MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES

Seventy-fourth Session
April 4, 2007

The Senate Committee on Natural Resources was called to order by Chair Dean A. Rhoads at 3:33 p.m. on Wednesday, April 4, 2007, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, 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:

Senator Bob Beers, Clark County Senatorial District No. 6
Assemblyman Harry Mortenson, Assembly District No. 42

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Randy Stephenson, Committee Counsel
Michael J. Stewart, Principal Research Analyst
Ardyss Johns, Committee Secretary

OTHERS PRESENT:

Tracy Taylor, P.E., State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources
Jason King, P.E., Deputy State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources

Steve Weiss
R. Michael Turnipseed, P.E.
Hugh Ricci, P.E.
Gordon H. DePaoli, Truckee Meadows Water Authority; Walker River Irrigation District
Kyle Davis, Nevada Conservation League
Andy Belanger, Las Vegas Valley Water District; Southern Nevada Water Authority
Don Alt
Steve King, City of Fallon
Leo Drozdoff, P.E., Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Bruce R. Scott, Board for Financing Water Projects, State Environmental Commission, State Department of Conservation and Natural Resources
Edwin D. James, Carson Water Subconservancy District
Don Allen
Bob Foerster, Executive Director, Nevada Rural Water Association
Robert Marshall
Ross DeLipkau
Lisa Gianoli, Washoe County
Jeanne Ruefer, Water Resource Planning Manager, Department of Water Resources, Washoe County
Bob Fulkerson
Dennis Ghiglieri
Susan Lynn, Great Basin Water Network
Joe Johnson, Toiyabe Chapter, Sierra Club
Erik Holland
Pamela B. Wilcox, Administrator and State Land Registrar, Division of State Lands, State Department of Conservation and Natural Resources
Kenneth E. Mayer, M.S., Director, Department of Wildlife
Richard L. Haskins II, Wildlife Bureau Chief, Department of Wildlife
Roger D. Works, D.V.M., Division Administrator, Veterinary Medicine Services, State Department of Agriculture
Larry Johnson, Coalition for Nevada's Wildlife
Chris MacKenzie, Chair, Board of Wildlife Commissioners, Department of Wildlife
Doug Busselman, Nevada Farm Bureau
Doug Martin

CHAIR RHOADS:
We will open the hearing with Senate Bill (S.B.) 274.

SENATE BILL 274: Makes various changes to provisions governing the State Engineer. (BDR 48-206)

TRACY TAYLOR, P.E. (State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources):
The language in S.B. 274 was requested by the Division of Water Resources during the 2006 interim study on water resources. Its primary focus is to authorize this agency to order any person in violation of the *Nevada Revised Statutes* (NRS) chapters 533, 534, 535 and 536 and the *Nevada Administrative Code* chapters 534 and 535 to pay an administrative fine not to exceed $10,000 a day for each violation, be liable for any expense incurred by the Division of Water Resources in investigating and stopping the violation, potentially repaying up to 200 percent of the water illegally used and to have the ability to seek injunctive relief. Administrative details for addressing violations, assessing fines or penalties and procedures would be done through the development of rules and regulations. This fining authority is needed because the existing process for addressing violations of the water law is slow and cumbersome, without any meaningful consequence or accountability for violations. Currently, it is a misdemeanor only. The substantial increase in the value and importance of water rights over the past ten years makes a misdemeanor offense almost meaningless.

The intent of these fines is to achieve compliance only and not as an additional funding source for the Division. This fining ability does not fall on individual taxpayers, but on the affected industry. The interim committee asked this office to develop some draft regulations concerning their requirement on fining. The Deputy State Engineer, Jason King, has spent numerous days reviewing other western states as well as Nevada agencies' fining regulations. He has done a thorough job in developing these draft regulations.

JASON KING, P.E. (Deputy State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources):
You should all have a copy of the draft regulations and a flowchart that lays out the framework for assessing violations and implementing the penalties (Exhibit C). I will not go through the draft regulations item by item, but will instead just highlight the intent.

The purpose of a statute amendment and the promulgation of regulations is to achieve compliance with Nevada's water law. In fact, the regulations, as currently drafted, propose any monies collected under the penalty provisions to be deposited into the school district of the county where the violation occurred. The regulations are written to provide ample opportunity for due process. The flowchart shows our intent is to give the alleged violator every opportunity to achieve compliance and avoid a penalty if at all possible.

During this process of investigating the alleged violation, along with the opportunities to meet with the staff of our office, we built into this process an appeal period for which the alleged violation can be appealed to an independent committee. Additionally, there are two opportunities to appeal the decision to a court of competent jurisdiction. The three elements of the statutorily provided penalties, Mr. Taylor mentioned earlier, are intended to achieve different aims of equity in public policy. The administrative fines are intended to remove the financial incentive of the violation by removing the economic benefit as well as imposing a punitive measure. Replacement of water is intended to make whole the resource of an impacted water user by requiring respondents to leave an amount of water undiminished in the resource for use by others. The allowance of up to 200-percent replacement indicates the penalty can incorporate a punitive element as well.

Finally, the reimbursement of enforcement costs is required to replace the public funds expended to achieve compliance with the law. In terms of the fines, there was some concern during the interim study that the Division would suddenly be sending out $10,000-a-day fines for violations. That is certainly not our intent. Again, it is only to achieve compliance. If we feel that fines and a replacement of water are warranted, those penalties will be determined by the value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water.

Keep in mind that the draft regulations are simply that, a draft. If this bill is approved and becomes law, we feel comfortable submitting this draft to the Legislative Counsel Bureau to begin the codification process as well as disseminating it to the regulated community to begin the public workshop process. We would anticipate a minimum of two rounds of public workshops in cities and towns across the State before compiling a final version for codification. The final draft has to be submitted to the Legislative Commission

for final approval so there will be at least one other opportunity for you or your colleagues to review the regulations.

CHAIR RHOADS:
In the last year, have you seen much lack of compliance?

MR. J. KING:
In terms of over-pumping in basins where we collect meter readings, we have had a substantial amount.

CHAIR RHOADS:
What is the typical fine for over-pumping?

MR. J. KING:
Currently, there is no fine. We just send warning letters. It could eventually come to a cease and desist order and we could move towards a misdemeanor.

STEVE WEISS:
My wife and I opened a horse-boarding facility in Las Vegas. In 2000, we obtained a variance and special-use permit from the City of Las Vegas for a commercial horse-boarding and training facility. The city never informed us that we would need to obtain a commercial well permit, nor did they require this for the variance and special-use permit. We proceeded to operate using our domestic well. In October 2001, we received a certified letter from the Division of Water Resources stating that we did not have a permit on file for using the water supply for the horses. The letter cited the NRS 534.080, sections 1 and 2, which reads, "If the owner fails to initiate proceedings to secure such a permit within 30 days from the date of such notice, he shall be guilty of a misdemeanor."

We initiated proceedings to obtain the permit on October 18, 2001, and a receipt from the Division of Water Resources showed our application was received and a notice of publication was mailed to the *Las Vegas Review-Journal*. We paid various charges throughout the year and on December 5, a letter from Thomas Gallagher showing proof of completion was filed for the permit. We have paid approximately $25,000 to secure water rights, plus we paid for a commercial well permit, not including the surveying fees. Subsequently, we have paid the fee each year for the permit. No other horse-boarding property was made to comply; commercial or otherwise. There

are hundreds of private wells throughout the Las Vegas Valley being used to water horses that are boarded for profit, but most do not have business licenses. Others that do have business licenses have not been forced to obtain a commercial well permit the way we have. We would like to see the same regulations apply to all horse stables with regard to supply and usage. I am asking that you give the Division of Water Resources the tools they need to enforce whatever action is necessary to make this happen.

R. MICHAEL TURNIPSEED, P.E.:
Some of you may recognize me as having appeared before you in the past. I was the Nevada State Engineer from 1990 until 2000 at which point I became director and Hugh Ricci became the State Engineer. Most of this bill is directed at southern Nevada. Mr. Ricci had the toughest time getting compliance with the Las Vegas Valley, in spite of the fact it has been under intense management now for 65 years. The basin was first designated in 1941. The Legislature authorized the State Engineer to designate groundwater basins in 1939 and the first two basins designated were Las Vegas Valley and Pahrump Valley. It was realized in 1941 that Las Vegas Valley had the potential of being over-pumped. It took until 1955 for the Legislature to allow temporary permits. Those temporary permits could be granted to sustain growth in southern Nevada because we knew we had a Colorado River allocation, but there were no facilities to move that water into the Las Vegas Basin at the time.

That program worked well and after 1971, when the southern Nevada water system was built, we invoked over 100,000 acre-feet of permits. We have not been able to bring the pumpage in the Las Vegas Valley back into compliance with the natural replenishment. Some of those in southern Nevada are living in dreamland or fairy tales. They think no matter how much they pump, someone will bail them out and replace that water. In spite of that fact, there is twice as much water pumped out of the Las Vegas Basin today than is replenished.

On one side of the street, you have intense conservation effort. There are limited days to water lawns as well as limited hours, and there is a turf buyout program. Right across the street is a guy who is on his own well and who says, "To hell with it; I will pump all the water I want." This bill is directed at that person. You will probably hear testimony today from people saying they were not granted enough water in the first place. First, we granted everything they asked for and it is still twice as much as the average user in Las Vegas.

MR. TURNIPSEED:
Civil actions are cumbersome. Senator Rhoads may recall the trouble we had getting a water user who was violating the Humboldt Decree into court. It took many years to actually get an action out of the judge who totally took away his water rights. In that case, we had an irrigator using about ten times as much as the decree allowed him. It was even more expeditious because we were under a State decree. It is a fairly rapid way to get into the court process, but it still took over a year to get any kind of judgment. Then, he turned around and starting doing the same thing over again.

Therefore, the State Engineer needs some kind of a rapid way to bring these people who are pumping more water than that to which they are entitled and in some cases twice as much and in those cases, probably four times as much water as they need. If you want to get management of the groundwater basin in Las Vegas, then I urge you to pass this bill.

SENATOR COFFIN:
Did you issue too many water permits in your tenure?

MR. TURNIPSEED:
Not only did I, but the person before me and the person before that. I actually was the first one to cut it off. That was in 1992 and it caused quite a stir. I had to make a couple exceptions. There were people who had begun the process. In other words, they had submitted their subdivision or parcel maps to the county for approval. If they could show me they had begun that process, then I would go ahead and grant them a permit. The other exception was if someone were replacing a permit that was issued prior. So, to answer your question, yes, but the revocable program was working well; the Southern Nevada Water System was built in 1971 and was expanding further, but when they put the second straw in the lake, connection fees skyrocketed. Those well owners got organized and the Legislature, in approximately 2003, put a moratorium on revoking any more permits. That sunsetted in 2005 and allowed the State Engineer to begin revoking permits again. I could be off a session or two on those, but you are right. I issued more permits than I should have. Pete Morros before me issued more than he should have as well as Roland Westergard before him.

SENATOR COFFIN:
I am just trying to figure out why you have become a sudden convert to this and find yourself on the other side of the issue.

MR. TURNIPSEED:
There will continue to be more pumpage than is replenished, but to allow a person to pump more than he is even entitled to, just exacerbates the problem.

SENATOR COFFIN:
Do you really think we are using twice as much in the Las Vegas Valley, or are we not closer to our replenishment rate? I do not know if you are counting our water banking.

MR. TURNIPSEED:
It does get more complicated with the banking. It has been six years since I was State Engineer, so the numbers begin to get a little fuzzy, and I always thought the range was somewhere between 35,000 and 50,000 acre-feet. I was told today, they were using the wrong precipitation numbers versus the recharge coefficients and that the real number is closer to 21,000 to 34,000. Against that, pumpage is still around 62,000 acre-feet a year.

HUGH RICCI, P.E.:
I followed Mr. Turnipseed as State Engineer and I did not issue any permits in Las Vegas other than those exceptions he mentioned. It was right in the middle of the 1999 Session when all of this was beginning to come to a head dealing with the revocable permit program. It came up again in the 2001 Session. There was an amendment in 1999 to the revocable permit program to have the sunset in 2005 and then go back to the old statute about revocable permits. I do not recall during that Session if there was any discussion about whether fines should or should not be levied. In the 2003 Session, when I was the State Engineer, it became a big issue as to what to do about over-pumping. You must remember too, that even though we were talking about Las Vegas a great deal, this does not happen only in Las Vegas, it happens everywhere. Mr. Turnipseed pointed out another problem of getting people to comply. If they are taking water that is not theirs to take, cease and desist orders have to be issued and then we have to follow up. It becomes a very cumbersome litigated process. The A.B. No. 213 of the 72nd Session required the State Engineer to report to the 2005 Session to review the administrative powers the State Engineer had

within the statutes as to whether he could fine anyone. On January 31, 2005, I sent a letter to the Legislative Counsel Bureau director, indicating I had researched everything I could find and also looked through other regulatory agencies. Every one of those that had administered fines had the absolute authority directed to them by the Legislature, in which to do so. The State Engineer does not have that authority. There was a Nevada Supreme Court case that had just come down about a month earlier that said, "The only way you can have direct fining authority is for it to be granted by the Legislature." So the answer to the question of whether or not we have a fining authority was no.

There were a number of discussions again in 2005 about how would one fine somebody, what would it be based upon and would it be close to the amount of water used by a regular customer on some utility system. Those are all the things with which my successor has to deal. The advantage a water user has over someone on a water system is a water system keeps a good account of the amount of water you use and the amount of money you pay for that water. In some of these instances where the fining authority is not there, somebody could use as much water as they want and have no consequence. It becomes a matter of fairness. This is not a conservation measure. We are talking about compliance. We allocate a certain amount of water to somebody and they are entitled to that amount and no more. If they use more, there should be some penalty.

GORDON DEPAOLI (Truckee Meadows Water Authority; Walker River Irrigation District.

I have drafted a proposed amendment (Exhibit D), suggesting an addition to S.B. 274, which would be a new section 5 on page 3, line 20 and the remaining sections would be renumbered accordingly. The amendment applies to the surface-water portion of the bill. The reasons for the amendment suggestion are as follows: The three rivers in western Nevada, the Truckee, Carson and Walker, are regulated and administered pursuant to federal court decrees or judgments. On the Walker and the Carson Rivers, those federal court decrees operate and administer the system both in Nevada and California. When the Truckee River Operating Agreement (TROA) enters into effect, the interstate allocation on the Truckee River, Carson River and at Lake Tahoe will be pursuant to an act of Congress and pursuant to a federal regulation, namely, the TROA. The purpose of the amendment is to attempt to avoid any jurisdictional conflicts between the decrees, the interstate allocation and any regulations under those. The amendment is not intended to suggest that these provisions

would not apply to water rights in Nevada that are based on State law, but rather to make sure they get applied in a manner consistent with the federal court decrees or the TROA regulation. For example, you would not want to have a situation where the State Engineer made a conclusion and was about to fine someone for using someone else's Orr Ditch water, and at the same time, have the Orr Ditch Court to find that did not, in fact, happen. In addition, the TROA, when it enters into effect, does have provisions for repayment of water to another party when someone winds up, for whatever reason, using someone else's water.

KYLE DAVIS (Policy Director, Nevada Conservation League):
The Nevada Conservation League wants to go on record as supporting this legislation. It is a good idea to empower the State Engineer with the tools needed to enforce Nevada water law.

ANDY BELANGER (Las Vegas Valley Water District; Southern Nevada Water Authority):
Over the last ten years, I have been involved with the Las Vegas Valley Groundwater Management Program, which was created by the Legislature to address the imbalance in the groundwater situation in the Las Vegas Valley. We have done a number of things over the past ten years to address the over appropriation. We have a financial assistance program that helps well owners to voluntarily get off their wells and connect to the municipal system. We also offer conservation programs to send newsletters to well owners to help them understand some of the complex water issues in the Las Vegas Valley. Over the last four years, the committee's discussions have been dominated by this issue of over-pumping. Well owners are using more water than they are legally allowed in the Las Vegas Valley. The committee has had approximately 15 to 20 meetings over the last 4 years to address this issue and at least 3 or 4 very well attended public workshops. This is not an easy issue. Well owners are concerned about having to comply with the terms of their permits.

CHAIR RHOADS:
Do you have the authority to issue fines?

MR. BELANGER:
We do not. That is why we are in support of this bill. The advisory board did vote in favor of allowing the State Engineer the tools necessary to ensure that people are complying with the terms of their permits. It applies to everyone; not

just community well owners or domestic wells that serve more than one home. There is a domestic well exemption and it does not apply to them, but it applies to everyone who has a permitted well. The Las Vegas Valley Water District, the City of North Las Vegas and anyone who might overpump would be subject to these fines, so it does apply evenly to everyone.

DON ALT:
I would be in favor of this bill if it includes livestock water.

STEVE KING (City of Fallon):
The City of Fallon would not be opposed to this enforcement tool for the State Engineer. In response to Mr. DePaoli's amendment, we would support it until the last line, which then goes beyond the interstate allocations of water pursuant to an act of Congress and refers to federal regulations. The TROA, as Mr. DePaoli references, under the act of Congress, will need to be incorporated into the Orr Ditch decree. That is set forth in that act. The way it is written now, with those federal regulations, you turn the long history of Nevada water law and policy on its head. The water in Nevada belongs to the people of the State. Their representatives will set that policy. Federal regulations which may be enacted on a river system could arguably get out of the control of the people of the State and be turned over to federal agencies. We could just imagine which federal agencies could be beyond the U.S. Department of the Interior. It could be the U.S. Department of Agriculture or the U.S. Department of Energy. I know the way it is written, it purports to just refer to interstate allocations of water, but I would just put a precautionary note on that. Further, the way it is written, you could have a Carson River operating agreement, which could be relied on in the future through a set of federal rules under the *Federal Register*.

ASSEMBLYMAN HARRY MORTENSON (Assembly District No. 42):
The State Engineer should have the power to fine people who overuse water. However, there needs to be some uniformity in the rules the State Engineer requires of people. I will give you a scenario where we have six houses. There are three identical houses over here and each is on a half acre of property in the Las Vegas Valley. Across the street are another three houses exactly the same on the same-size properties. All the houses are the same except the wells. The well for the three houses on the north side of the street each have an individual well, while the three on the south side have one common well. The houses with the individual wells are allotted two acre-feet a household allowing a total of six acre-feet. For some reason, the other three houses are only allowed to

pump one acre-foot for each house. The reason I am familiar with this scenario is because I am one of those houses. The State Engineer told me to put a meter on the well, which happens to be on my property, so I did and we started monitoring how much comes out. Those three houses are using almost double what they are allotted, which is the same amount the houses across the street are allowed. The houses across the street are not required to have meters and therefore, could be pumping 12 acre-feet and the State Engineer would never know the difference.

Our *U.S. Constitution* is based on fairness for everyone. It says we have to be taxed equally and government rules should be equally applied.

CHAIR RHOADS:
We will close the hearing on S.B. 274 and open the hearing on S.B. 276.

SENATE BILL 276: Makes various changes relating to water. (BDR 30-207)

SUSAN SCHOLLEY (Committee Policy Analyst):
I will give you a quick overview of S.B. 276, which came about as a result of two separate recommendations from the interim committee on the Use, Management and Allocation of Water Resources. The first part of the bill relates to the Water Rights Technical Support Fund that was created by S.B. No. 62 of the 73rd Session and funded with a $1 million appropriation. As recommended by the interim committee, this bill would add as an eligible grant application, water planning and information management. Under S.B. No. 62 of the 73rd Session, the use of the $1 million in the Water Rights Technical Support Fund was limited to protecting existing water rights. This would expand the uses of that fund to include need-based grants for water planning and information management. This bill would also appropriate another $1 million for the next biennium. In addition, with regard to the Water Rights Technical Support Fund, this bill also provides a priority for these grants to rural areas of the State, essentially, excluding Washoe and Clark Counties. The grants under this technical support fund would continue to be administered by the Board for Financing Water Projects.

The A.B. No. 198 of the 66th Session established the Board for Financing Water Projects funding (A.B. 198 Program). The second part of S.B. 276 is an expansion of the uses of the A.B. 198 Program. This recommendation would add to the existing A.B. 198 Program, which is funded through bonds. It would

add grants and loans to implement water resource plans for infrastructure development, and it would give priority to rural areas of the State. I would point out that as to the A.B. 198 Program, this does not increase the bonding cap, which is currently at $125 million. I would also point out that currently, the A.B. 198 Program is strictly a grant program. This would add a component for loans, which is not currently in the A.B. 198 Program. For that reason, you will see a lot of other sections that change the name of these funds to reflect the increased uses of the funds. The Nevada Division of Environmental Protection is here. They will be testifying as neutral on the bill; however, they are better equipped to answer questions you may have about how these work.

LEO DROZDOFF, P.E. (Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources):
We have provided an amendment for your consideration (Exhibit E). The State Board for Financing Water Projects was created under the NRS 349.957 and began funding water projects in 1992. The Board is charged with the administration of programs that provide grants for capital improvements to publicly owned water systems, grants for improvement to conserve water, grants for the abandonment of individual sewage disposal systems in favor of sewage connection and, most recently, grants for technical support for water rights. All these grants are commonly referred to as the A.B. 198 Program. Under the NRS 445A.265, the Board is also charged with approving the priority projects applying for loans under the Drinking Water State Revolving Loan Fund and reviewing and approving loans for specific projects.

The A.B. 198 Program, as it has become known, has benefited numerous entities throughout the State and today, we have issued grants totaling $113 million. We have enjoyed an excellent relationship with the Legislature, which has augmented funding and expanding this program through the years. The A.B. No. 198 Program started in 1991 with $25 million in bonding authority. In 1997, S.B. 302 of the 69th Session increased the bonding authority to $40 million and established the revolving loan fund program. In 1999, the bonding authority was increased again by $10 million with grant eligibility now expanded to include irrigation and conservation projects under A.B. No. 237 of the 70th Session. In 2003, the program was again expanded to include projects for connecting individual residences to community sewer systems and the total bond authority was increased to $90 million under S.B. No. 233 of the 72nd Session. Finally, during the last session, S.B. No. 62 of the 73rd Session added $1 million to the fund and created the Water Rights

Technical Support Program. The total bonding authority was increased to $125 million. The Board has worked efficiently and effectively in administering these programs over the years and should be commended for their excellent work.

As we read the bill, the fund under the A.B. 198 Program will now be expanded to include loans for certain projects. The bill also expands projects eligible for funding under the A.B. 198 Program, and gives preferences to rural areas. Our position on S.B. 276 is currently neutral though we do want to point out some potential implementation problems the Board and staff at the Division of Environmental Protection may experience. Senate Bill 276 first amends the definition of the term "fund" to include loans. The fund, as described above, has traditionally been a grant program and simply does not have an administrative loans structure. The proposed legislation does not provide guidance of when a loan should be used in lieu of a grant for water resource-related projects. This will require the Division and the Board to develop a new loan program and sets selection criteria for grants and loans. While this is going on, there are already two existing loan programs that provide low-interest loans for drinking water and wastewater treatment. They are the Drinking Water State Revolving Loan Fund and the Clean Water State Revolving Loan Fund. Both of these programs also reside at the Division of Environmental Protection.

MR. DROZDOFF:
These State revolving fund programs do not allow loans for certain irrigation projects and certain water resource projects. However, they are relatively broad-based. Senate Bill 276 adds new eligibility for projects funded by either grants or loans associated with development of infrastructure relating to water resources and implementing resource plans. The provisions included covering costs associated with the expansion of facilities of water systems, which is presumably, to accommodate growth. This is significant expansion eligibility, yet no dollars are allocated for expansion of duties as has been done in the past. This also presents a public policy issue for the State funds, which are now paying for growth. That will present a challenge to the Division and the Board. As an example, the Board will now need to decide whether to issue a loan or a grant to a public water system needing a grant for uranium treatment to comply with the safe-drinking water standards in a rural area, or to increase their water system capacity to meet growth needs. We can think of numerous scenarios like this where the Board will have to make difficult choices between two competing interests. Therefore, absent legislative funding or directive

policies, the Division will have to create regulations to develop project prioritization. From our vantage point, the Division will continue to support projects addressing public health over projects addressing growth, but other parties may have a difference of opinion and the Board will have to establish a ranking system as they deem appropriate.

Historically, as I described earlier in my testimony, the Legislature has added specific dollar amounts to the A.B. 198 Program over the years to provide direction or intent. The only guidance provided in S.B. 276 actually has a conflict with existing statute in one area. For projects involving the development of infrastructure related to water resources, the new area of eligibility, the bill requires preference be given to rural areas for grants or loans. Rural areas are defined as towns or cities with populations of less than 10,000, and counties with populations of less than 100,000. Existing law in the NRS 349.981 requires the Board to give preference to purveyors of water whose public water systems serve less than 6,000. That is a conflict that needs to be addressed. It is our recommendation to leave the A.B. 198 Program as a grant program and not include loans. As mentioned previously, two loan programs currently exist and service a relatively broad spectrum of needs for various entities. The balance of projects should be handled by the A.B. 198 Program.

MR. DROZDOFF:
Because new projects will be eligible for funding under this bill, and the Water Rights Technical Support Fund is continuing, the Division will need to hire one additional staff member to handle this program expansion. The Board and the Division currently manage 12 loans totaling $25 million, and 44 grants totaling $44.9 million. This does not include the applications that were reviewed and not funded. More resources will be needed to manage the program with the requirements under S.B. 276, and we have submitted an unsolicited fiscal note to the Legislative Counsel Bureau.

I testified three different times before the Legislative Commission's committee to study Use, Management and Allocation of Water Resources, also known as S.C.R. No. 26 of the 73rd Session. I specifically relayed to the Committee that, in my opinion, any further additions to the A.B. 198 Program would require additional resources.

SENATOR CARLTON:
I would like to see a synopsis or executive summary of how the $1 million provided by S.B. No. 62 of the 73rd Session was spent.

MR. DROZDOFF:
We can provide that by tomorrow.

BRUCE R. SCOTT (Board for Financing Water Projects, State Environmental Commission, State Department of Conservation and Natural Resources):
Although there would be real value in a loan fund, I am concerned about the way the loan element is included in this particular proposed legislation. I would like to see consideration of that going into the State Revolving Loan Fund for Water, which presently exists. There is a mechanism, there are administrative codes and it is something that is working. The concept of a loan program for some of these areas would perhaps better fit in that fund and would reduce the staff requirement to some degree. At this point, we are stretching our staff thin. We have had good support from the Division of Environmental Protection but I would concur that additional responsibilities are going to create some difficulties in not so much the administration of the funds, but in making sure that $125 million is properly administered on the ground. We need to have staff able to take the time to get out of the office and make sure that what is going in the ground is what is supposed to be going into the ground and that the money being spent by the taxpayers is appropriately monitored and paid. In that vein, with arsenic, uranium and other water-quality issues coming at us from a federal level through the State, we are concerned that the ability for us to fund projects is reaching its limits with the monies we have available. If our authority is expanded to include providing money for expansion of existing infrastructure to allow for growth, it will put us in a dilemma if we have to choose between an arsenic issue and a growth issue. I suggest we should either have loans that would relate to growth so they would be reimbursed back to the State Revolving Fund, or consideration of further funding so growth could be an element. I am afraid we are going to run out of our legislatively approved bonding capacity just with the water-quality issues facing us from a regulatory perspective. The way things are presently structured, I have concerns about our ability to meet those needs.

MR. SCOTT:
There is one minor change from a wording perspective in the current law. On page 6, line 13 of S.B. 276, I would like to change the word "grant" to "water

project." It is a subtle change but the effect is to allow the Board for Financing Water Projects more latitude in the percentage of the grant we can give people. Currently, we cannot give less than a 57-percent grant. We would like to have the ability through that wording change, to go to a lower level where we could give some money, but not necessarily be required to give 57 percent as a minimum. That change would allow us to go from a 25-percent grant to an 85-percent grant, which would be something the Board would evaluate based on the needs and the ability in the community to pay for the other part of the grant.

In the NRS 349.981 on page 4, line 16, the current language implies connecting a well with a temporary permit to a municipal water system, which is not the intention. Legally, we would not connect a domestic well to that system anyway. The same language is on page 4, line 43.

MR. DROZDOFF:
The changes Mr. Scott suggested are included in our proposed amendment, Exhibit E.

MR. BELANGER:
The Las Vegas Valley Water District operates water systems in Blue Diamond, Kyle Canyon, Searchlight and Jean. These water systems are privately managed from the Las Vegas Valley Water District at separate rates and separate service rules. The Board for Financing Water Projects has been integral and critical to ensuring these systems have the financial capacity to make necessary improvements and to comply with the Safe Drinking Water Act, federal and State standards and regulations. We are in support of S.B. 276 as well as the amendments offered by Mr. Drozdoff. During the last interim, we spent a considerable amount of time before the Board on behalf of our small water systems and it is true they have a very difficult task ensuring that the limited pool of money is spread evenly and equitably across the State. We support anything that helps the Board operate more flexibly.

EDWIN D. JAMES (Carson Water Subconservancy District):
We are in support of the language change for the Water Rights and Resource Technical Support to include water-resource planning. As the demand for water increases, there is a huge issue of planning the right direction in which you need to go. We are not going to make any more water in the system. This year is going to be dry and we know with what we will be dealing. We have developed

a technical committee on the Carson River to start dealing with these issues. I can see us coming back in the future to ask for some of these funds to help us plan in the right direction. If you plan in the right direction, you will save funds while more efficiently using the water.

DON ALLEN (Silver Springs Mutual Water Company):
I run a water company that is a community water system. We are a nonprofit public water system. When the original A.B. No. 198 of the 66th Session was presented, it excluded nonprofits. Even though we are a public water system, we still have to follow the same federal and State laws and regulations. We just do not have the funding mechanisms to help us accomplish this task. I was hoping to propose a change in the eligibility requirement so it would also include the nonprofit public water systems. I am not looking to save the guy making a profit. I am trying to save the same community in rural areas that do not, at this time, have the funding mechanisms they would if they were a general improvement district.

MR. SCOTT:
I cannot speak formally for the Board, but I do not object to some of these small mutual water companies achieving eligibility as long as we have a way to make sure we are not inadvertently giving access to those who really do not need it. We are a program for those in need.

BOB FOERSTER (Executive Director, Nevada Rural Water Association):
I am in support of Mr. Allen's proposal. The Nevada Rural Water Association has 191 small water systems in its organization. Some are represented in the group of homeowners associations and mutual water companies that would benefit. The A.B. 198 Program has been a tremendous help to the small water systems.

CHAIR RHOADS:
We will close the hearing on S.B. 276 and open the hearing on S.B. 405.

SENATE BILL 405: Revises provisions governing the appropriation of public waters. (BDR 48-1158)

CHAIR RHOADS:
Everyone who wants to testify on this bill may do so, but for your information, this Friday at 9 a.m., in this room, Susan Scholley, our Committee Policy

Analyst, will meet with all of you who have an interest in the bill and try to come to a consensus. If you are unable to reach a consensus, the bill will die. If you do come to a consensus, we will add it to a work session next week and vote on it at that time.

SENATOR AMODEI:
You all have a copy of the mock-up of the proposed amendment (Exhibit F). The bill before you deals with nine major areas. The first area is a restatement of the State Engineer's authority, which is the statement of existing law. As I indicated in my earlier testimony, as the State has grown and matriculated and we talked about more and more transfers from agricultural to municipal and quasi-municipal use, some of those jurisdictional lines are blurred. That is the reason it would be appropriate at this point in time, to come forward with a more unequivocal statement on the State Engineer's authority. That is section 1.

Three of those nine areas are arguably substantive law changes or additions to the State water law, and the other six are procedural in nature. If you recall, the State Engineer is not subject to the Administrative Procedures Act so the procedures the State Engineer utilizes are ones that are promulgated by his office, specifically for the purposes of administering water law.

In section 3 is what I call the second area. That is the definition of consumptive use we are working with for purposes of a discussion now. This is a substantive addition to the water law in the State and one we need in view of the change of applications as they go from one permitted use to another permitted use. That is technical in nature, and I will leave its discussion to the folks with the slide rules who will speak after me. However, we absolutely need a definition of consumptive use in some way, shape or form. To leave this Legislative Session without one, will invite further proliferation of litigation and further depletion of the resources of the Office of the State Engineer, which you will recall, consists of approximately 90 employees.

The last substantive provision is in section 4, which gives the State Engineer specific statutory authority for incremental analysis of applications. Those are situations you are seeing right now in terms of the Southern Nevada Water Authority and their applications to import from outside the county into their service area. I would submit to you that you will see continuing applications along those lines elsewhere in the State. Remember, we are the most urbanized

State in the nation. Most of the population lives in Clark County or a five- or six-county area in western Nevada. You will need to import water into both of those areas to allow that matriculation to continue. I am not here to talk about planning and zoning. That is up to the local government, but when the locals give the zoning and planning and master plan amendment, you will have to find water to do that. The language in section 4 gives the State Engineer specific statutory authority to go ahead and do that in an incremental sense so if somebody wants to challenge that later on, he has something to rely upon.

Number four is the bifurcation of who a protestant could be. The language did not do much to change things and what we are aiming at here is frivolity. I told you the example of folks who use the same sheet of paper for the protest and only change the date and name and mail it in. I did not like the way that turned out, so on page 4, lines 17 through 26 (Exhibit F), I have labeled it "frivolity." It provides that the State Engineer may refuse to consider the protest if the protestant fails to provide any information relating to the protest required by the State Engineer. That is an attempt to make sure the people who access the protest procedure at the Division of Water Resources are doing so with some sound basis.

The fifth area is section 7, subsection 6, which I have labeled "communications." It reads, "The State Engineer may communicate with any applicant, protestant or person interested for the purposes of obtaining information which the State Engineer deems necessary to conduct a hearing ... ," if he provides notice to the other parties and an opportunity to respond. This is a way to acknowledge the fact that with what resources are available, I do not think it is helpful to attempt to streamline things to prohibit all ex parte communications. However, if the State Engineer speaks with someone on information relating to a protest, and as long as the other sides are advised of that conversation and given an opportunity to provide input, that is a practical way of dealing with the information flow for purposes of protest.

I have the sixth area labeled as "settlement discussions." It is a technical review process prior to a hearing. It starts on page 4, line 38 (Exhibit F). It provides specific statutory authority for the State Engineer to bring technical persons in although I had said I do not think you should have lawyers in that process. If it is technical in nature and really scientific, the aim is to find out what the science is and where the differences are. It is a potentially useful tool.

The seventh area starts at the top of the page 5 (Exhibit F), section 7, subsection 8 which is the framework for action. This is an attempt to provide some framework for action within which parties can look at and count on in terms of when they are planning out what a protest entails and for how long it goes. Originally, it came before you as 120 days, and now we have it at 240 days. Some people hated 120 and some hate 240. It is a function of several things. One, there is a potential fiscal note if we go to the 120, which would probably result in the need for about a 10-percent increase in staff for the State Engineer's office. This is an attempt to provide some sort of structure within existing resources to avoid a huge fiscal note, but also let those people who are part of the process, know that there is a framework for taking action.

Number eight starts on page 7, lines 30 through 44 (Exhibit F). This was an attempt to give the State Engineer specific statutory authority for reconsideration. I am still not thrilled with the way that turned out, but maybe someone on Friday morning will have an idea along those lines.

Finally, the ninth area is the "stay" language. It says if there is litigation involving the subject of an application, then processing that application is stayed until litigation is completed.

CHAIR RHOADS:
I have two letters to go on the record concerning S.B. 405. One is from the White Pine County Economic Diversification Council (Exhibit G) and the other is from Laurie Carson, White Pine County Commission (Exhibit H).

MR. TAYLOR:
I have given each of you a copy of my prepared testimony from which I will read (Exhibit I). Although the bill drafters have made improvements to the initial draft, I still have concerns. I have provided you with some suggested amendments (Exhibit J). I will go over those when we meet on Friday morning.

MR. DEPAOLI:
I have been working with the State Engineer. I have seen their proposed amendments and they have seen mine. We agree on some, but not yet on others but if it is the Committee's preference, I would also wait and see what comes from Friday's meeting.

ROBERT MARSHALL:
I support this bill. There are a number of things in it that are very helpful. As I indicated in a letter that was passed out to you last week, I specifically approved of section 1. It makes the State Engineer's orders final. He makes the final decision on the matter covered by the order. One of the problems I have had as a water right holder is that some agencies do not take the State Engineer's order seriously and think they can make other determinations. You go through years of paying the bills for expensive experts and hearings and hiring attorneys and, in my case, sometimes I hire attorneys and sometimes I do it myself. You go through all this expense and delay, and you drill a test well that indicates a basin can produce a certain amount of water consistent with the State Engineer ruling. Then, you have a governmental agency that says, "We won't recognize that." It is regulatory chaos and I have experienced it firsthand. I have a great deal of confidence in the State Engineer's office. That does not mean I always agree with them. Sometimes I take appeals against them and sometimes I win. It is very important that the State Engineer be the final, sole arbiter of the availability of water in basins pursuant to the permits he issues. In the past, the State Engineer may have issued too many permits and over appropriated a basin, but they do not do that anymore. Now they do not issue enough permits. They can always designate a basin and they can administer it, so there is a mechanism in the law to take care of that. However, those concerns are not with us today because the State Engineer's office is very careful about not over-allocating a basin.

In section 1, subsection 1, paragraph (a) of Mr. Taylor's proposed amendment, (Exhibit J), he stuck in the word "unappropriated." It reads, " ... the State Engineer has full exclusive and final authority with respect to the appropriation, allocation and availability of unappropriated water." This emasculates the purpose of the bill, because it means the State Engineer can make final orders on new permitting, but it does not protect existing right holders from people who would not recognize existing permits. I would strongly suggest the word "unappropriated" be eliminated from any amendment and that the language stay as it is in the mock-up bill for S.B. 405, Exhibit F. I would like to have a shorter time period than 240 days for a decision to be rendered.

ROSS DELIPKAU:
On page 7 of Exhibit F starting at line 33, on the motion to reconsider an order of the State Engineer, my concern is whether there is a staying of the 30-day appeal period. It is fine if someone wants to file a motion to reconsider, but we

do not want anybody to blow the 30-day appeal period. That is the decision of this Committee.

On page 2, Exhibit F, starting at line 30, I find "consumptive use" quite confusing. For example, on lines 33 and 34 it reads, " ... or that otherwise does not return to the ground water or surface ... " Does that mean the converse? If it does return to the source, meaning that is included within "consumptive use." The provisions also found on page 2, state that the State Engineer conducts all of these hearings. In these very large desert basins of ours, what happens in the north may be different from what happens in the south. If water for a wheat field is converted to a different use, the consumptive use is going to be different than the conversion from an alfalfa field. The goal we are all trying to achieve is to allow a change of a permitted or certificated right to another use with no additional yield or withdrawal upon the source. There should be some language requiring the State Engineer to look at both what happened on the agricultural source and what happens to the water when it is used. It can all be consumed in a plant, or it can go into a subdivision. The subdivision will have secondary or return flows through the sanitary waste system and through outdoor irrigation.

The State Engineer is well equipped. His people have the expertise to determine these items on a case-by-case basis without having hearings in each basin. We need to change some of the statutory language to simplify and condense it where the State Engineer looks at these two factors, existing use and proposed use, with no additional withdrawal upon the source.

LISA GIANOLI (Washoe County):
Washoe County is pleased with the mock-up of S.B. 405. However, we do have one amendment (Exhibit K), which Jeanne Ruefer will explain to the Committee.

JEANNE RUEFER (Water Resource Planning Manager, Department of Water Resources, Washoe County):
We were pleased to see the proposed amendments to the bill and we fully support it. We would like to offer an amendment that would explicitly state the authority of local governments to determine water availability and acceptability of water rights in their jurisdictions, while fully recognizing the mandate of the State Engineer to have full, exclusive and final authority with respect to the maximum limit of appropriations of water rights in Nevada.

BOB FULKERSON:
I have been working on public land and water issues in this State for the last 25 years and I agree with the opening remarks of Senator Amodei. This State is changing rapidly and there are a lot of pressures on decision makers which speaks for a more deliberative and open process. I have prepared testimony showing why I am opposed to this bill (Exhibit L).

DENNIS GHIGLIERI:
I have reviewed the amended S.B. 405 (Exhibit F) and it still contains language that will unnecessarily limit public participation. It also gives the State Engineer a new role, which is not defined, and I argue, presently rests in part, with local government. Currently, those with water rights can protest as well as any of the public that will be affected by the appropriation of water. This feature in Nevada water law should remain unchanged simply because appropriation may impact natural resources such as lakes, rivers, streams, springs and wetlands dependent on groundwater, as well as affecting existing water rights. The State Engineer should not be limited by the Legislature in the scientific information the State Engineer can hear and consider by limiting who can participate in certain hearings.

Further, when the State Engineer grants a portion of an application as a water right, there should not be any automatic granting of the remaining portions as provided for in my reading of S.B. 405. Each appropriation must follow due process for applicant and protestant as provided for in the existing law. Currently, the State Engineer determines how much of the public waters of Nevada, both surface and groundwater, can be appropriated for use by the applicant. That is a specific and necessary role for the State Engineer, and it works. However, section 1 provides the State Engineer with a role to determine the allocation and availability of water (Exhibit F). I am concerned that this wording may merely be a rewrite of sections 2 and 4, which were deleted from the original bill. Some people see regulatory chaos. I see a necessary need by local governments to understand what real water allocation means when houses are put on a demand for water. If that water is not there, they are not going to come back and complain to the State Engineer as loudly as they are going to come back and complain to their local officials who may have permitted that application to begin with.

I am also concerned that you try to define "consumptive use." Currently, consumptive use is defined by the State Engineer on a case-by-case basis and it needs to stay that way.

SUSAN LYNN (Great Basin Water Network):
The Great Basin Water Network is a group that looks at sustainable use of water. The first writing of the bill alarmed us drastically. The second one only alarms us some, so we are making some progress, but some portions of this bill are troublesome to us. We do not think there is any regulatory chaos as was referred to today. Having sat through a number of the State Engineer's hearings, it is a very orderly process. It is much like an attorney's appeal or discovery process and you have the weighing of evidence that is provided by the parties who are interested. The process used by the State Engineer is sufficient and does not need further definition.

We also see that it becomes more difficult for ordinary citizens who have serious concerns and need to protect our water rights; we may be shut out of the process. This repeatedly calls for science and we agree that science is a very necessary part of the procedure the State Engineer follows. We are finding a lot of little people who are fighting big water applications, and they need to band together to find legitimate representation and legal and scientific experts to help them represent their cases. The most recent case had to do with Aqua Trac where several ranchers in the affected valley have already filed applications but the Aqua Trac applications were heard first. Those ranchers were not only required to provide a defense of their applications, but they will have to come back again when their applications are finally heard by the State Engineer. They have to go to double the costs, which is something we are very concerned about.

We are also concerned about the terminology for consumptive use. Trying to define consumptive use is like trying to say one glove fits every hand. There are a number of different basins having different requirements and consumptive use varies from basin to basin. It also varies from home to home, field to field and region to region. Therefore, we are very hesitant to begin trying to define consumptive use.

JOE JOHNSON (Toiyabe Chapter, Sierra Club):
The Toiyabe Chapter of the Sierra Club would like to go on record as opposing S.B. 405 as it is presently written. Our principal concerns have to do with the public's right to participate and the definition of consumptive use, which is confusing.

MR. DAVIS:
We still have some concerns about the public participation section of the bill, but I will be here on Friday to see if some of those concerns can be addressed.

ERIK HOLLAND:
I am an artisan teacher from Reno. It figures that the bill would share the same number as the busiest freeway in southern California. What is with all these changes in water law? What is broken? I do not want all the water allocation responsibility concentrated on the State Engineer. I am not sure he does either. Talk about a recipe for an ulcer in this State. The public process should be as broad as possible. Just because I do not own water rights does not mean I do not have an interest in how water is allocated. The cartoon I submitted to this Committee (Exhibit M) is what I fear could happen. It is easier to replace a recalcitrant State Engineer than the public.

I should be able to come and talk about water issues. It seems to be part of the grand scheme to put northern Nevada on a freeway to even more rapid growth than we are currently experiencing. I am concerned about all this matriculation, as it was called. For example, a huge new development is planned in Storey County called Cordevista. I noticed a lot of art in this building with Nevada scenes, but unfortunately, urban sprawl is becoming a more accurate Nevada scene. As a member of the public, I am concerned and frustrated with it. I am a veteran of some master-plan changes and wars in Washoe County where a master plan is completely overturned to benefit a developer. With the large development on tap in Storey County, I would argue that the citizens of Storey County, even if they do not possess water rights, would like to weigh in on this proposal. The reason I bring up Cordevista is because water will need to be imported. As a citizen, I generally prefer that the water stay where it is. I do not want over-pumping to result in dust storms that will obscure our clear Nevada skies. I do not want Pershing County stripped of water for development in Reno, and I do not want water moved around to support developments like Coyote Springs.

Please think about the people you represent. This room is filled with a lot of suits, but you also represent the people who are toiling to earn their daily bread. Ask yourselves as you consider this bill, do Nevadans want their landscape to look like urban sprawl? Do Nevadans want to pay higher taxes for more water to support mega developments? Do Nevadans want the chance to weigh in on water decisions? I know a fourth-generation Nevadan who is often in tears after a day out and about when she sees her favorite places have been paved. Let us keep our voices.

CHAIR RHOADS:
We will close the hearing on S.B. 405 and open the hearing on S.B. 484.

SENATE BILL 484: Creates the position of Rural Land Use Planner within the Division of State Lands of the State Department of Conservation and Natural Resources. (BDR 26-397)

MICHAEL J. STEWART (Principal Research Analyst):
As nonpartisan staff of the Legislative Counsel Bureau, we cannot advocate the passage or defeat of any legislation. However, as staff to the Legislative Committee on Public Lands, from which S.B. 484 was recommended, I am here to present the bill. I have given you an outline of the bill (Exhibit N). Given these important functions, the Committee on Public Lands believes that providing an additional staff member in the Division of State Lands would be beneficial to the State and to those local governments needing assistance from the Division. The Committee was approached with an amendment that would somewhat restructure S.B. 484 to include an appropriation to pay for the position (Exhibit O). It would require that the appropriation be included as a base budget expenditure in the proposed budget for the Executive Branch of the state government in a future biennium.

CHAIR RHOADS:
The rural counties do not have the expertise enjoyed by the larger counties. That is what we were getting at during the meetings of the Committee on Public Lands. Everywhere we went, we were told by the rural counties that they did not have the talent needed for land-use planning.

PAMELA B. WILCOX (Administrator and State Land Registrar, Division of State Lands, State Department of Conservation and Natural Resources)

The Division of State Lands is particularly proud of this program, which does provide planning assistance to local governments. We did not request this bill. In fact, we are particularly flattered that it was requested by a gentleman from a rural county who appreciates the assistance we have been able to provide to him and his county. However, we support the Governor's *Executive Budget* and since this position was not included in the Governor's budget, we are not able to support this bill.

SENATOR AMODEI:
I understand the preparation of legislation for disposal of public lands, but upon any development of plans for use of land within the city, does it not put the State in the local planning and zoning business in selected counties?

MS. WILCOX:
The way the statutes are constructed, we provide technical assistance to counties only as they request it. We are not in any way permitted to interfere with their local planning and zoning authority. For example, if they want a new master plan or want a plan that relates to some particular thing like public lands, if they ask us, and we have staff available, we send someone to be their borrowed staff. We come without an agenda other than to support them in their work.

CHAIR RHOADS:
If this bill is processed out during the work session, we will need to rerefer it to the Senate Committee on Finance.

MR. STEWART:
It was brought to the Committee's attention that perhaps one way to approach this would be to add an appropriation to the measure. Basically, it would be an appropriation roughly based on the fiscal note. In lieu of creating the Rural Land Use Planner position, it would authorize such a position with the Division, and budget accordingly. As part of that, a possible amendment would be to provide that any balance of the sums appropriated remaining at the end of the respective fiscal years, must not be committed for expenditure after June 30 of that fiscal year. It then reverts to the General Fund. Also, to include a statement of the intent that the appropriations made would be intended to finance ongoing expenditures of state agencies. The expenditure financed with those appropriations would be included in the base budget expenditures in the proposed budget for future biennium. In short, it would actually infuse it into the

Executive Budget and it would be continually funded after this initial appropriation.

CHAIR RHOADS:
We will close the hearing on S.B. 484 and open the hearing on S.B. 366.

SENATE BILL 366: Prohibits the Department of Wildlife from exercising jurisdiction over animal husbandry relating to animals intended to produce food for human consumption. (BDR 45-1328)

SENATOR BOB BEERS (Clark County Senatorial District No. 6):
This is the case of the criminalized crustacean. Six years ago my son, my dad and I took a five-day recreational vehicle (RV) trip through central Nevada. We stopped at the Sodaville Hot Springs, where a sign read "desert lobster." We picked up five pounds of this "desert lobster" and cooked them later in the RV. If you shut your eyes and considered how far you were from a big city, they kind of tasted like lobster. It turns out they are Australian Red Claw Crayfish, an invasive species prohibited by the Nevada Department of Wildlife. A month after that trip, I received a call from the proprietor of the "desert lobster rancher," Mr. Eddy, and he asked for my help because he said the State was shutting him down. He was told his lobsters were illegal. I told him I was on my way to the Interim Finance Committee and would probably see some of those wildlife people and I would ask them about his situation.

The person I spoke with from the Department of Wildlife told me the Australian Red Claw Crayfish had been introduced into another warm spring by some evil-minded lobster purchaser and if they were to reproduce, they would potentially wipe out the population of endangered Railroad Valley "pupfish" (springfish) in that hot spring. On my way back to Las Vegas I stopped at the lobster farm and told Mr. Eddy what I had learned. He took me into the Quonset hut where he kept the crayfish tanks and pointed out the springfish living in the tank with the crayfish. When I spoke again with the person from the Department of Wildlife, I was told that while the crayfish do not eat the springfish, they eat the eggs of the springfish and in that way, kill the population. I asked what the Railroad Valley springfish was doing in the Sodaville Hot Springs 100 miles away from Railroad Valley I was told a renegade biologist in the 1950s had acted as "Johnny Springfish Seed," and had sprinkled populations of springfish throughout all the warm springs he could find and they took hold in a number of those springs. Therefore, we have an

invasive endangered species versus an invasive species. I stopped again at the "lobster farm" and told him what I had found, and Mr. Eddy said:

> Let's say that somebody did introduce these lobsters into a warm spring, and they did decimate the population of Railroad Valley pupfish. Why couldn't Wildlife just come back in and introduce some of the ones from my spring, where they are actively reproducing, or one of the other springs where these pupfish now live, and reintroduce them back after cleaning out the desert lobster?

I told him that was a good question, but before I had a chance to find the answer, the Department of Wildlife, the Washoe County District Attorney's office investigator squad and several other people flew their black helicopters in and wiped out the population of "desert lobster" and Mr. Eddy's business. I have a stark memory of stopping back in and seeing the carnage left behind. Between every fourth or fifth desert lobster carcass, was a Railroad Valley Springfish carcass.

As a result, I was asked to introduce legislation that would take jurisdiction from the Department of Wildlife over any species designed to be raised for human consumption.

KENNETH E. MAYER, M.S. (Director, Department of Wildlife):
Richard Haskins, who is the chief of our fisheries bureau can give you the rest of the story about the involvement in this story by the Department of Wildlife. Senator Beers made a good story of this, a lot of which is absolutely true, but the buildup to actually taking action might be in order.

RICHARD L. HASKINS II (Wildlife Bureau Chief, Department of Wildlife):
Most of what Senator Beers indicated is factual. They are Railroad Valley springfish. They were introduced into that system in 1947. Crayfish have quite a history in Nevada. I can document impacts from crayfish introductions all the way from Pahrump to Ruby Valley. When introduced into the wrong area, crayfish are, in fact, very deleterious to our native aquatic population. Senator Beers made light of the issue, but Mr. Eddy, the lobster rancher, did posses a prohibited species in Nevada. We attempted to bring him into compliance as early as 1988. It went on for quite a while and, ultimately, he applied for a permit. We tried to work with him on that, but one of the

conditions of his permit was he could not sell the crayfish out the door a dozen at a time. In order for him to transfer ownership of a prohibited species, it would have to be transferred to another licensed individual. He never complied with that part of his permit. We continued trying to bring him into compliance, but ultimately, he just flat out said," no" he will not.

We then went to court to try to get him into compliance. The court ruled in our favor and gave him a deadline to properly dispose of the crayfish. He did not, so we went back to court to get an additional order allowing us to go in and confiscate those crayfish. Invasive species are a serious issue in Nevada all the way from quagga mussels and talapia in Lake Mead to crayfish in some areas. We also have alligator gar and bullfrog issues, so aquatic invasive species are a serious issue. Our ability to control the importation of critters into the State, to assure they are disease free, is an important part of our ability to protect and enhance native wildlife and their habitats.

MR. MAYER:
In 2004, for example, $120 billion worth of damage was caused in the United States, from invasive species. There are now 50,000 different alien species in the United States and 42 percent of the species that are endangered are endangered as a direct result of the effects of exotic species. Being a deer hunter, one of the things I worry about is chronic wasting disease. It jumped from Colorado to Wyoming to Nebraska from Wisconsin as a result of the White Tail Deer program. Bovine tuberculosis in Michigan is now firmly established, which came about as a result of moving through a livestock operation. Nelgi antelope, an exotic species from Africa, for example, was introduced in Texas in the 1930s. Texas is now engaged in a futile attempt to eradicate the species. There are a number of small game problems as well, such as rabies in raccoons. Currently, 50 percent of all rabies cases come from raccoons. In California, millions of dollars have been spent trying to kill the Northern pike. If we are limited on our ability to exercise the wildlife laws of the State, would that affect our ability to comment on grazing or other land-management issues? I am not quite sure where the boundaries are with this bill and what the far-reaching effects might be.

SENATOR BEERS:
This bill is not really about invasive species. It is about creatures raised for human consumption. Perhaps these operations are better off in the State Department of Agriculture.

ROGER D. WORKS, D.V.M. (Division Administrator, Veterinary Medicine Services, State Department of Agriculture):
The State Department of Agriculture has some serious concerns regarding S.B. 366 and its potential impacts on the established livestock community. Our concerns have to do with potential disease implications. We are not opposed to alternative livestock. We recognize two species currently under statute. We also prohibit several species, specifically, because of those issues. Additionally, we have concerns about the introduction of diseases such as chronic wasting disease and the reintroduction of tuberculosis and brucellosis into the State. Currently, Nevada enjoys both tuberculosis- and brucellosis-free status. Should we lose the tuberculosis status, conservative estimates show it would cost the cattle industry roughly $15 million a year in direct out-of-pocket costs. Market and movement restrictions would significantly raise that figure. If we add brucellosis to the list, our cost would more than double.

In addition to these so-called program diseases I have discussed, depending upon the species of animal we are talking about introducing, they each come with a wide range of host-specific types of diseases, many of which are not well researched. To make the matter even more difficult, there is no standardized or approved testing methodology for most of these other species and certainly not for the diseases they carry. Additionally, there are very few, if any, vaccines that are approved or available to help control those diseases.

We work closely with the Department of Wildlife and depend upon their expertise in helping to control these exotic species. We also depend on them for the cultivation of native species that could have dire consequences for the livestock and wildlife of the State. This bill would seriously hamper our abilities to properly regulate and control potential diseases of concern. In short, it would open a Pandora's Box that could affect livestock industries for years to come.

LARRY JOHNSON (Coalition for Nevada's Wildlife):
The Coalition for Nevada's Wildlife wants to go on the record as opposing S.B. 366, not for its intended purpose of lobster ranching, but the language is overly broad and has far-reaching implications. Exotic species can have disease issues that adversely impact our wildlife populations. Last Session, we moved Rocky Mountain Elk from the alternative livestock list because of the fear of this. It is one of the most common species that spreads chronic wasting disease and has done so in many states and Canadian provinces through game ranching.

Brucellosis in buffalo, for instance, could be absolutely devastating to the livestock industry. We must keep as much oversight in farming, ranching and raising of these species for human consumption as possible, and the Department of Wildlife is an integral part of that.

CHRIS MACKENZIE (Board of Wildlife Commissioners, Department of Wildlife):
I want to register the Board of Wildlife Commissioners' opposition to this bill. This came from one situation and has been characterized by some as an overreaction by the Department of Wildlife. In my opinion, this is an overreaction by the Legislature to completely denude the Department of regulation in these issues.

DOUG BUSSELMAN (Nevada Farm Bureau):
The Nevada Farm Bureau is concerned primarily about the potential of chronic wasting disease as the bill is currently written. We were involved last Session in removing Rocky Mountain Elk from the list of alternative livestock. We were also involved with the development of the section within the NRS that deals with alternative livestock. One possible suggestion to deal with the situation that prompted the bill to come before this Committee might be the idea of looking at the addition of the desert lobster to the alternative livestock section of the statute. Under that criterion, you would then have a responsible agency managing the creation of the kinds of mechanics that need to be put in place. That might be a solution to getting you where you want to go without having such far-flung and wide-ranging definitions currently in the bill.

DOUG MARTIN:
I am a 37-year resident of Nevada and graduated from the University of Nevada. I have worked in the area of conservation and environment my entire career. I am handing out a reprint of an article from the Rocky Mountain Elk Foundation (Exhibit P) regarding the connection between farm-raised animals, game animals, chronic wasting disease and other problems associated with that. It points out that Colorado took away the ability of the Department of Wildlife to regulate game animals being raised for human consumption and that now the State of Colorado is giving that authority back. I see a connection with this bill and raising animals that would be in conflict with our wildlife. I work for a conservation district and we are concerned about invasive species in the Lake Tahoe Basin. After listening today, I just want you to know that invasive species are a real concern and the Department of Wildlife should have at least a look at what may be an invasive species introduction.

SENATOR BEERS:
I do not know if the Committee has an appetite to look at putting the Australian Red Claw Crayfish in the alternative livestock provisions. I will check with Mr. Eddy to see if he has an interest in that possibility.

CHAIR RHOADS:
There being no further business before the Senate Committee on Natural Resources, we are adjourned at 5:46 p.m.

RESPECTFULLY SUBMITTED:

_____
Ardyss Johns,
Committee Secretary

APPROVED BY:

_____
Senator Dean A. Rhoads, Chair

DATE: _____