)

ASSEMBLYWOMAN PIERCE MOVED TO INTRODUCE BDR 19-543.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Kirkpatrick:

We will start with Assembly Bill 285. This is Assemblywoman Leslie's bill.

Assembly Bill 285: Revises provisions governing the adjudication of water rights. (BDR 48-913)

Assemblywoman Sheila Leslie, Assembly District No. 27:

This bill is about correcting a basic injustice. It allows property owners and their successors in property title, such as family members, to qualify to participate in the administrative process that affects their existing water rights or interests in property. The concept of the bill is: if a water rights application is not adjudicated by the State Engineer within five years, the State Engineer is required to reopen the protest period before the hearing is held. The State Engineer must re-notify all protestants, and they have the responsibility to respond if they wish to continue. New protestants shall be added to the protestants list. Successors in property interests through the change of title or family death are entitled to carry on with the protest.

As it is now, neither the children of protestors, new businesses, nor residents who have moved into the area after a protest is filed cannot inherit the protest even if it takes decades to have an application decided, or even if wells are proposed next to their property. New residents cannot file a protest even though the exported water will impact their lives.

Without a protest, citizens cannot participate in the State Engineer's hearings on water applications, although his decisions could critically affect their livelihoods and communities. The bill is a matter of fairness in due process. A person has a right to protect their property.

Today, you will hear from private and public water experts as well as rural residents of our state who have a stake in this decision. They will give you some examples of how the law currently works, and may suggest some amendments.

I know this Committee has a lot of people interested in this issue, especially our rural representatives. I know this issue is extremely important to the residents of White Pine County and the Ely area, some of whom have traveled here today.

Assemblyman Settelmeyer:

I agree with the concept of allowing those who inherit the land or those who buy the land to inherit the protest. What section of the bill deals with that?

Assemblywoman Leslie:

Section 1 on page 4, subsection 9 deals with it, in that, if the water adjudication does not happen in five years, anyone who comes in after that has a right to be notified and file their protest. While it does not specify new residents, if the application has not been decided in five years then it reopens to any protestant.

Assemblyman Settelmeyer:

What if someone were to pass away, and the next year you lacked the ability to protest?

Assemblywoman Leslie:

That is an interesting concept. My interest, Mr. Settelmeyer, is to make sure that people have the right to participate in the process.

Dean Baker, Private Citizen, Baker, Nevada:

[Read from prepared statement ([Exhibit C](#)).]

Gary Perea, Private Citizen, Ely, NV:

[Read from prepared statement ([Exhibit D](#)).]

Jo Anne Garrett, Private Citizen, Baker, Nevada:

I have lived in Baker, Nevada for 35 years. Protests were returned to the State Engineer because the addresses were not found by the United States Post Office. A new post office was built to serve an area which was formally two offices, Ely and East Ely. During a two year period people could change their address after which any mail that came and did not have a correct address was summarily sent back to the Las Vegas Post Office as return to sender. After those two years no effort was made to forward mail because it was an

automated process. I called the people whose names we recognized on the list as having not been discovered by the State Engineer. People were shocked and indignant that they were being deprived of the privilege and obligation to follow up on their protest. Most of them were not aware of any movement on those protests that had been filed so long ago.

It is a good law that lets people speak individually, because they know and care for the place. They know that water is not a commodity; it is part of our living on the earth.

Assemblyman Goicoechea:

When we talk about an application, are we talking about all applications or just those applications to appropriate? There is a big difference. We could bog the process down if there were the ability to protest every time there was a changed application for place or manner of use.

Dean Baker:

It should be a significant amount of water. There have been thoughts that only 10 or 20 applications should be allowed for a limited amount of water. If there were 20 applications in a ten square mile area it should be considered a large application.

Let us say that Gary decides to build 200 new motel rooms, files for enough water to do that, gets the application, and then his financier says he can only build 20. He should be able to keep the original allocation, versus someone that files for a huge amount of water, and then does not do anything for 18 years. The State Engineer should have the leeway with transfers and other things to review them individually.

Gary Perea:

I own the Border Inn with my mother. She filed a protest in her name back in 1989, but if she were to pass away, that protest would die and our business would not have the opportunity to protest these applications.

About two years ago we drilled a new well because we were expanding our business, and we needed a more modern water facility. We had to get Southern Nevada Water Authority's (SNWA) approval to drill because of those applications that I cannot protest.

Assemblyman Bobzien:

What is the number of people we are talking about in a situation similar to yours?

Gary Perea:

Jo Anne [Garrett] may have a better idea on that because she came up with a list of people who would like to file a protest.

Jo Anne Garrett:

I reached about 50 people by telephone who were not able to follow up on their protest, whether their interest was commercial or otherwise.

Gary Perea:

I would say between 50 and 100 people.

Assemblyman Goicoechea:

The State Engineer has the number of protests that were actually out there.

Steve Walker, Truckee Meadows Water Authority:

I support the bill if amended. We have submitted a very simple amendment to the sponsor of the bill. It gets to Assemblyman Goicoechea's question: is this for permits to appropriate water, because there are also permits to change manner of use of water, and place of use of water once the water is appropriated. The Truckee Meadows Water Authority (TMWA) is changing agricultural water rights to municipal industrial rights on the Truckee River and has over 80 changes to the manner of use applications that are dated, not because they are controversial, but because they are going through the process.

All that we have asked for is a very simple amendment to make clear that we are talking about new appropriations of water. With that amendment we support the bill, and without it we oppose the bill.

Jon Hutchings, Executive Director, Central Nevada Regional Water Authority:

The Central Nevada Regional Water Authority (CNRWA) is comprised of seven Nevada counties that have the geographical distinction of sharing the central hydrographic region. That region is unique among Nevada's hydrologic areas in that it consists entirely of internally drained basins. All the precipitation within the boundaries of that region falls to the center of those basins into streams or rivers that flow outside of the boundary.

The local governments represented by the Central Nevada Regional Water Authority are rural by nature. Those include: Elko, Eureka, White Pine, Nye, Lander, Esmeralda, and Churchill Counties. These counties are struggling to raise their management sophistication to enable them to be involved in water resource decision making at the State level.

Their underlying concern is representation in the decision making process which is key to the efforts of the individual county and local governments. It is a priority for the Central Nevada Regional Water Authority to help them get there.

The provisions of A.B. 285 are in line with that priority, and we support the bill. There may be testimony later as to the appropriate time frame and whether it is five, seven or ten years before applications are reopened for re-protest. At the present time, the Regional Water Authority does not consider five years an appropriate time, but rather between five and ten years. We also do not have any problem with exempting applications that are specified as annual duty, say, ten acre-feet per year to relieve the administrative burden on the State Engineer's Office.

I concur with Mr. Walker's comment regarding permits to appropriate versus changes in place of use or point of diversion.

Andy Belanger, Senior Management Analyst, Southern Nevada Water Authority:
We are in support of A.B. 285. We believe it is fair to have some mechanism to allow participants who were not able to enter a formal protest during the protest period to be able to provide comment.

The State Engineer held hearings on our Spring Valley Applications in September of 2006. Those applications were for 91,000 acre-feet of unappropriated water within that one basin. During that hearing, in addition to all of the protests that were filed, were 86 people who spoke during the public comment portion of that hearing. A significant number testified in opposition, but a number testified in support of the applications. Contrast that with the Aqua Trac hearing, another big inter-basin transfer, where only two people testified.

Already in law are adequate measures that allow participants who have missed the protest period to enter into a hearing process. *Nevada Administrative Code* (NAC) 533.100 allows interested persons, who have missed the protest period, to ask the State Engineer to allow them to enter. We support the Legislature to take action if it is appropriate.

We support Mr. Settelmeyer's idea about successor and interest, allowing participants to inherit a protest that is filed. We would be happy to work with the sponsors to come up with a solution.

Assemblyman Bobzien:

A quick question to Mr. Walker. I am trying to discern what TMWA's position is on this legislation. Would you say that TMWA's conditional support of the bill is more because they are concerned about the expansive scope that changes

in use bring to this question? Or is it more just TMWA does not see itself impacted by the legislation if it deals only with appropriations?

Steve Walker:

It is the former. We are in the water right change business, both place and manner use, more than any other entity in the State. We have a lot of those applications, and if there is a five year limitation on those, we do not know if we could operate within that type of limitation. We also think that the intent of the bill with inter-basin transfers and appropriation of water was left out. The bill talks about the appropriation until you get to the exact language on Section 9, and then that language is done.

Chair Kirkpatrick:

Mr. Walker, are you saying that five years is not enough time, and that you need more time?

Steve Walker:

Five years is fine as long as it is for a permit to appropriate water. The other applications deal with water that has already been permitted or appropriated and are more housekeeping types of applications. We are asking for it to be limited to new appropriation of water, because that is the intent.

Assemblyman Settlemeyer:

Would you be okay with the concept of allowing protests to run at the land? I started to think that it would increase the potential for people to sue; I believe the law does not allow you to inherit a lawsuit.

Andy Belanger:

We are open to that concept. We would be happy to come back and give a position on that.

**Simeon Herskovits, representing Advocates for Community and Environment,
Taos, New Mexico:**

I represent a number of protestants with pending applications in eastern Nevada. I want to touch on the fairly indisputable policy, and legal issues this bill is designed to address. There is deficiency now in Nevada state law as it pertains to water rights applications. The thrust of the law and administrative regulations the State Engineer has adopted for water rights applications purport to put an emphasis on the speed, or the expediency with which water rights applications and change applications are processed, as well as the speed with which an applicant actually puts the water to use and diverts the water for which he has applied. However, the law turns around and leaves an open-ended period of time for the State Engineer to not act on pending

applications without allowing any renewed opportunity for interested members of the public to participate. There are not existing procedures that safeguard people's property interest in water.

The interested person provision has not been effective in allowing the majority of people who had been excluded from pending water rights applications in eastern Nevada to get involved and meaningfully participate. Anyone can give public comment at a State Engineer hearing, but it does not become evidence in the record, is not a basis for the decision of the State Engineer, and is of no use if the decision is taken to court afterwards. This does not give citizens of Nevada an adequate means of protecting their property rights and interests.

Many residents have protected property rights and other protected interests in the water resources of their area under Nevada law and western law in general. We have heard from a number of individuals who hold protected water rights, such as ranchers, farmers, and other property owners in White Pine County. There are also business owners and residents who have protected interests under Nevada law in the water supply of their local area. Obviously, these are people, who under the federal and Nevada Constitution, have a right to due process, which means that they must be heard to defend those rights in a meaningful and timely manner. Under current Nevada law, the State Engineer is constrained on an application that is pending for 5-20 years.

Once the 30 days protest period has expired and the years go by; it does not matter whether someone is an heir to their parent's or grandparent's property; whether they purchased the property with the water rights; whether they have put other water to use and are dependent on the integrity of the local ground and surface water supply; or whether someone was an infant or a child during the original protest period. They are completely shut out of any opportunity to protest and to become an active participant in the decision making process.

This is a situation that violates both the federal and state guarantees of due process and has put Nevada in an embarrassing position. There is already pending litigation regarding the eastern Nevada applications. There is some uncertainty of the numbers, but there are over 200 protestants who are not participating in the process because there has been movement in the previous 17 to 18 years, or the original protestant has passed away, or other people have taken over their land and property, whether it is kin or new owners. Those people are now no longer able to participate in the process. We are talking a very sparsely populated area with over 200 protestants, who because of the lapse of so much time, have been effectively shut out of the process. They raise a serious question in terms of being provided the required due process; meaning that they have a real opportunity to make their concerns

heard, present their evidence, and be involved as interested parties in any subsequent court action.

There has been talk about providing a right to a successor. It would be a good step, whether it is an heir or subsequent purchaser of property, to get involved and file a protest up to the time of, or within a short period prior to the hearing. That would prevent a certain amount of injustice. You also have to look at the time factor. What amount of time is enough to develop activities between people moving into the area and now having a new interest, and organizations or entities like the Truckee Meadows Water Authority? People who have moved away from the area but remain interested, if they were reminded after the lapse of many years that the issue has come to a head, could they get involved as is their right and vindicate their original concerns and protest their interests?

Assemblywoman Leslie has done a good job setting the time at five years. I would submit perhaps six or seven years would also be reasonable. Seven years is enough time for people to move, pass away, for changes in mailing addresses, or for new entities or organizations that have come into existence to be part of this governmental decision making process.

There has been some comment about whether this should apply only to applications for new appropriations. I think the most obvious and significant issue concerns new water right appropriations where there potentially is water available, but it is disputed if it is appropriate or permissible to allow. There are a number of interested entities who would be impacted by a new water rights application. You should not assume that new water rights applications are the only ones that raise serious concern for current water rights holders with protected property interests or for new persons or entities that have other types of protected interests in decisions regarding the water at issue. If there is an inter-basin transfer application, or change of application, you can still have significant impacts to current water rights holders and the economy in the area from which water is sought.

You could choose to go only with new water rights appropriations, but I would recommend the Committee make the choice to also include change applications above a certain threshold. Maybe this needs more fact finding, but perhaps 250 or 300 acre-feet to avoid minimum or routine change applications.

A new appropriation could be problematic when water is going to be transferred from one basin to another and potentially have harmful impacts on its basin of origin. Those types of change applications should be held in the scope of this bill. The lowest level probably is a matter of housekeeping, but it is not fair to characterize the large scale exportation of water from one basin to distant

basins as housekeeping. I think that raises significant property rights concerns on both an individual and community level in terms of economic and environmental impacts.

Assemblyman Bobzien:

At this point, it is up to the State Engineer to determine whether or not someone outside the existing definition of standing can take the public protest. There is some leeway for the State Engineer to make that call. This bill is putting that into statute.

Simeon Herskovits:

I understand the point you and Mr. Belanger suggested. It is surprising to hear from Mr. Belanger because of his own agency's pending applications. The State Engineer has found and conclusively held that he does not have the discretion to grant rights of participation to a class, or many classes of residents who could be protestants that missed their opportunity 15, 18, or 20 years ago.

In fact, the State Engineer held, that while he has the leeway and is directed by the statutes to keep an application open and pending indefinitely, once the original brief protest period is passed, he can use the law to confine his ability to participate to a very minimal level. Interested persons are not a routine mechanism for allowing proper protestants to be involved.

Chair Kirkpatrick:

Is there anybody that would like to speak in favor of A.B. 285? [There were none.] Anybody that would like speak neutral on A.B. 285? [There were none.] Is there anybody that would like to speak in opposition of A.B. 285?

Gordon DePaoli, Representing the Walker River Irrigation District:

I did sign up in opposition, but my opposition relates to the fact that the bill, as written, applies to all applications including applications to change, rather than be limited to applications to appropriate water. Having heard the discussion this morning as to what the bill is intended to correct, it makes sense that there be a direct way to allow successors to participate in these proceedings regardless of the amount of time that has elapsed.

There also needs to be a more direct way to allow parties to participate where an application has sat for a very long period of time. This bill attempts to do that by re-noticing and possibly reopening, but there may be a more direct way to statutorily authorize the State Engineer to allow for persons to participate as full parties without having to re-notice in every situation.

In 1930 the Truckee-Carson Irrigation District filed an application to appropriate 100,000 acre-feet from the Truckee River to take over to Lahontan Reservoir. The application was not protested in 1930; but it came up for a hearing in 1996, and the State Engineer was in the position of having limited ability to allow participation. The State Engineer dealt with the situation as the statute required without protestants, based on the situation in 1996, not 1930, and denied the application. There needs to be a direct way for successors to a participant to participate if an application has sat for a period of time.

Doug Bierman, representing the Humboldt River Basin Water Authority:

The River Basin is not opposed to this measure; at this point in time they are neutral.

Tracy Taylor, State Engineer, Division of Water Resources, State Engineer's Office:

[Read from prepared statement ([Exhibit E](#)).]

Assemblyman Settlemeyer:

On the issue of the successor of interest of land, are you willing to put that one to a zero rather than a ten year? If you have any time frame on it, it can be very problematic if someone has passed away.

Tracy Taylor:

I would agree to that.

Assemblyman Goicoechea:

If we give you ten years, it will take you ten years. That is why I would like to see that come down. I am also concerned with the threshold number of 500 acre-feet. That is more than enough water to do a quarter section of land or provide one pivot, and again, ten years may not seem like a long time to the State Engineer's Office, or the average person here, but if you are that person out there trying to develop that 160 acres, it is a long time.

I definitely agree with the administrative hearing process. I would love to see every protestant application have the ability to go before an administrative hearing in hopes to resolve some of these issues before they get to a full blown hearing. We need to look if there is the ability to create some type of three member administrative hearing panel.

Chair Kirkpatrick:

Are there any other questions? [There were none.] I would like to invite Ms. Leslie back to the table if you have any comments.

Assemblywoman Leslie:

I am pleased with the testimony we have had today. Even the people who were opposed were not that opposed. Mr. Settelmeyer's idea seems to have caught fire. I hope the committee can figure a way to do that. Mr. Perea gave some good testimony on his family situation, and at least we can get that resolved.

I am not sure the publication of the re-notice is really what I am after. I want people to have the right to protest. They have to be notified in some way, and the Committee can better address whether people really combed the Ely paper to see the notice, or if that is really the best way to "notice" people. There are some great suggestions for amendments, and I look forward to working with this Committee on this bill. It is very important that we correct this injustice.

Chair Kirkpatrick:

Does anyone have any final questions for Ms. Leslie? [There were none.] We will close the hearing on A.B. 285, and open the hearing on A. B. 296.

Assembly Bill 296: Makes various changes concerning the lease of certain water rights. (BDR 48-978)

Assemblyman David Bobzien, Assembly District No. 24:

The intent of this legislation and a summary of the conversation that lead to this amendment are in this handout ([Exhibit F](#)). We are discussing water this morning as one of the most important issues facing this state, and the residents of my district. Protecting what we love about Nevada is of paramount importance, whether it includes bird watching, hunting, fishing, or boating.

Our state water policy needs to be flexible and reflective of the various uses water has in our State. My intent with this legislation is to make it more clear that an agricultural water user could, by their choosing, enter into lease agreements so the water would be used for conservation purposes, as in-stream flows, which is water making it down the river to a lake.

I have had conversations with Mr. Taylor, Mr. Biaggi, and others who are concerned about how this would interface with existing federal decrees. Some of the proposals could potentially put us at odds with some of those decrees.

The original bill would have created a special way to do water leases. I want to make clear that the Legislature's intent was that this sort of leasing is appropriate and is supported through water policy.

This sort of a Legislative intent statement is consistent with statute. In Chapter 533 there are other instances where the Legislature has made its intent

clear. The amendment strikes the majority of the bill except the statement "the Legislature hereby finds and declares that it is the policy of this State to allow the temporary conversion of agricultural water rights for wildlife purposes or to improve the quality or flow of water."

Assemblyman Goicoechea:

Would it be beneficial because presently you can only lease water for a one year period? Would you have to do the paperwork again? We need to try to do something with that time frame. It makes sense when we are talking about the backlog for the State Engineer. The bill could be a good vehicle to say water may be leased for a five or ten year period, or at least expand that time frame a little.

Assemblyman David Bobzien:

That was the heart of the original bill, and, it drives to the heart of the issue. The time frame puts us immediately crosswise with some existing federal decrees. Whatever we can do to articulate in state policy that we would like to see that time frame expanded, but at this time simply declaring the intent gives us a great framework to continue that discussion.

Chair Kirkpatrick:

We will move to those that are in favor of A.B. 296.

Steve Walker, representing Truckee Meadows Water Authority:

The proposed amendments go even further than we asked, so we are in favor of this bill as amended.

Tracy Taylor, State Engineer, Division of Water Resources, State Engineer's Office:

I signed up as a neutral, but we are in favor of the bill with the proposed changes.

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:

Nevada Farm Bureau has policy to support leasing, not just for wildlife purposes, but leasing in general. We want to make sure that if anyone were to consider this type of a business transaction they would in no way jeopardize their water right through that lease. After the lease had been completed the individual who leased the owned water would still control that right.

Assemblyman Settlemeyer:

Mr. Taylor, what if we put in; "unless it conflicts with existing decree, it would be allowed to go to a five year lease". Would that be acceptable? Are there some modifications in state law we could make that would not conflict with

existing decrees, but would allow you some flexibility to process the other paperwork?

Tracy Taylor:

We have the ability to issue a permanent change that expires after five years, and then it can revert back. The difference between a temporary change and a permanent change application is that a temporary change is required to be published or go through a protest period. For example, the Walker River Decree says I have to publish every application that is filed to change the Walker River Decree. That is one of the decrees we would be in conflict with, but I believe we have the ability to issue those applications right now with those permits.

Assemblyman Goicoechea:

Technically what you are saying is if we have the ability to lease water for ten years, the real issue is compliance with the decree, and that you would have to publish it. If we go back to the other bill [A.B. 285] or something similar, and come up with this magic threshold number, what is a good number if you wanted to push it beyond the temporary five year's?

Tracy Taylor:

Maybe I was not clear. A temporary change can only be granted for a one year period. I can grant a permanent change permanently, or I can limit it to ten, five, or eight years. The question is: after that period of time, does it revert back to its original right, or do you need to file another change application for a new use? I think I have the ability right now to issue any period of time.

Assemblyman Goicoechea:

A temporary for any period time?

Tracy Taylor:

Correct, but try not to confuse the temporary application process where that is limited to a one year but you can issue a permanent change and limit it.

Assemblyman Goicoechea:

If you are leasing water, no one wants to go to a permanent change and take it for ten years out, then have you come back, advertise it, and open it for a protest period. That is the scary part: it might not be granted. We have a number of water leases in the state right now, even some industrial being used for agricultural, that I would like to see go beyond the one year period, because I think it does jeopardize some industries.

Tracy Taylor:

As an example on the Walker River Decree, suppose the Department of Wildlife filed a change application to allow water to go to Walker Lake, and I granted that application, and it went to publication, and went through the protest period, and we granted it for a three year period. After three years it reverted back to its original right, but the right was a permit that had to go through a process of proof of completions and beneficial use. If it were a certificate of right it can revert back to that type of right.

Assemblyman Goicoechea:

We are saying as long as you have a certificate of right, you can make a temporary change for water for whatever time frame you want, and it will revert.

Chair Kirkpatrick:

Are water leases separate from any state leases that we have in place? Last session we changed the way state leases were done, and I am trying to do some clean up.

Tracy Taylor:

I believe the leases we are talking about are between individuals, which may be the Department of Wildlife and irrigation, the water right holder or municipalities, and it is usually between two parties.

Chair Kirkpatrick:

So is it between the State and another party, or is it between a government agency and a government agency?

Tracy Taylor:

It could be another government agency. It is not the State Engineer's Office itself. It would be between two entities and we would just make the decision on whether that application could be approved or not.

Chair Kirkpatrick:

Is there anyone else that would like to speak on A.B. 296?

Susan Lynn, Executive Director, Public Resource Associates:

We have been working on the Walker River issue, which I think this is intended for. It certainly applies in other areas with other surface water and groundwater issues. We like the concept of Assemblyman Bobzien's opportunity to lease water between two consenting parties, and we like the ten year because it allows people to fallow ground if they wanted. We support this bill and encourage the discussion to resolve the issue.

Glenn Bunch, Private Citizen, Hawthorne, Nevada:

I represent a lot of the sportsmen in the community. I have been in the Walker Lake Basin for a number of years, and I support this bill. We see it as a possible avenue to remedy our situation on bird watching, boating, and other criteria.

Simeon Herskovits, representing Advocates for Community and Environment:

I am here on behalf of the Mineral County Commission in lieu of Commissioner Jerrie Tipton. Mineral County, Nevada, has Walker Lake, which is one of two natural lakes that is entirely within Nevada. Walker Lake is a precious public resource in the State of Nevada. It has the potential to again be an incredibly valuable recreational, economic, and environmental resource for the citizens of this state.

Mineral County is emphatically in support of Assemblyman Bobzien's bill. We support the original bill, in any amended or modified form the Committee decides to pass. There has not been an acknowledgement of leases as a valid purpose or any sense of public or civic commitment to the idea of conservation or of sustaining the health of the State's water resources. This bill allows, or perhaps even encourages, these sorts of transactions where you have two willing participants. This simply allows and supports individual entities or people to arrange for a temporary lease or exchange of water rights to benefit wildlife resources, river flows, and the health of lakes.

If Assemblyman Bobzien is no longer interested in pursuing the original proposal because there are federal court decrees that govern water right transaction changes, then this precludes the Legislature for the sovereign State of Nevada from adopting legislation and implementing procedures. It would also preclude providing a procedure that would encourage or specify a mechanism by which such conservation leases or such changes could temporarily be processed and approved.

If this bill were adopted in its original form, and provided ten year temporary changes for conservation purposes, you would potentially have a positive impact throughout the state wherever there was not a federal decree that required additional steps or hurdles. In a situation like the Walker River Basin, the federal court has, in its interpretation and application of Nevada and California water law, decided there needs to be public notice and a hearing, as well as a court hearing for each of these applications.

That does not change the fact that Nevada has the sovereign authority to adopt new provisional measures. In fact, it may be that decrees, such as the Walker River Decree, are malleable and will change over time.

If Nevada adopts a conservation lease law that encourages or facilitates river health, fisheries, or any other conservation type purpose, it removes another barrier. Whether it would encourage the federal court to reconsider does not create a real conflict. There is no danger of running afoul of the federal courts because you are not ordering people to do this. You are simply permitting people and providing a more efficient way for accomplishing a socially desirable end.

Assemblyman Settelmeyer:

A lot of these agreements deal with multiple states. Obviously, Alpine and Mono Counties are in California but you are talking Nevada law in allocation of water. I strongly caution the concept that Nevada has a right to pass its own laws, but they do have a detrimental effect when dealing with other states.

Chair Kirkpatrick:

Is there anybody else that would like to speak in favor of A.B. 296?

Patti Bakker, Truckee River Project Manager, The Nature Conservancy:

I am here to express our support for this bill. The mission of the Nature Conservancy is to preserve our plants, animals, and natural communities by protecting the land and waters that they so depend on. Nature Conservancy scientists and trustees have identified Nevada's highest priority landscapes, which include many of the desert river systems in the state, including the Truckee, Amargosa, Muddy, and Carson Rivers. The Nature Conservancy then created the Nevada Desert Rivers Program in order to protect and restore these important river systems, and the aquatic and riparian habitat along the rivers.

Implementation of restoration projects along these rivers is a big part of the program. A large part of restoration is the revegetation of the land with desirable native species that can proliferate and recreate functioning habitats on which the wildlife depends. It is often the case that irrigation is needed to successfully revegetate an area that can then withstand pressures from invasive species and other damages.

An example of this is the McCarran Ranch Project that the Nature Conservancy, along with many public and private agencies partners, has been implementing along the Truckee River. It is a 304-acre project along five miles of the river, construction was finished last November, and now revegetation efforts will continue for several years to ensure successful survival of the restored habitats. The Nature Conservancy is leasing water rights from the University of Nevada, Reno in order to irrigate the plants used in the revegetation effort. Public and private funds have been expended on this project and the Nature Conservancy

and our partners, for a myriad of reasons, are working to restore the Truckee River. It is important that this project and the others that we will be implementing be successful. This bill will help the Nature Conservancy perform its work and protect the priority landscapes that have been identified in Nevada. We support this bill.

Chair Kirkpatrick:

Is there anybody in Clark County that would like to speak in favor of A.B. 296? Is there anybody in Clark County that would like to speak in neutral on A.B. 296?

Doug Bierman, representing Humboldt River Basin Water Authority:

Originally the Water Authority had taken a stand opposing this legislation as written, but in light of the suggested and proposed amendments we would change to a neutral position at this point in time until we have a chance to look at the amendments.

Chair Kirkpatrick:

Is there anyone opposed to A.B. 296 that would like to speak?

Gordon DePaoli, representing Walker River Irrigation District:

I have some suggestions for the amendment terminology that was submitted because I think there is confusion as to exactly what we are talking about.

Starting with the lease, leases are of anything including waters that may have terms of a few months to years. I also represent the Truckee Meadows Water Authority (TMWA) who inherited water rights leases from Sierra Pacific for 99 years. There is nothing in the law today which precludes a lease of a water right year other than the rule against perpetuities, which may or may not still apply. There is nothing that prohibits a lease of a water right for an environmental purpose for whatever the parties can agree upon.

A temporary change in Nevada's water law is different than what people think. Temporary in water law does not mean it only lasts for a period of time. It was intended to allow the State Engineer to process an application for a change without providing notice, a hearing and opportunity to protest what you heard about. It was limited to one year, and that is where the word temporary comes from. In terms of a change that may not qualify for the temporary process, there is nothing to prohibit the duration of that change for being something less than permanent, 5 years, 10 years, whatever the parties can agree upon in their lease, and whatever the State Engineer is willing to approve as something less than permanent.

I would suggest to not use the words temporary or conversion in Assemblyman Bobzien's amendment. Use the words that are in the statutes now concerning the change in place of diversion, place of use, and manner of use of agricultural water rights for wildlife purposes or to improve the quality of flow.

Jon Hutchings, Executive Director, Central Nevada Regional Water Authority:

Mr. DePaoli has lined it out. The provisions the original bill were seeking to change seemed to be already available to any party that wishes to lease water rights under existing statute. The statement that water leasing is a good thing as long as it does not jeopardize the original water right in its reversion is the key. This bill does not seem to further the cause beyond what is available. I am not sure what we are going to get out of this.

Don Alt, representing The Nevada Livestock Association:

We are against the bill for several reasons. If you have livestock on the range, and you let the water go somewhere else, the plants die off. If, for ten years there are no cattle grazing, the fire load becomes very heavy. There are a lot of negatives on farm land, and if you go ten years without planting a crop, rabbit brush will grow, and the land will never go back to agricultural use. Our rural communities and counties are struggling with their tax base; and if wildlife needs more water, the Bureau of Land Management (BLM) should give the ranchers permits to bring equipment in to clean out the reservoirs in northern Nevada that are soldered shut. This is economically bad for Nevada to go to ten years. I think it should be left at one year.

Chair Kirkpatrick:

Mr. DePaoli, who are you representing?

Gordon DePaoli:

I was speaking on behalf of the Walker River Irrigation District.

Assemblyman Goicoechea:

I was looking at the language you are proposing, and whether it allows the lease change and place and manner of use of agricultural water rights, is that defined enough for you? Rather than a temporary change conversion, I just want to make sure what you are talking about.

Gordon DePaoli:

I am talking about using the same words that are in the statute already, change of place of diversion, place of use and manner of use.

Assemblyman Goicoechea:

Would you talk about a leased change if that would separate it?

Gordon DePaoli:

I do not know if it needs to specify "leased." We think it is a good idea under the circumstances. The policy expressed here is for a duration that may not be permanent. I could see an arrangement where someone enters into a lease, pays someone not to transfer their water to a particular use for the next ten years, and get paid and file the application. There is no change in the name of who is on the water right by lease or anything else, it is an arrangement where someone agrees to change their water to this use for a period of time and gets paid for it. You could call it a lease, but you do not have to.

Assemblyman Goicoechea:

I think we all support that, but I want to make sure we do not let something slip so that down the road we find out there are going to be some adjustments to those agricultural water rights and they try to roll them back.

Gordon DePaoli:

I think that is a legitimate matter of concern. The further out you get, the more potential for problems when they are intended to revert back. Based on the change of circumstances that may have happened in between, that is something that is appropriate to be considered either by the Committee or the State Engineer's Office when looking at these kinds of applications.

Assemblyman Goicoechea:

And the terms and length of the terms in the conditions.

Chair Kirkpatrick:

Do we have any other people that would like to speak against A.B. 296? [There were none.]

Assemblyman Bobzien:

I do have some comments in closing, some context and maybe a vision of what I have in mind in trying to support lease arrangements with water for conservation purposes.

Those of you who know me well know that I am an avid fly fisherman, so I looked at other western states and their water issues and water policies. In Montana there are partnerships between conservationists, sportsman, and agricultural water users to protect habitat, help fish, ducks, whatever, and it is my intent to foster those relationships and partnerships here in Nevada.

As Mr. Herskovits said, "We are talking about willing participants." These agreements are where all parties come to the table and make an arrangement. This is exactly the kind of relationships we are trying to build here. These are willing property rights holders that enter into these lease agreements.

Mr. Taylor had mentioned under existing statute this is the sort of thing that can go forward and can happen. I would point out much of state water policy is interrupted and executed by the State Engineer. While we are blessed to have such a capable individual in that position, I am looking down the road and see possibilities that other engineers might take a far more restricted view. That is the intent in the statutes. This does have a purpose and I do think this is important to go forward as amended.

Chair Kirkpatrick:

With that, I will close the hearing on A.B. 296. We have seven BDRs to introduce and get on the floor.

BDR 23-700—Authorizes the Governor to designate a temporary replacement if the State Controller or the State Treasurer becomes temporarily incapacitated. (Later introduced as [Assembly Bill 559](#).)

ASSEMBLYMAN GOICOECHEA MOVED TO INTRODUCE
BDR 23-700.

ASSEMBLYWOMAN WOMACK SECONDED THE MOTION.

THE MOTION PASS UNANIMOUSLY.

* * * * *

BDR 22-431—Authorizes governing bodies to reject certain incomplete applications relating to land use. (Later introduced as [Assembly Bill 558](#).)

ASSEMBLYWOMAN PARNELL MOVED TO INTRODUCE
BDR 22-431.

ASSEMBLYMAN ATKINSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

BDR 23-1420—Revises the provisions governing preemployment drug testing for state employees. (Later introduced as [Assembly Bill 557](#).)

ASSEMBLYMAN STEWART MOVED TO INTRODUCED
BDR 23-1420.

ASSEMBLYMAN ATKINSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

BDR 34-497—Makes various changes relating to bonds. (Later introduced as [Assembly Bill 554](#).)

ASSEMBLYWOMAN PARNELL MOVED TO INTRODUCE
BDR 34-497.

ASSEMBLYMAN GOICOECHEA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

BDR 20-291—Authorizes constables to collect fees for removing or causing the removal of abandoned vehicles from public property. (Later introduced as [Assembly Bill 552](#).)

ASSEMBLYMAN BEERS MOVED TO INTRODUCE BDR 20-291.

ASSEMBLYMAN ATKINSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

BDR 31-382—Authorizes counties to levy an ad valorem tax to pay for the long-term institutional care of medically indigent persons. (Later introduced as [Assembly Bill 550](#).)

ASSEMBLYWOMAN PIERCE MOVED TO INTRODUCE BDR 31-382.

ASSEMBLYMAN ATKINSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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BDR 22-482—Authorizes local governments to require the placement or replacement of certain electric transmission lines in an underground location. (Later introduced as [Assembly Bill 545](#).)

ASSEMBLYMAN STEWART MOVED TO INTRODUCE BDR 22-482.

ASSEMBLYMAN CHRISTENSEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Kirkpatrick:

We will now hear Assembly Bill 325.

[Assembly Bill 325](#): Makes various changes concerning water. (BDR 48-1165)

Assemblyman Harry Mortenson, Assembly District No. 42:

The bill is not intended to hinder or delay the Southern Nevada Water Authority (SNWA) in any way in its exploration of the hydrology of White Pine or any other county. This bill will open up the process and let everyone know what is happening.

I have many complaints from people that the process is not public, and I hope they will testify today about their inability to get information.

There was a meeting in Baker, Nevada about six months ago. Baker is close to Ely and closer to the Utah border. There were about six Legislators from Nevada and a few more than that from Utah in attendance. They were assembled to discuss the proposed SNWA pipeline from White Pine County to Clark County. There were several representatives from the SNWA and geologists, hydrologists, and hydro-geologists. Many people there were very concerned about this project. There was even a gentleman there from Owens Valley, California who made ominous predictions.

We listened to a number of environmental scientists and hydrologists. By and large, the majority of these people were very rational and they made no

unsubstantiated claims. There is a lot of worry about this project. I would go as far as to say there is "great fear and loathing" about this project. One gentleman summed up the attitude of the meeting. He stated that it would be an unimaginable atrocity if the beautiful valleys in one small county of this state were destroyed in order to satisfy the insatiable appetite for growth by another larger and more powerful county. He received a standing ovation.

I am not taking a position whether any kind of dire things are going to happen, but I am saying that the SNWA faces a tremendous task of trying to assuage people's "fear and loathing." If their information and data were open it would go a long way, and it would help.

A few years ago, the National Conference of State Legislatures (NCSL) held a meeting in Hawaii and on the big island there is a huge mountain with a number of telescopes. The Keck is the biggest and the most advanced telescope. We took a trip up the mountain and half way up was a building that looked like a fancy motel, and inside it were all the scientists. They had private rooms, a dining room, and all kinds of facilities to make it nice for them. Technology has changed astronomy from when they used to strap the principal investigator at the focal plane of the telescope and he was in a suit that was heated by electric wires and filaments because it was so cold at most locations.

Today, they sit in a nice warm room, have a big flat screen television in front of them, and all the data from the telescope is brought down to this facility, and it is put on a web site, and the whole world is welcome to see what is going on. Scientists in the Max Planck Institute in Germany know exactly what the principal investigator in Hawaii is seeing, as do the investigators at the University of Maryland, or anywhere in the world they have access to that material. It makes the principal investigator wary of making any mistakes, because he knows that there are going to be a bunch of people who will know he goofed up. This is what I am trying to accomplish with this bill. I would like to see the SNWA present their data, from their drilling, pumping, and monitoring of wells, so that the hydrologists can access it anywhere.

The State of Utah is concerned about this pumping project. They issued a report at the meeting in Baker, which said there would be dire consequences in Utah if the SNWA pumped 91,000 acre-feet. There is great fear and loathing, which needs to be dispelled. It could be dispelled if a professor of geology at the University of Nevada, Reno (UNR) assigned a couple of graduate students to look at the data and they come to the same conclusion as the SNWA, as well as the scientist from Owens Valley. It is public money that is building this pipeline so the public has to have access to the data.

Assemblyman Goicoechea:

As I look at the bill there is one thing that makes sense. I think a quarterly report makes more sense so that we are not a drain on the Authority, and I know there have been cases where the information was not readily available. I think it is critical when we start talking about a project of this magnitude.

Assemblyman Mortenson:

I would be happy to make it quarterly. I know that they will be making reports much more frequently than quarterly.

Chair Kirkpatrick:

Mr. Mortenson, we will give you the last word as the bill sponsor. Is there anyone here to speak in favor of A.B. 325?

Kyle Davis, Policy Director, Nevada Conservation League:

We are here today to support this bill. When it comes to involving the public in the process we have testified in favor and I think this is a good bill because it shines more light on the process and gives the public more opportunity to be a part of the process.

As an organization, our view on water use is that we are not doing enough for conservation, specifically with the proposals to transfer water inter-basin and county-to-county. We do not have enough information on the effects.

Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada:

We are in support of A.B. 325. We also feel that transparency is important. I agree with Assemblyman Goicoechea that quarterly seems more appropriate than monthly. Most reporting for a lot of different agencies is quarterly and that would be a great change.

The State Engineer's process is very complicated and goes on for days. It is more like court than a legislative process, and I think a lot of us felt confused at the end, so transparency and information to those of us who are not experts would be greatly appreciated. We have yet to know the cost of this pipeline. There has never been any definitive amount of money as to how much this pipeline is going to cost.

I think the citizens of Nevada need to know the cost, the effect, what is going to happen to the communities, and how much water is going to be left. All this is interesting and important information for such a huge change in the State of Nevada. I would urge your support.

Dennis Ghiglien, representing Sierra Club, Toiyabe Chapter:

We support this bill. We believe the more information available to the public, the better, especially where it affects people's lives and livelihoods through inter-basin transfers. A couple of examples: the SNWA signed an agreement with federal agencies to withdraw their protest over their water applications in Spring Valley. It went with a stipulated agreement, but as that agreement is implemented no information will be provided to the public, and the operations of this agreement will take place strictly between the Authority and the federal agencies. There is no opportunity for public input into that process. If the Authority had to report the information they had, we would have better information as to what the ramifications of the pumping project are going to be. We believe the bill should provide water information to people who actually live in the areas losing the water.

Chair Kirkpatrick:

Is there anybody else that would like to speak in favor of A.B. 325? Any who are neutral on A.B. 325?

Steve Walker, representing Truckee Meadows Water Authority:

Truckee Meadows Water Authority is neutral on this bill.

Chair Kirkpatrick:

Is there anybody opposed to A.B. 325 that would like to speak?

Tracy Taylor, State Engineer:

Read from prepared statement ([Exhibit G](#)).

In response to Mr. Goicoechea's comment on quarterly, if the information is submitted to the State Engineer's office, a yearly report would be more convenient for us. I know the information has to be gathered daily, but if we are responsible for letting the public access that information, a yearly report would be a better way to handle that.

Andy Belanger, Senior Management Analyst, Southern Nevada Water Authority, and the Las Vegas Valley Water District:

I am here today in opposition to Assembly Bill 325. We certainly applaud the sponsors desire to keep the process open to the public. We also, as an organization, are committed to making sure the process is open as absolutely possible. We do have problems with the bill.

First of all, the SNWA is already subject to NRS 239, which is the public records law, which requires any report that is final, or any information that is in

the possession of the Water Authority be made available to the public, if it is a public record.

That leads me to the second concern that we have related to this bill. If you look at subsection 2, lines 14 and 15, it requires we provide an explanation of any findings and also requires we specify whether any findings or data are preliminary in nature. The fact we might have to characterize data we are providing is inappropriate. We are concerned about providing information that has not been quality controlled or checked prior to its release. We want to make sure that the information we are providing is accurate, up-to-date, and has gone through all the reviews needed prior to making it public.

Our third concern with the bill and one of the reasons why we are convinced it is not necessary, is that the State Engineer, in his hearing processes, requires data exchanges. Those data exchanges have to take place between the applicant and the protestants. In our Spring Valley application there were actually two exchanges, a preliminary exchange and a rebuttal exchange. There are a lot of opportunities for the public to look at the information. All of it is still on the State Engineer's website under a link to the Spring Valley Hearing.

Our final concern is the statewide application of this bill. This bill singles out the SNWA. It does not apply to all inter-basin transfers; it does not apply to any private group that might be interested in making a transfer of the same nature that we are making. The question is whether this is good public policy, and if it is, why it only applies to one entity. We believe there are sufficient mechanisms in state law to ensure the open process and the open feeling that Mr. Mortenson is concerned about. We want to work with all the parties to make sure they have the adequate information they need, but we are concerned about the nature of this bill and what the real intent is.

Assemblyman Goicoechea:

[To Tracy Taylor] I agree that you have the ability to do this, but we have had 18 years of ongoing investigations and very little information has been distributed. We know that there were four wells drilled or are being proposed in Spring Valley. There is no data coming out of those. What are the sites, what were the depths? I have had some concerns expressed to me about the Environment Impact Statement (EIS) process, and about how much data was actually available to them. This is a major project, and to Mr. Belanger, involves public money, and I think there has to be more openness in the process. People in southern Nevada want to know where their \$2 billion is going. I do not think it is too much to ask, there is probably not anything proprietary because it is public funds.

Chair Kirkpatrick:

This does not pertain to this bill, but it pertains to some comments. What kind of staff do you have? How many employees are there? What abilities do you have within your office as far as staff?

Tracy Taylor:

I have 71 General Fund employees.

Assemblyman Goicoechea:

As I read the bill, it says "the water authority shall submit." It is not the State Engineer's place to submit this data to the public.

Chair Kirkpatrick:

Does anyone else have any questions or comments? Is there anyone else that would like to testify against A.B. 325? [There were none.] Mr. Mortenson, please come back up, if you have any comments that you would like to make.

Assemblyman Mortenson:

Thank you for the opportunity to address some of the things that were said by the opponents to the bill. There is a stipulation in which when the State Engineer approves one or more of the water rights, committees will be formed. There is a technical committee, a biological committee, and an administrative committee. The stipulation says the members of this committee will be from four agencies of the Department of the Interior, and one person from the SNWA. In other words, the United States Park Service will have a person on the biological committee, Fish and Wildlife will have a person, two other agencies, and the SNWA. It will be a five man committee, and the committee will monitor what is going on.

The SNWA says once the information is finalized, it will be available. I am trying to avoid this because the scientists have mulled it over and made their decision, and the lawyers have looked at the data and it has been sanitized by the public relations people. It would go a long way if data that was sufficient for individual investigators to look at and make their own analysis were available to anyone.

Madam Chair, there are three people who have just came up behind me and said they would like to rebut. There is a Mr. Herskovits, Dean Baker, and Gary Perea, is this something you would allow?

Chair Kirkpatrick:

In all fairness we do not typically do that, but I will give you five minutes. If they can keep it to the short answer I will entertain it at this time.

Dean Baker, Private Citizen, Baker, Nevada:

I have worked in the area where the SNWA is trying to gather information. One of the springs we own has a significant amount of water coming from it.

The United States Geological Survey (USGS) came and asked if they could put a measuring device there; I said, "Yes, you can put a measuring device there as long as the information becomes available to us." When we tried to get the information from the USGS they said that the SNWA is paying the expenses and cannot release the information. I found it almost impossible to get information.

They tell you they will give you information, but in the end they give you none. I have seen where they simply do not know what they are doing, and they were surprised when I questioned them about it. There was another 6,000 acre-feet coming out of a spring in the area they did not know about.

Gary Perea, Private Citizen, Ely, Nevada:

I had not planned on speaking to this, but a point was brought up that bothers me. As a former White Pine County Commissioner and a member of the discussion group, I watched on the Internet as Mrs. Mulroy stated she was disappointed she was not able to come to an agreement with White Pine County. It was not White Pine County's fault nor were they trying to be a road block to the situation, but we could not get the information either.

How can we come up with an agreement to protect White Pine County and its residents if we cannot get the information or data that is coming out of SNWA?

Simon Herskovits, representing Advocates for Community and Environment, Taos, New Mexico:

There are just a couple of points that need to be reemphasized or clarified. This bill only pertains to governmental agencies, public bodies that spend public money, and as such it is unseemly for any water authority or like entity to resist and withhold information from the public. As one of the lawyers directly involved in the Spring Valley proceedings before the State Engineer's hearing, I am shocked to hear it characterized as an example of a complete and adequate disclosure to the public of information. Anyone involved in that proceeding knows the SNWA is trying to achieve their mission, to get water for southern Nevada. They have an agenda. There is not necessarily anything wrong with that, but they actively select the kind of information they disclose. In the course of coming to a stipulated agreement with the federal government, they actually withdrew evidence from the record and refused to disclose or discuss it to the extent they were able to prevent that from happening.

As you have heard from Mr. Perea and Mr. Baker, the level of public outrage, suspicion, and ignorance about the specifics of this project is an indisputable reflection that not a lot of meaningful information is being disclosed.

When you are dealing with a public agency that purports to drain one part of the state of its most vital natural resource for benefit of another part, in what may well prove to be an unsustainable way to the detriment of both parts of the state, it is imperative that information be made available. When something goes on for 5, 10, or 18 years we should not have to sit here and point out the fact. If an agency sits on everything until it is comfortable with what it considers a final outcome, a tremendous amount of time will pass, a number of decisions will be made, resources will be committed, and potentially significant continual harm will be done to Nevada if timely concurrent disclosure of public information is not provided, regardless of whether or not the scientists are spending ten years accumulating the data. The public should be able to access that data and weigh in on what its significance is.

Chair Kirkpatrick:

Mr. Belanger would you like to have the final say? [Mr. Belanger motioned no.] If not, we will close the hearing on A.B. 325. We will now open the hearing on Assembly Bill 331.

Assembly Bill 331: Makes various changes relating to the conservation of water. (BDR 48-915)

Assemblyman Joe Hogan, Assembly District No. 10:

In the midst of our 60-year drought, sharply reduced water flows have created a predicted water crisis, so we are here to discuss a water conservation bill, A.B. 331.

Section 1 establishes a policy for the State of Nevada that water is to be priced to maximize water conservation. The bill also requires a water conservation plan, which is already required to be developed by each water supplier, and addresses the issue of conservation pricing and estimating the annual water savings expected from the pricing plan being used by that water supplier. These two simple changes in the NRS can advance water conservation in Nevada because of the power of conservation pricing to generate a response in the minds of hundreds of thousands of water customers.

A good conservation pricing system keeps prices low for moderate income persons and those who practice conservation, while letting high volume users carry the fair cost of their usage. This tends to reward the lower usage

customers and provide motivation to high-end users to reduce their consumption of our precious resource.

Some of us in southern Nevada are concerned that we may be headed for a serious water crisis in the near future. Even those who support the proposed pipeline to transport water, acknowledge this new water supply must be on hand seven to eight years from now in 2015. There is a frightening prospect of a building moratorium in the Las Vegas Valley and a severe slow down in our economy as a result of inadequate water supply. This needs to be avoided.

Even with a proposed pipeline, there is no guarantee it would come on-line in time to prevent this crisis. It is a massive and complex project, which could be delayed by any one or a combination of factors: legal issues, denial of water transfer applications, environmental concerns, construction delays, construction material shortages, natural disasters, and even international issues.

Assembly Bill 331 is an effort to reduce our high water consumption through conservation pricing so current supplies may sustain the southern Nevada economy. It is also to sustain the Nevada economy in full for an extended period and avoid the looming crisis. Think of conservation pricing of water as our insurance policy against a near term economic downturn.

A recent study of water structures in our region was published by Western Resource Advocates. It demonstrates the very favorable effects of conservation pricing. Taryn Hutchings-Cabibi is with Western Resource Advocates; she specializes in technical and policy issues related to urban water conservation, and efficient supply throughout the west. She is also the author of the recent study entitled, "Water Rates Structures in the Southwest." I have asked Ms. Hutchings-Cabibi to address the impact of conservation pricing systems and to help with any questions you may have.

Taryn Hutchings-Cabibi, Water Policy Analyst, Western Resource Advocates:

There are two handouts that I will reference as I speak. The water rate structure ([Exhibit H](#)) is the mechanism by which utilities are able to set prices for the retail sales of their commodity, in this case, water. Rates along with new connections fees are how utilities cover basic and maintenance costs, as well as the cost of acquiring new supplies. Therefore, a water rate structure is very important for any water provider. Many communities throughout the southwest use an inclining block rate structure, which charges more per unit as volume of use increases.

This is an inherently equitable pricing mechanism because it requires those high volume users, who place the most stress on the system through peak demand

requirements, treatment, transportation costs, and wear and tear on the system, to pay their fair share. Often these rate structures provide a low cost block of water for low income or fixed income residents and are referred to as subsistence blocks. They enable people to meet their basic water needs for cooking, cleaning, and bathing at the lowest price per unit.

The chart that looks like inclining blocks that does not have a title, I will explain first. The cities of Santa Fe, New Mexico and Tucson, Arizona have implemented inclining block rate structures that quickly ascend in price per thousand gallons as monthly consumption surpasses 10,000 gallons. Although different from one another, both of these rate structures are very effective in conveying a conservation price signal to consumers. This is further revealed by per capita use, which I will address in more detail in a moment. This figure illustrates the increase in price per unit from one tier to the next for both Santa Fe and Tucson. Other cities shown on this graph, such as Colorado Springs, Colorado and Albuquerque, New Mexico, have also adopted block rate structure in which the price of the second block is roughly 70 percent greater than price per unit of the first block. This sizable increase from tier to tier helps convey a conservation price signal to consumers. Although it is important where the thresholds are set, if there is not a noticeable increase per unit price, the message is lost.

The price structures of the Las Vegas Valley Water District, Henderson, and North Las Vegas have all implemented an inclining rate structure with four tiers; I use those examples because we have studied them most thoroughly. The thresholds are set in such a manner that they target both low and moderate volume users. The increase in price from one tier to the next is quite minimal, which will result in little to no conservation price signal.

The effect of this is shown on the second graph ([Exhibit I](#)). This graph is the average price curve, which includes both the fixed monthly service charge as well as the consumption charge. This is what consumers typically respond to because it is what they see in their monthly bills. The initial average price starts out high, due to the fixed service charge, and then declines as that service charge is spread out in use. An effective conservation signal rate structure will initially decrease and then rise again. This is because the per unit price is noticeably increasing as consumption increases. In other words, the consumption charge predominates over the fixed fee. An ineffective block rate structure does not send a conservation price signal and will decrease initially and then flatten out or decline as use increases rather than rising. The second figure shows the average price curves of Santa Fe and Tucson rising steadily at higher volumes of use where the curves in the Las Vegas Valley municipalities

do not. This indicates that the price per unit does not increase enough from one tier to the next to send an effective conservation price signal.

Other communities throughout the southwest with more effective inclining block rate structures typically have lower per capita consumption rates as well. For example: Tucson and Albuquerque both have lower per capita use than the communities in the Las Vegas Valley. The City of Albuquerque's system-wide use in 2005 was 173 gallons per capita; Tucson's was 165 gallons per person, per day. The Las Vegas Valley, which is a grouping of all the purveyors from the Southern Nevada Water Authority, was estimated at 256 gallons per person per day.

Family residential is more comparable across communities, and takes out the impact of industry. Albuquerque was at 110 gallons per person per day, Tucson was at 114 gallons per person per day, and the communities in the Las Vegas Valley were about 174 gallons per person per day. The City of Santa Fe also has extremely low per capita use: in 2005, they reported a system-wide use of 108 gallons per capita per day.

The effectiveness of a block rate structure not only depends on where the threshold is set, but also on the increase in the per unit price from one tier to the next. The structures can be adjusted to increase effectiveness while remaining revenue neutral. This is important because many water providers may only use the cost base pricing, which prevents them from collecting more revenue than their expected expenses. Another alternative to this is to increase spending on conservation programs, and funding those expanded programs with the additional revenue from increasing both revenue and expenses.

Lastly, changing rate structures does not always result in an increased cost to consumers. The Denver Water Board in Denver, Colorado, recently approved a rate structure change that altered where the tiers were set, which was revenue neutral, and decreased the average bill for residents throughout the city. With population growth compounding the demand for water in the southwest, residents of Nevada have no choice but to face the challenge and become more water use efficient. A more effective inclining block rate structure is an important and cost effective step in that direction.

[Chair Kirkpatrick left room, Vice Chair Pierce took over meeting.]

Vice Chair Pierce
Questions?

Assemblyman Stewart:

Some have written to me concerned that as we try to conserve more, our pools could go down, and therefore, the water district then has a reduced amount of money coming in so they raise the fees in order to compensate for lost revenue.

I have also read studies that Tucson and the other areas that are lower in per capita consumption are not measured in the same manner that we are measured. For example, I understand that just the cities of Tucson and Santa Fe are measured, while in southern Nevada the whole valley is measured, which includes golf courses and other places.

Taryn Hutchings-Cabibi:

I will start with the raising of the rates which has come up in some communities. One of the most effective ways to overcome it is to take the time to properly design the rate structure and look at how the elasticity of demand changes with an increase in rates. That way it can be factored in from the beginning rather than basing it on rates of use now. There is an elasticity component of any change, and that would need to be factored into those water rates structures. Many communities across the southwest have been able to do that effectively, and periodically rates will have to be raised to keep up with the cost of service.

Secondly, the way water is tallied, I can speak to the report that we have most recently published entitled "Water in the Urban Southwest." It was a comparative analysis of Albuquerque, Tucson, and the communities of the Las Vegas Valley. In that report we did account for golf courses in the communities. One of the reasons we use single-family residential use as a comparative tool rather than system-wide use is because there are a number of industries that use water differently. Cities are going to have different components; you get more traffic through the Las Vegas airport, therefore, more flushing of toilets than Albuquerque. Those things are somewhat out of your control, and so we look a lot at the single-family residential use because that number does not vary that much across the country.

Assemblyman Stewart:

Do you take into account the 135,000 hotels that are flushing their toilets as well?

Taryn Hutchings-Cabibi:

Yes, that is factored in the system-wide use number. It gets complicated in the Las Vegas Valley because some of those casinos have water rights to groundwater that they get through the wells. That data is not included in water provided by the SNWA because they do not have authority over that water.

Assemblyman Goicoechea:

As we conserve water, let us look at the Las Vegas Valley. If we go from 175 gallons per person per day down to 125 gallons per person per day and allow new development to use that 50 gallons per day, there is not the ability to cut back further or absorb. You are talking about price conservation and creating some excess water, but we will also have to address the fact you will need to maintain a little buffer because if we are saving 50 gallons, then that means for every two users we can put up one more house. Any comment on that?

Taryn Hutchings-Cabibi:

Yes, I am going to use an example from Colorado. Colorado is in the process of this statewide assessment called the Statewide Water Supply Initiative, and phase 2 of that report concluded last year. It studies the issue of demand hardening and whether or not conserved water could be used for new growth. What it concluded was that a portion of water can be used for new growth without further impacting the system reliability. This report should be published in the next month or so.

Assemblyman Goicoechea:

I look forward to seeing what those percentages are.

Vice Chair Pierce:

I was assured that this kind of comparison was absolutely not possible, and I appreciate you bringing this to us.

Is there anyone who would like to speak in support of A.B. 331?

Kyle Davis, Policy Director, Nevada Conservation League:

What this comes down to for us is: are we doing everything that we can to promote conservation of water throughout our state. This bill is a step in the right direction because we are not doing enough. Looking at the problems we are going to have by not having enough water, and the fact we live in a desert climate, it is incumbent on us to take every effort to conserve the water in our state. A lot of great things have been done in the name of conserving water, especially in southern Nevada, like incentives for redoing landscaping. This is another tool to encourage conservation and until we are doing everything we can, we need to do more.

I would like touch on Mr. Goicoechea's point for creating excess water. We need to think about how we are going to have smart growth to grow in a way that is sustainable.

Vice Chair Pierce:

Is there anyone else that would like to speak in favor of A.B. 331? [There were none.] Is there anyone who would like to speak in terms of neutrality on A.B. 331?

Tracy Taylor, State Engineer, Division of Water Resources, State Engineer's Office:

This bill may appear to some as giving my office the authority to dictate rate structure for water purveyors. I would like to be on record stating that I do not believe this should be the intent of the bill. The bill states that this office will review the conservation plans and make sure the rate structure has been addressed in the plan, and not to necessarily dictate the rate.

The proposed amendment under Section 3 and Section 4 of NRS 540.141 should be deleted in its entirety and the existing language should remain. The amendment, as written, would require the written approval of the State Engineer to the State Water Planner who works directly for me.

Edwin James, General Manager, Carson Water Subconservancy District:

We are neutral in this. We want to first say we support water conservation, we are working with all the water entities up and down the Carson River, and we believe more can be done.

I do not see the bill doing one thing, and this is what we want people to be aware and careful of: trying to harden up conservation for every water agency. In our watershed we have 11 different water purveyors. They all have different lifestyles and goals in their areas. Not all conservation programs would work for their needs. It is important you give flexibility to a water agency as they develop these programs to ensure you are not forcing something that does not fit with their community.

Vice Chair Pierce:

Is there anyone would like to speak in opposition of A.B. 331?

Andy Belanger, Senior Management Analyst, Southern Nevada Water Authority and the Las Vegas Water District:

We support the concept of this bill: that communities should do everything they can to conserve water. In southern Nevada we have done yeoman's work and the residents have really stepped up to the plate when it comes to conservation.

If you had called us five years ago and asked us to do make this presentation, we could not say the things the communities in southern Nevada have done to

date. The ordinances in the cities and counties are substantially similar; they require no grass in the front yard, 50 percent in the backyard at most. There are mandatory days of the week and times of the day when watering restrictions are applied uniformly throughout the Las Vegas Valley.

We have taken a holistic approach to conservation in southern Nevada. We have worked together to try to find common ground that can help all the communities in southern Nevada conserve water. We have an integrated water planning committee that was made up of members throughout the community of southern Nevada as well as representatives from the rural areas, and that committee encouraged us to do two things related to rates.

One was to ensure that water rates keep pace with inflation so we kept the pricing signals that were put into place in 2003 when we raised rates by 29 percent. I am happy to report that in December of 2006 the Water District Board acted on that recommendation and increased water rates for all residents. That rate increase took place after the report that Ms. Hutchings-Cabibi talked about so the report does not contain the most accurate information related to rates in the Las Vegas Valley.

Secondly, the Las Vegas Valley Water District Board of Directors is expected in the next month or so, to convene a new rate committee that will take a broader look at all rate increases and decide if there is a better or more holistic approach to address water rates in our service area.

I want to be on record as saying that the Las Vegas Valley Water District does support conservation-based rates. We have an inverted block rate structure that has been quite successful in reducing them. Just consider this: between 2002 and 2005 water use in the Las Vegas Valley dropped by 20 billion gallons annually. That was with the addition of 250,000 new residents, and 44 million annual visitors. For the Las Vegas Valley to have this unstated presumption that it is not doing enough to conserve water is a misrepresentation of the facts.

Speaking directly to the bill, we have a couple of concerns and we have talked to Mr. Hogan about these concerns. Our first concern is Section 1, subsection 5, lines 24 through 26 using gallons per capita per day as a measurement in statute because it is easily manipulated. Tucson does not include golf courses in their gallons per capita per day number, because the golf courses receive their water through irrigation districts. Phoenix does not include the backyard water use in their numbers because the backyard water is provided through the Central Arizona Project. These examples show why these communities do not have a uniform number for comparison.

Even the report that was discussed earlier by Western Resource Advocates does not include the 19 water agencies in Tucson; it singles out one, the City of Tucson, so communities that have different water agencies that provide water within the valley, Pima County, are not included. Using United States Geological Survey (USGS) data, in USGS Circular 1268 released in 2005 called "Estimated Use of Water in the United States in 2000," it went county by county and gave total population numbers and water use numbers. If you take the total water use and divide it by the total population of southern Nevada, you will see our water use is in line with Tucson, and about half per capita as it is in Phoenix, Maricopa County, and Washoe County.

Using gallons per capita per day as a measurement is something you can use to make any argument you want. One more example of that, in my household we used 87,000 gallons of water last year, that is a forth of an acre-foot over the course of the year. There are five of us in the house, and if we calculate the gallons per Belanger per year for my family, that number is 47 gallons per capita per day (GPCD). Swetta, who works with me, lives alone, and used about 37,000 gallons last year, so she used about 100 gallons per capita per day.

That is a micro example of why GPCD as a measurement can be used to bolster any argument you want.

I also looked at the statewide water use, and if you look at gallons per capita per day, and you take the entire population of Nevada and you compare it to the entire state's population in Arizona or in New Mexico, Nevada uses about 1,400 gallons per person per day per Nevadan, whereas Arizona uses about 1,300 gallons per person per day and New Mexico uses about 1,800 gallons per person per day. That includes agriculture. This is not about urban versus rural, but rather water use, and so there are some significant concerns about the concept of using gallons per capita per day.

We have suggested to Mr. Hogan, rather than relate these findings in gallons per capita per day, to use gallons of water saved per day, because that number is irrefutable. A toilet fixture replacement, whether it happens in Washoe County or Carson City, should save the same amount of water no matter how many units you put in, and you can calculate that number. We think this is a better way to calculate any conservation savings as referenced in Section 3, subsection 1(g), line 9.

Lastly, I would like to say we do concur with the amendments the State Engineer had mentioned, removing the section that requires the State Engineer to report to his staff.

Steve Walker, representing Truckee Meadows Water Authority:

One size does not fit all in water conservation planning in Nevada. First of all, the effects of conservation in Washoe County and with the Truckee Meadows Water Authority, every gallon or acre-foot of water saved is stored in reservoirs for Cui-ui fish, the recovering of an endangered species, and drought storage. It does generate revenue, but you do not take that gallon of water saved and put another connection on it and you do not build another house with it. Other communities do. All of a sudden your conservation programs under our scenario lose their financial mechanism.

We also would argue the best measurement is not gallons per capita per day. Please refer to the sheets I have handed out ([Exhibit J](#)). We looked at gallons per capita per day only as a function of single family residential units. We found the biggest influence in Washoe County and Truckee Meadows Water Authority (TMWA) on a yearly variation was how much rain we get in the spring. When irrigation is delayed, our gallons per capita per day go down quite a bit. The low numbers on these charts represent wet springs. We are held to criteria over which we do not have much control and we would like to work with the bill sponsor.

The third page shows population and water demand. As in all cities in the west, we are seeing a reduced water demand per person. In Washoe County it was a function of a meter retrofit program that was mandated by the State Legislature. We have gone from 43,000 unmetered services 15 years ago, to 4,000 unmetered services. We do have three tiered rates, but the implication of a state water conservation mandate tied to rate making and restructuring is a concern.

Under NRS 548 we have to address water conservation in a more specific piece of legislation than is before us right now. We would work with this sponsor to get our concerns addressed in this bill, but as the bill is written, we would oppose it.

Vice Chair Pierce:

Are there any questions for Mr. Belanger or Mr. Walker? [There were none.] Is there anyone else that would like to speak in opposition of A.B. 331? [There were none.]

Assemblyman Joe Hogan:

Just a couple of clarifications, the data that was provided regarding the water usage in the Southern Nevada Water Authority was, in fact, updated to include the most recent adjustment. That adjustment was not expressly for water conservation purposes, it simply reflected differences in operating costs. It was

a rather small adjustment, and it did not enhance the conservation capability of the water pricing scheme.

The question of comparing one city to another and the question of which measurement to use is always a little difficult, none of these are perfect. From my reading, studies going back and to the current time tend to use the gallons per person per day as a strong general indicator of what the usage levels are.

You have much higher usage levels in gallons per person per day in areas that have remarkably low water prices compared to the others. There is more favorable, controlled usage where prices move through tiers to a higher level. That continues to show properly tiered price systems do result in lower utilization of water, and provide pricing signals to the minds of hundred of thousands of customers, many of whom react to higher water price the same way that most of us react to higher gasoline prices. If we make this modest change in the rules for reviewing the conservation plans, we will have a chance to build up a stronger conservation ethic among the water users in the State of Nevada.

Vice Chair Pierce:

I am closing the hearing on A.B. 331 and we have a Committee BDR introduction.

BDR 23-759—Makes various changes to the Local Government Employee-Management Relations Act. (Later introduced as **Assembly Bill 561**.)

ASSEMBLYMAN GOICOECHEA MOVED TO INTRODUCE
BDR 23-759.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Vice Chair Pierce:

Do we have any public comment? [There was none.]

Meeting adjourned [at 10:55 a.m.].

RESPECTFULLY SUBMITTED:

Cheryl Williams
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 26, 2007

Time of Meeting: 8:02 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 285	C	Dean Baker	Prepared Statement
A.B. 285	D	Gary Perea	Prepared Statement
A.B. 285	E	Tracy Taylor	Prepared Statement for
A.B. 296	F	Assemblyman Bobzien	Amendment
A.B. 325	G	Tracy Taylor	Prepared Statement
A.B. 331	H	Taryn Hutchings-Cabibi	Rate per Gallons Chart
A.B. 331	I	Taryn Hutchings-Cabibi	Average Price Curve
A.B. 331	J	Steve Walker	TMWA Water Use