

**G6MINUTES OF THE  
SENATE COMMITTEE ON NATURAL RESOURCES**

**Seventy-fourth Session  
May 2, 2007**

The Senate Committee on Natural Resources was called to order by Chair Dean A. Rhoads at 3:30 p.m. on Wednesday, May 2, 2007, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Dean A. Rhoads, Chair  
Senator Mike McGinness, Vice Chair  
Senator Mark E. Amodei  
Senator Joseph J. Heck  
Senator Bob Coffin  
Senator Michael A. Schneider  
Senator Maggie Carlton

**GUEST LEGISLATORS PRESENT:**

Assemblyman David Bobzien, Assembly District No. 24  
Assemblyman Joe Hogan, Assembly District No.10  
Assemblywoman Sheila Leslie, Assembly District No. 27

**STAFF MEMBERS PRESENT:**

Susan E. Scholley, Committee Policy Analyst  
Randy Stephenson, Committee Counsel  
Shirley Parks, Committee Secretary

**OTHERS PRESENT:**

Tracy Taylor, P.E., State Engineer, Division of Water Resources, State  
Department of Conservation and Natural Resources  
Simeon Herskovits, Mineral County; White Pine County; Great Basin Water  
Network; Toiyabe Chapter Sierra Club  
Kyle Davis, Nevada Conservation League  
Doug Busselman, Nevada Farm Bureau

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Charles Benjamin, Western Resource Advocates  
Andy Belanger, Las Vegas Valley Water District; Southern Nevada Water Authority  
Steve K. Walker, Truckee Meadows Water Authority  
Joseph (Joe) Johnson, Toiyabe Chapter Sierra Club  
Jan Gilbert, Progressive Leadership Alliance of Nevada

CHAIR RHOADS:

We will open the hearing on Assembly Bill (A.B.) 296.

**ASSEMBLY BILL 296 (1st Reprint)**: Expresses the sense of the Legislature concerning the temporary conversion of certain water rights. (BDR 48-978)

ASSEMBLYMAN DAVID BOBZIEN (Assembly District No. 24):

This is a different kind of water bill. It seeks to get beyond the contention that we have with water issues in Nevada. It seeks to honor and promote a cooperative relationship between rural water users, agricultural water users and conservationists. This is a good bill with a simple expression of legislative intent. The initial bill came out with a specific process for an agricultural water user to enter into a lease agreement, a temporary change in water use for the benefit of wildlife or other conservation purposes. It was meant to elevate this kind of transaction to a higher level. I learned through testimony and discussions with the state engineer that the bill would put us at cross-purposes with different federal decrees throughout some of the basins in Nevada. I made a decision to go no further with A.B. 296, but to make clear the state engineer could support these different change orders. Currently this can be done through the state engineer. Assembly Bill 296 is not an attempt at the automatic "rubber stamp." Certainly the state engineer will take into account all varied public interest dynamics before approval of any changes. The bill does not put wildlife as the beneficial water user above any other recognized use. It will simply add to the list of other legislative declarations with regard to water policy.

SENATOR COFFIN:

Did the Schroeder law firm appear or testify on behalf of anyone at the Assembly hearing of A.B. 296?

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ASSEMBLYMAN BOBZIEN:

No, they did not testify at the Assembly hearing. I received a copy of this letter ([Exhibit C](#)) just about 25 minutes ago.

SENATOR COFFIN:

This is a last minute appeal in opposition of A.B. 296, but no one testified to its content in the Assembly. Where were they? Now they produce this letter.

ASSEMBLYMAN BOBZIEN:

There were a number of people with concerns when the bill was initially introduced. We have moved beyond those concerns with the amendment.

CHAIR RHOADS:

Do we need this bill? When someone says temporary—bird, elk and deer already drink out of my water supply, and we do not have a temporary wildlife regulation for them.

TRACY TAYLOR P.E., (State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources):

The Division of Water Resources supports A.B. 296 as written. This is not a limiting bill. It emphasizes the transfer of water use.

SENATOR COFFIN:

Do we reference, in the statutes, any water codes? Is there such a code?

MR. TAYLOR:

We refer to the water law which are the statutes. We also have regulations.

SENATOR COFFIN:

The Schroeder letter had a reference to the "Water Code."

SIMEON HERSKOVITS (Mineral County):

I am here to represent Mineral County. The Mineral County commission has voted support both in its original form and again in the revised version of A.B. 296. Our position will be to support A.B. 296 as helpful to the water law. It is not limiting in our understanding. We take exception with the letter from the Schroeder law firm because it seems to fundamentally misunderstand the intent of the bill. Mineral County is in favor of the bill as it clarifies voluntary, temporary transfers between water users or a water-rights holder and a

"would be" water user for the purposes of increasing the amount of water in a stream or for wildlife benefits in an area of habitat. This could benefit different species that may be suffering under current conditions. This is not barred in any way by the State, but policy and the law permit it. There has been a degree of controversy and misunderstanding of the fact that this is a recognized beneficial use under Nevada water law. There has been opposition to what are mutually voluntary arrangements that have been proposed to do what most people would perceive as a public good. This bill clarifies these issues.

KYLE DAVIS (Nevada Conservation League):  
We want to go on record as supporting A.B. 296.

DOUG BUSSELMAN (Nevada Farm Bureau):  
We are here to speak in support of A.B. 296. The farm bureau has a policy on leasing. Our concerns about leasing are to make sure we get back our agricultural water. This approach will resolve our concerns.

CHAIR RHOADS:  
Are there others who would like to speak about the bill? The hearing on A.B. 296 is closed. We will open the hearing on A.B. 331.

**ASSEMBLY BILL 331 (1st Reprint)**: Makes various changes relating to the conservation of water. (BDR 48-915)

ASSEMBLYMAN JOE HOGAN (Assembly District No.10):  
In the midst of our six-year drought, sharply reduced water flows and a predicted water crisis, we are here to discuss a water conservation bill which will make a real difference. I will be reading from prepared written testimony (Exhibit D). Assembly Bill 331 will do two things. It first establishes in section 1, a policy for the State that our water is to be priced so as to maximize water conservation. Second, the bill requires that the water conservation plan already developed by each supplier of water must address the issue of conservation pricing and estimate the annual water savings expected from the pricing plan being used.

You have been provided a handout (Exhibit E) prepared by Taryn Hutchins-Cabibi with the Western Resource Advocates. She specializes in technical and policy issues related to urban water conservation and efficient supply throughout the west. She is also author of the recent study entitled,

"Water Rate Structures in the Southwest." Here to give brief testimony on behalf of the Western Resource Advocates is the Nevada Director, Charles Benjamin.

CHARLES BENJAMIN (Western Resource Advocates):

My testimony is provided from a handout, [Exhibit E](#), prepared by Taryn Hutchins-Cabibi. She sends her apologies as she is unable to be here today. As a water policy analyst for Western Resource Advocates, I have the privilege of working with a number of water providers throughout the Southwest to increase efficiency of their demand-side management programs. One significant component of demand-side management is properly structured water rates.

A water rate structure is the mechanism by which utilities are able to set prices for the retail sales of their commodity—water. Rates, along with new connection fees, are how utilities cover basic operation and maintenance costs and the cost of acquiring new supply. They are, therefore, very important to any water provider.

With population growth compounding the demand for water, residents of the Southwest have no choice but to face the challenge and become more efficient in the ways they use water. More effective inclining block rate structures are an important cost-effective step in the right direction. For this reason we strongly support A.B. 331. As we look at the chart on the last page of the handout, we can understand the need to use conservation especially compared to other western cities, with the residential rates per 1,000 gallons. You can see Las Vegas at 5,000 gallons, a lower volume, is costing under \$150 a gallon. It is also true of a city like Tucson, Arizona. As you get to the 12,000 gallons a month, then you can see on the chart, a big inclining rate structure. At these volumes, you can compare Tucson, Arizona, with the Southern Nevada Water Authority (SNWA). This is why we are saying there is a need to have a conservation price signal. The higher-rate consumptions would call on those who are using more water to pay more, creating price disincentives. This has had some good results in other communities.

SENATOR CARLTON:

Las Vegas is quite unique. Tourism changes the population greatly depending on the scheduled event for the week or weekend. Water use and gallons per person

per day, would need to be separated out. You mentioned we have a tiered system. At the upper-tier level you would encourage a water rate increase.

MR. BENJAMIN:

We are talking about residential use. We are not discussing commercial use. There is no way to regulate water in the hotels. Tourism is a major part of the Las Vegas economy.

SENATOR CARLTON:

It would be difficult to look at gallons per person per day with the influx of people coming and going. It could be that we will need to keep two charts on water consumption.

MR. BENJAMIN:

We do have charts on water usage in the SNWA and they basically show the largest portion of the "pie chart" is for residential uses. The most significant water use is outdoors. There are always people who are willing to pay the price. We are suggesting the possibility that SNWA use a water rate structure more similar to Tucson, Arizona, or Albuquerque, New Mexico.

ASSEMBLYMAN HOGAN:

I would like to respond to Senator Carlton's question. This bill contemplates a wider use of this type of pricing not to compel but to encourage more conservation. The bill does not require any water purveyor to establish particular rates. There are very knowledgeable pricing experts within the staff of the SNWA who are able to set these rates. Las Vegas is beginning the process of a study with community participation that might well lead to conservation pricing.

SENATOR CARLTON:

I do review my personal water bill and find my water usage for the month and compare it to last year's bill. I have used the water billing as a means of finding the need for a possible sprinkler repair or adjustment.

ASSEMBLYMAN HOGAN:

The water bill would continue to be used. This is not an alternative to the water bill. The gallons per person per day is a way to describe the savings achieved, system wide or on average. The individual water bill would look very much the same. The first tier of water rate schedules, at the lower levels there will be

very little change from current pricing. We do not want to pinch the low-income water customer or the customer actively working on conservation.

SENATOR CARLTON:

I do need some help understanding how we divide up the water-use bills. How do we separate commercial, industrial and residential water usage?

SENATOR COFFIN:

I think we get sidetracked when we try to do comparisons with other cities. The cities on the chart, [Exhibit E](#), that were used for comparison to Las Vegas have considerably different climates. They are dry, but still get the summer monsoons. They get more rainfall overall. It is also a matter of zoning in these cities. Building codes and areas for new buildings are on water consumption residential properties. We are just now beginning to understand block water pricing, tiered pricing is a good idea. Using terms like gallons per person per day simplifies the issues.

ASSEMBLYMAN HOGAN:

The water-use bill is not going to change much. People understand how to use the current billing system. There will be very little change with the exception of possible rate increases

SENATOR COFFIN:

This bill gives flexibility for the SNWA to proceed as they see the need.

SENATOR AMODEI:

Assembly Bill 331 is a good water tool. It seems to be the most appropriate way to encourage conservation especially in the west.

ANDY BELANGER (Las Vegas Valley Water District; Southern Nevada Water Authority):

We certainly applaud Assemblyman Hogan's legislation, A.B. 331. We believe Nevada's conservation plan should include components concerning estimates of water use and water rates. Las Vegas Valley Water District (LVVWD) has an aggressive conservation-based rate. We increased water rates in 2003 by 29 percent. We have raised them again in December 2006, to ensure the pricing signal that we have on these rates was not eroded by inflation. We strongly believe this is a good tool used to ensure the customer of a water utility is using water efficiently. We do have concerns regarding gallons per person per day as

a measurement tool in the bill. I am providing a proposed amendment to the bill ([Exhibit F](#)). We want to amend section 3, subsection 1, paragraph (g) by inserting, "An estimate of the amount of water that will be conserved each year as a result of the adoption of the plan or joint plan." We recommend removing the statement "gallons per person per day." There is reason for doing this. Gallons per capita per day is a measurement tool that can be useful to evaluate where a particular water agency is going compared to where it has been. This is a valid tool in this sense. To use it as a comparable for water use among communities, it becomes more unpredictable. When water use is averaged out over a year most Nevadans use about 1,000 gallons of water a day, each Nevadan uses that amount of water. As a customer of a water district in Las Vegas, a person would use in the neighborhood of 250 gallons per person per day. My personal family use of water will be about 50 gallons per person per day. So it depends dramatically how you make these comparisons in order to find a true average.

We believe it makes sense for each agency that has to submit a five-year plan; to estimate the total water conservation, to make estimates according to what they are doing and what results do they intend to receive. In the LVVWD, we do not use just water rates as a conservation tool. In Tucson, Arizona, this is the primary tool. We have a broader cross section of tools. For example, we have ordinances that are part of the law, stating new development cannot have grass in the front yard and no more than 50 percent in the backyard. Day of the week water restrictions, time of day, and incentive programs like the water-smart landscape program are designed to reduce the amount of outdoor turf for consumptive use of water in the Las Vegas Valley. We have increased this rebate to \$2 a square foot. This is a statewide issue and this is a statewide bill. We appreciate the efforts of Assemblyman Hogan and with the acceptance of the proposed amendment, [Exhibit F](#), we will support A.B. 331.

SENATOR COFFIN:

I see this bill as a way people may better understand their water usage. I do have a question on blocks or tiered water rate structure. How many do we have?

MR. BELANGER:

There are four blocks or tiered water rate structures at the LVVWD. This is a consistent amount among the member agencies of the SNWA. We raised rates in December and we increased the blocks overall by 10 percent.



SENATOR CARLTON:

Do you have a way of separating out commercial, residential and industrial water use? Do you look at these rates?

MR. BELANGER:

We can do this. All the member water agencies take all the water that is used including the tourist industry and calculate all other water use and divide by all the population. We also include golf courses and water used by industry. This is a valid way to calculate the use of water in Las Vegas. Other comparable cities in the west do not calculate this way.

STEVE WALKER (Truckee Meadows Water Authority):

I am here to represent the Truckee Meadows Water Authority (TMWA). We too, in northern Nevada, are concerned with water conservation. We also requested that "gallons per person per day" be eliminated from A.B. 331 to instead say "water saved." When you compare water use in communities, it might be more consistent to compare the single family home. The numbers from the TMWA over the last 4 years, assuming there are 2.5 persons per home, are well below 200 gallons per capita; we are between 150 to 170 gallons per capita. Climate is a major factor in water-use control. How wet is the spring season? For instance, if it is a dry spring season, lawns and other outdoor watering can be significant to the water supply. The TMWA has a three-tier system. We support the amendment brought by Andy Belanger.

KYLE DAVIS (Nevada Conservation League):

The Nevada Conservation League supports A.B. 331. We need to focus on water conservation. Obviously it is a very important issue for all Nevada. We have discussed the various water-use agencies and definitely conservation is a statewide issue. Basically the bill requires that we address certain items when it comes to a conservation plan that the purveyors file with the state engineer. Conservation pricing is an appropriate measure to take especially when we do see the success in Nevada and other cities in the west.

MR. TAYLOR:

The Division of Water Resources is neutral on A.B. 331. The bill will affect us with the additional responsibility of analysis of rate structures as it relates to conservation requirements. It will be our job to make sure every agency's five-year plan has this conservation component. It is not our job to make sure

rates are a certain amount. We do not set rates. We simply review the plan and make sure it is complete.

JOSEPH (JOE) JOHNSON (Toiyabe Chapter Sierra Club):

The Sierra Club is in support of A.B. 331. Markets work and that is what this attempts to do.

CHAIR RHOADS:

We will close the hearing on A.B. 331. We will open the hearing on A.B. 285.

**ASSEMBLY BILL 285 (1st Reprint)**: Revises provisions governing certain transfers of groundwater. (BDR 48-913)

ASSEMBLYWOMAN SHEILA LESLIE (Assembly District 27):

This bill is about fairness and due process. It requires the state engineer to reopen the protest period. The original bill said ten years but this bill was extensively worked on in the Assembly Committee on Government Affairs and they set the period of time to submit an application for protest of various changes at seven years. Literally some of these interbasin transfer applications were not acted on for decades. This bill allows children of protestors to inherit the water protest. In the meantime, if people died and if their protest was not in place, there was no opportunity to continue the protest. The Assembly Committee on Government Affairs added some good language to help clarify this issue. There are some people here who have testified that their right to protest has been inadequately handled. I understand the state engineer has an additional amendment. I have reviewed the amendment and it is acceptable with me.

MR. TAYLOR:

The section of the bill that we propose to amend is section 2, subsection 10, dealing with the successor of interest in a protest. After the final draft was completed, we found three items that needed to be clarified by amendment ([Exhibit G](#)). The first item describes what type of owner would be considered as a successor of interest. This would be the owner of real property containing a domestic well or the owner with an interest in a domestic well. These are basically the same thing. The amendment suggests eliminating one. The second item, deals with the successor of interest, that it be limited to only the protested applications which are interbasin transfers of groundwater. The last item of change has to do with the intent to pursue a protest through the State

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Engineer's office. The protest may be filed anytime up to the time of a final decision.

CHAIR RHOADS:  
Is there still a fiscal note on the A.B. 285?

MR. TAYLOR:  
No, not as it is written now.

CHAIR RHOADS:  
What if you were to have a case where the father dies and he has two sons, which son would receive the protest or would both sons have the opportunity?

MR. TAYLOR:  
The protest would be dealing with a water right for a domestic well. If one of the sons acquired the water right through an inheritance, then he would be the one to take over the protest.

CHAIR RHOADS:  
Ownership would be in the final will. What if there were no will?

MR. TAYLOR:  
It would depend on who actually acquired the property. They would notify the State Engineer's office of property ownership and then with verification take over the protest.

MR. DAVIS:  
We are in support of the bill as written and the proposed amendment as offered by the State Engineer's office. We always try to support the public's ability to be involved with water decisions of Nevada. This is a good bill to demonstrate that process.

JAN GILBERT (Progressive Leadership Alliance of Nevada):  
There are many rural residents who came to the first hearing on A.B. 285, but were unable to make this hearing. They have had some experience with the process of interbasin transfers of groundwater. They are in full support of this bill.

SIMEON HERSKOVITS (White Pine County; Great Basin Water Network; Toiyabe Chapter Sierra Club):

White Pine County, the Great Basin Water Network and the Toiyabe Chapter of the Sierra Club are all in support of A.B. 285. Assemblywoman Leslie pointed out accurately this is fundamentally about due process and fairness. People in eastern Nevada and others throughout the state have found in the past, when a great amount of time has elapsed, the heirs or others of interest are closed to any right or ability to step into the shoes of parents or relatives to maintain the protests that have been shared within the family or a successor of interest. Those who have the right to maintain the protest would be determined first through the law. This bill does not address how this might be straightened out.

CHAIR RHOADS:

It needs to be spelled out to prevent a family difficulty.

MR. HERSKOVITS:

This is true and could be something that has been a past problem. Even so, the family would want to maintain the protest and do everything possible to safeguard their water rights. At a practical level, when so much time passes, where the line is drawn for a final deadline on possible protest can be subject to different perceptions. This is really about making an adjustment to the process to ensure the citizens of Nevada are not inadvertently shut out of a right that plainly was intended to be given to them.

MR. BELANGER:

The SNWA testified in support of A.B. 285 in the Assembly. We continue to maintain this support. We would note the original bill applied to all applications for water that the state engineer had not acted on and so our concern has to do with limits on the renotification portion of the bill to include just applications for interbasin transfers above 250 acre-feet that have not been acted on within 7 years. We believe there is still an adequate public policy interest to enable all people to reengage in the process. We would like to see the bill broadened to include all applications so the law is fair throughout Nevada.

MR. WALKER:

We supported this bill in the Assembly as amended with the interbasin transfer language. The TMWA deals with place of use and manner of use transfers of Truckee River water rights. We do support the bill as amended.

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SENATOR COFFIN:

I am confused. Is TMWA taking the same position on the proposed changes as SNWA?

Mr. Walker:

Yes, as it is written.

CHAIR RHOADS:

We will close the hearing on A.B. 285. We have no other business to come before us today. We are adjourned at 4:53 p.m.

RESPECTFULLY SUBMITTED:

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Shirley Parks,  
Committee Secretary

APPROVED BY:

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Senator Dean A. Rhoads, Chair

DATE: \_\_\_\_\_