

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

**Seventy-Fifth Session
February 12, 2009**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:02 a.m. on Thursday, February 12, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Chair
Assemblyman David P. Bobzien, Vice Chair
Assemblyman Paul Aizley
Assemblyman Kelvin Atkinson
Assemblyman Chad Christensen
Assemblyman Jerry D. Claborn
Assemblyman Ed A. Goedhart
Assemblywoman April Mastroluca
Assemblyman Harvey J. Munford
Assemblywoman Peggy Pierce
Assemblyman James A. Settelmeyer
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Scott McKenna, Committee Counsel
Cynthia Carter, Committee Manager
Renee Ekleberry, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Randy Robison, North Las Vegas, representing City of Mesquite
Susan M. Holecheck, Mayor, City of Mesquite
Jason King, P.E., Acting State Engineer, Division of Water Resources,
State Department of Conservation and Natural Resources
Kim R. Wallin, CMA, CFM, CPA, State Controller, Office of the State
Controller
Catherine Cortez Masto, Attorney General, Office of the Attorney General
Kate Marshall, State Treasurer, Office of the State Treasurer

Chair Kirkpatrick:

[Roll taken.] I invite representatives of the City of Mesquite to make their presentation.

Randy Robison, North Las Vegas, representing City of Mesquite:

It is my privilege to represent the City of Mesquite before this body and other legislative bodies. I have the pleasure of introducing our Mayor, Susan Holecheck. You will find her to be very intelligent, very articulate, and very passionate about the City. Also present is our City Manager, Tim Hacker. He has been with the City since 2006. We were in pretty good hands before he arrived, and we are in great hands now. With that, I will turn it over to Mayor Holecheck.

Susan M. Holecheck, Mayor, City of Mesquite:

I come before you today and I thank you for the opportunity to be able to explain to you that I believe Mesquite to be at a crucial crossroad. I believe the City will need every economic tool currently available. We have a handout ([Exhibit C](#)) to acquaint you with our City.

The state demographer has indicated our 2008 population is 19,938. Regarding our current financial standing for the 2008-2009 fiscal year, our revenues are projected to be \$25.6 million; that includes transfers. Expenditures, including transfers, are expected to be \$25.2 million.

It is important for all of us to realize that 45 percent of our general fund supports public safety for the community. I hope we can always preserve that. It is very important to our quality of life.

I also believe Mesquite has been very careful and diligent with its budget. We probably are not facing the same constraints as some other cities. We feel it prudent to reduce our expenditures by 5.7 percent. This is because of these economic times, and, more importantly for Mesquite, a decline in visitor volume.

What I want to say to you today is, historically, Mesquite has always relied on tourism and visitors. As the mayor I wanted to diversify our economy. However, it was not able to be accomplished prior to our City suffering the layoff of 500 employees in December. To a town of 19,000 citizens, when a layoff of that magnitude occurs, it is staggering.

The important thing to convey is that Mesquite wants to grow. Our population is less than 30,000, we are located in a relatively rural area and unlike Pahrump, we have a very large part-time component as far as residents are concerned. This really presents economic challenges to Mesquite in luring and attracting businesses.

One major asset that has been of significant assistance to us in keeping Mesquite desirable is our Redevelopment Agency (RDA). There is sometimes a concern that projects serve all, that we do not create this vacuum of an "underserved" population. Examples of projects where we have used RDA funds are our Senior Center, rehabilitation of our old elementary school and gymnasium, and a community theatre project. It is very important to let you know the following two factors: Mesquite has always attempted to leverage the use of RDA funds with other sources, including private investments. Also, the City of Mesquite has not, to date, extended tax abatements or exemptions. The reality is that the City of Mesquite is on the verge of being able to benefit from this funding source.

If this governing body wishes to make slight alterations to preserve the integrity and intent of the RDA, I could not agree more. If, however, elimination or drastic changes are implemented, the loss of this valuable tool for rural cities, like Mesquite, will make us suffer.

Just within the last week, we have had a project presented to us. We have been working on it since December. The magnitude is great. It is the sale of 900 acres for recreational amenities. This will include 24 soccer fields, 20 ball fields, and 14 tennis courts. It has the potential to employ up to 1,000 people. It complements everything we have going on in Mesquite right now. It lends

itself to the visitor. It also gives our residents an opportunity to get other jobs in case there is a continual decline in tourism and visitor volume.

A project of this magnitude is probably not going to be possible, given our funding situations with banks and our current state of affairs, without something like Sales Tax Anticipation Revenue (STAR Bonds). This is not an RDA project per se, but I think STAR Bonds are also important to a small, rural community like Mesquite. This type of a project would want to avail itself of that opportunity.

I would like you to know that I thank you for your attention and your efforts to really balance today's needs with tomorrow's possibilities. I believe that rural communities face different difficulties than our larger cities. The tools that you offer us like the RDA Program or STAR bonds are invaluable. I assure you that transparency and accountability are paramount to us.

Chair Kirkpatrick:

Just to inform the Committee, yesterday I had a meeting with all the mayors throughout the state about changes to redevelopment, economic development, and STAR bonds. I have been passionately working on this for a year and a half since I got to experience green building. Everyone is nervous. My hearing is next week and they are all going to talk about it, so do not hold it against them.

There is one thing about Mesquite I would like you to talk about. I went to Mesquite for a few hours and got to see a bigger part of it. Please talk about your nexus to Clark County. Those that live in the north would not necessarily know. Also, please talk about your nexus to Lincoln County.

Susan Holecheck:

Mesquite is 87 miles north of Las Vegas. Our City abuts Lincoln County as well as Mojave County, Arizona. It makes an interesting play when you talk about the different jurisdictions and different issues that we have to work with.

Lincoln County is currently facing huge growth. Much of the infrastructure and traffic issues they are looking at will impact Mesquite, as well. They will be coming through Clark County from Lincoln County. Therefore we will all be trying to work together to assess and analyze the impact that will have on us. Being as far away as we are from Las Vegas, and also being perhaps 37 miles from St. George, Utah, causes additional difficulties.

I mentioned the part-time component of our population. I should make that a bit clearer. Mesquite loses approximately 5,000 to 7,000 people from about May through October of every year. We have a lot of active adults who choose

Mesquite as a second home. They spend only a certain amount of the year in Mesquite. That poses a large problem for businesses. When a business is trying to evaluate how quickly it will see a return on its investment, it must consider that shift.

Even though our population is 19,000, at other times during the year that may drop to 12,000. This is very, very difficult for businesses when they have benchmarks that trigger coming to cities when they reach a certain population.

Also, in today's world when you think about gas prices and everything else, it again affects the people in Mesquite who want services. While the day used to be when people would not have minded driving to Las Vegas or St. George, those days are probably over. With the cost of gas, they want those services and those businesses to be accessible to them within the community. Again, we are hungry and eager to bring those business opportunities to Mesquite. There are challenges.

Assemblyman Claborn:

Thank you, Ms. Holecheck, for coming in today. I am very involved with softball. How much of an effect will this funding check have on the annual softball tournaments in Mesquite? Has it already been felt? I knew they were a shot in the arm for needed funds in the past few years. Is this going to be felt really hard, and will you continue to have these tournaments?

Susan Holecheck:

I believe what we are seeing when we talk about the Desert Falls Project, which was outlined in our exhibit, is interest expressed by sponsors through letters of intent. Apparently, the sponsors, including such well-known names as Adidas, feel this is going to get better. I think the idea of people taking vacations to Europe or the Caribbean or Mexico is done. People may be opting for combining their vacations with watching their children and grandchildren participate in a sport.

I think you are going to see short visits. They can come to Mesquite and still play softball and soccer. I believe you will see an increase.

Assemblyman Claborn:

I am glad to hear that. When we have had softball tournaments in Mesquite, people come from all over the United States to play in these tournaments. Often, you cannot get a room there. If you do not get a room six months in advance, you sit by the fence and drive back and forth from Las Vegas. I am glad to hear this is a shot in the arm for the economy, and it is a good thing. I am glad it is. It is going to be a good thing for the City of Mesquite.

Chair Kirkpatrick:

I do not know if you have seen their fields recently, but they are something to see. With the new astro-turf they have there, they are really nice.

Assemblyman Ed Goedhart:

Obviously, the City of Mesquite is doing a lot of this correctly. I come from Nye County, and those from Pahrump admire what those in Mesquite have been able to do. You have done a remarkable job on developing your community.

Assemblywoman Spiegel:

Thank you for coming in and giving your presentation. We heard from Lincoln County the other day, and I was concerned to hear that in their hospital, 18 to 20 of their beds are taken up by people who are "living" there, using it as a long-term-care facility. Does the Mesa View Regional Hospital have people coming in from Lincoln County? Does that have an adverse effect on your ability to provide health-care services to residents of Mesquite?

Susan Holecheck:

I am surprised by that comment. Mesa View is a critical access hospital. The thought that people are staying there long-term would surprise me greatly. Patients must be transported to another facility within a short period of time.

Assemblywoman Spiegel:

May I clarify? It was the facility in Lincoln County that has 18 of its beds occupied. Apologies if my question was not in order. The underlying question is are you seeing an impact from Lincoln County's capacity issues?

Susan Holecheck:

No, to my knowledge, we are not. The hospital itself had some difficulties the first year it was open. There were insurance issues. I believe those have been resolved. We are seeing more Mesquite residents using the hospital. There are things that can be done that will help rural communities. I will give you some ideas. Perhaps hospitals could employ physicians. Many times the cost of physician malpractice insurance is very high. If hospitals were able to employ them, that might help carry the burden of paying malpractice insurance.

Unfortunately, that is not currently possible. I believe the Attorney General may revisit that issue. For rurals, that could be very important. Many doctors ask how fast they are going to be able to get a practice up and running. They are looking at exorbitant malpractice insurance fees.

Assemblyman Aizley:

You mentioned part-time workers, and you mentioned the population shift of 7,000 people. Are they linked together in any way? Is a part-time worker population necessarily bad for all the businesses? I am not advocating, but it does save on benefits when people are hiring on a part-time basis. Can you elaborate?

Susan Holecheck:

To clarify, when I speak about a part-time component, those are usually our active population. They are probably over 50 or 60 years of age. They, themselves, are not working. What happens is that they may own a second home, they come into the community only part of the year. They do want services. There are two distinct issues. We have people who live in Mesquite full-time. We want desperately to provide jobs for them. In fact, we would like to provide higher-paying jobs for them. Then there is the part-time component of the population. They are the residents, not workers, but the residents who are only there part-time. It really creates a quandary for businesses.

Those part-time residents tend to be the affluent people. They tend to be the people who are able to go into businesses and spend those dollars. So when they are gone for three to six months, it leaves a significant impact.

Chair Kirkpatrick:

This is just to give you a prime example, Mr. Aizley. There is a restaurant my husband likes because they have great ribs. It is called Playoffs and in the off months you cannot get a seat without waiting. They have a full-time staff. In other months, they are greeting you at the door to bring you in. There is not a lot of consistency for the workers. I would think they have to plan for the good times and save for the rest of the year. Is that right?

Susan Holecheck:

Yes, very much so.

Chair Kirkpatrick:

Does anyone else have any questions? Thank you for the reception you hosted yesterday. I am sure we will be in touch as we go through the session. Thank you. We will now call the State Engineer's Office. Mr. King, welcome to Government Affairs.

Jason King, P.E., Acting State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources:

Sitting next to me is Kelvin Hickenbottom. He is the Deputy State Engineer and we want to thank you for inviting us here this morning. We will be providing

you with a brief overview of our office ([Exhibit D](#)). I will cover our mission statement, division structure, Nevada water law statutes, a few basics regarding Nevada water law, duties of the office, some program issues, and potential legislative issues.

Chair Kirkpatrick:

Regarding the legislative issues, we do not talk about bill specifics because we like to have you back as many times as possible to talk to us.

Jason King:

The mission of the Division of Water Resources is to conserve, protect, manage, and enhance the state's water resources for Nevada's citizens through the appropriation and reallocation of the public waters. That is both ground water and surface water.

In terms of the division structure, we have four offices with the main office here in Carson City. We also have an office in Las Vegas, in Elko, and a one-man office in Winnemucca. Here in Carson City our office is divided into eight sections: water rights, surface water and adjudication, engineering and dam safety, hearings, hydrology section, titles in which we deal with water rights ownership, water planning and flood plain management, and an information technology section.

In terms of our revenue sources, you can see we are primarily a State General Fund agency. Over 90 percent of our revenue comes from the State General Fund. We receive 7 percent of our revenue from local government. That money is used to fund three mapping positions for the Truckee River. We receive a small amount of federal funding to implement flood plain management and dam safety operations.

The lion's share of expenditures is in cost for personnel salaries. The next category is in operations, and then a small amount is used to provide money for U.S. Geological Survey (USGS) gauging programs and to implement the federal programs. Those are flood plain management and dam safety programs.

Nevada water law can be found on page four of my exhibit ([Exhibit D](#)). I have also provided a pamphlet entitled "Nevada Water Law—An Overview" ([Exhibit E](#)).

The State Engineer is responsible for the appropriations of all ground and surface water in the state. We are responsible for the adjudication of those waters. The following information is for those who do not know what adjudication is. It is an administrative process used to determine priorities and

quantities of water for pre-statutory rights. It is a very long process that can take decades. Eventually, it goes before a court to get "blessed."

We are also responsible for the distribution and regulation of water. Our offices in Elko and Winnemucca are there primarily to distribute water for the Humboldt River.

We are responsible for dam safety and that includes the review of plans for dams proposed to be built in the state. We have over 600 dams within the state which surprises a lot of people since we do not have a whole lot of water. We are also responsible for inspecting those dams including low, significant, and high-hazard dams.

We are responsible for well drilling and well construction. We license all the well drillers in the state. Water planning and flood plain management are under the purview of the State Engineer. We also have signatory authority over all subdivisions within the state. I should say that when you hear me talk about the State Engineer's Office and the Division of Water Resources that is one and the same.

I am going to go through a few basics of water law. Nevada prescribes to the prior appropriation doctrine—"first in time, first in right." "Beneficial use" is the limit and the extent of the water right. Then "use it or lose it." You may have heard some of those phrases. Water rights can be lost. One gets a permit for a water right. Water rights can be cancelled. Water rights can be forfeited. Water rights can be abandoned.

Who owns the water in the state? All sources of water within the boundaries of our state, whether above or beneath the ground surface, belong to the public. However, the use of the water is a property right and can be sold by one party to another. People ask, if citizens own the water, how can it be bought and sold? It is the use of the water that is considered a property right. As such, it can be sold.

Regarding the appropriation process, all manners of use within the state, except for domestic wells, require a permit from our Office. If one owns a piece of property not located within the service area of a municipality, the property owner has the right to drill a domestic well to provide up to two acre feet per year of water to his home. Any other manner of use requires a permit from our Office.

Regarding the application process, one must file an application including a supporting map that goes with it and pay the fee. It goes to a "map table"

review where we check for completeness. After that review, the application is sent for publication. It is published for four continuous weeks in the newspaper of general circulation where the point of diversion is located. After being published for four weeks, there is a 30-day protest period. During that time anyone can come forward and file a protest. After the protest period, it becomes ready for action. That is when it is brought before the State Engineer and we decide whether we should approve or deny that application.

In many cases, a hearing has to be conducted to weigh evidence of a protestant. Then a decision is rendered.

The following is some information regarding the number of applications being filed. We have from 1,400 to 1,800 applications filed with the State Engineer annually. Approximately, 70 percent to 75 percent of those applications are change applications. They are changes of existing rights. That is being done because, in basins where people are using the water, the water is fully appropriated, and therefore, we are not issuing new appropriations. Water is being sold and changing hands.

When the application is ready for action, the State Engineer uses four criteria to decide whether or not to approve that application. First, is there unappropriated water at the source? Is there water available? Will it conflict with existing rights? Does the use of the water prove detrimental to public interest? That is a real wild card right there. We could talk about "public interest" for a long time. The fourth criteria: does the application conflict with existing domestic wells?

In 1993 and 1995, the Legislature added the "anti-speculation" criteria. In addition to the four criteria I just mentioned, we also must look at whether or not the applicant can show "good faith" to construct the works necessary to put the water to beneficial use. We also look to see that the applicant has the financial ability to construct the project and apply the water to beneficial use.

Interbasin transfer is always a hot topic. For those of you who do not know what an interbasin transfer is, I could first preface it by saying that the State of Nevada is divided into 256 hydrographic basins. Interbasin transfer occurs when an applicant files an application to divert water in one of those 256 basins and use it in another basin. That is an interbasin transfer. Often people do not understand that concept. Some people think that one can buy or apply for a water right in Carson Valley and then move it to Tonopah, and just pump it out in Tonopah. No, the water has to be diverted in Carson Valley and one must put it in a pipeline or a baggie or whatever and take it to Tonopah. I do not want you to simply think that you can change points of diversion all over the state.

Another thing I want to make clear is that interbasin transfer gets a lot of attention though it is nothing new. The first interbasin transfer occurred in 1873. We have had probably over two dozen interbasin transfers since then. It is not new in Nevada. It is not new in the western states. It has a long history in the western United States in terms of bringing water to the people.

With interbasin transfers, there is an additional criterion that was added in the 1999 Legislative Session that the State Engineer must consider before approving or denying an interbasin transfer. That criteria is that the applicant has justified the need to import the water from another basin. If he does not need to import it, then we question why he is proposing to do that. Is there a conservation plan in effect in the basin where the water will be imported? Is the proposed action environmentally sound? Again, we could spend another three weeks talking about what does "environmentally sound" mean. However, those are the criteria.

We also have to leave enough water for future economic growth in the basin where the water is being exported. This is another difficult question. Lastly, our favorite one, any other factor determined to be relevant.

Next, I will review water resources program issues. Both Kelvin and I are very proud that over the past five years, we have made great strides in reducing the backlog of pending applications and water right ownership within the division. About five years ago, we had a backlog of approximately 4,000 applications. Now we are down to just slightly over 2,000. I cannot tell you how proud we are of our staff and how much work they do.

As I mentioned earlier, we have to conduct hearings on protested applications. As all of you know, water is being litigated more and more. Therefore we have to hold many more hearings. In some cases these hearings can last up to three weeks.

We are continuing to expand our website through linking our permits, certificates, well logs, and maps to their scanned images. We are receiving nothing but positive feedback from the general public. They no longer have to come into the office to get copies of things. They can get all that information online. I encourage you, if you are interested in water resources and want to know more about what we do, to go to our website. You will find there is a wealth of knowledge there.

As many of you remember from the last session, Senate Bill No. 274 of the 74th Session was passed which gave Water Resources statutory language to adopt regulations to assess fines and penalties for violations of Nevada's water

laws. We have done that during calendar year 2008. We held 13 workshops. We have had a number of draft regulations tweaked as a result of the workshops. We adopted them and have submitted them to the Legislative Counsel Bureau (LCB) for codification. Beginning in July of this year, those regulations will go into effect.

I would like to expand on that briefly. What that law allows us to do is to assess monetary fines up to \$10,000 per day, per violation. We can require the replacement of water illegally taken or wasted. We can also require reimbursement of our expenses in going after those enforcements.

When we conducted these workshops, we used a PowerPoint presentation and we were very clear that the goal of these regulations was to achieve compliance with all water law within a framework that minimizes enforcement. We told everyone we hope we never have to collect one dollar in fines. All we are after is compliance of water law. I think you and your constituents are going to find out that, as long as they are working towards compliance, they are not going to have an issue at all with these regulations.

The regulations also assure that if we do have to assess administrative penalties, it will be done lawfully, fairly, and consistently.

I will now review water related issues. Again, it is not extremely detailed. We have already seen some language on inventorying the water resources before interbasin transfers can occur. There is also funding for additional hydrologic studies, forfeiture language clarification, cost of bonds for stays of State Engineer decisions, and interbasin transfers. Again, that is the hot topic. Then there are extensions of time. There is a bill related to that.

In any case, that is a brief overview of the Division and we would be happy to answer any questions.

Chair Kirkpatrick:

You can ask anyone on this Committee how much an acre-foot is because they studied it the first week of session. [Laughter].

Assemblyman Ed Goedhart:

I have heard a lot of good things about you. I hear you will do a great job as the acting State Engineer. I am from Amargosa Valley, and we have had some fun over there over the years with the Division of Water Resources and the State Engineer's Office. One of my concerns is that over the years, there seem to be many cases where they have tried to enact a forfeiture proceeding against land owners in the Valley. Years ago, the land owners did not have the money

to fight them. Recently, people have been able to mount the monetary resources for defense.

Last week, in the Nevada Supreme Court, the Division had taken a pass at the district court level and went to the Supreme Court level, against the Lee Morris Family Trust. That was another case where you lost. In Amargosa Valley, we have only a handful of folks. I know you folks have been overruled several times in district court and numerous times in the Supreme Court.

In light of diminished funding in all of our state agencies, it seems distressful to me that we have to waste precious resources of manpower and time to try to prosecute forfeitures that have been overruled in both district court and the Nevada Supreme Court. Thank you.

Jason King:

First of all, thank you for your kind words, Mr. Goedhart. You can go back through time and look at our rulings related to forfeiture and you will find the statement that the State Engineer abhors forfeiture. It is not something we like to do. It is something that is in statute. It is something that is required of us. Again, as I talked about earlier, "use it or lose it" is a way that water rights can be lost. Some would argue that if those mechanisms were not in place, then what would prevent someone from just holding on to a water right forever? They could keep it until such time that it is a good time to get rid of it. I understand what you are saying about forfeiture. It is something that is in our water law. It is something that we have to do. Again, it is something we have lost on and something we have won on.

Assemblyman Ed Goedhart:

I beg that, looking into the future, you please make sure it falls within the state statutes. The district courts and the Supreme Court have ruled that those forfeitures brought forth by the Division of Water Resources did not fall legally within the scope of the law. We realize there is that law of forfeiture out there. Since you folks have been ruled against numerous times in one little valley, I would beg you to carefully process your backlog of change order applications. Sometimes we do not have unlimited resources and I would encourage you to first process the backorders before you start trying to take away water from the folks who have been ruled against in the Nevada District Courts and the Nevada Supreme Court. Thank you.

Assemblyman Aizley:

Would you clarify the term "domestic use"? It sounds to me like anyone who owns a home and a backyard can dig a well in the backyard. I did not think that was possible.

Jason King:

Mr. Aizley, they can dig a well if that residence is not in a service area. In other words, they cannot be provided with water by Las Vegas Valley Water District. If the residence is where it cannot get water service, that house does have the ability to have a domestic well to serve it.

Assemblyman Bobzien:

I have two questions. I respect if you do not want to go too far afield with your answers. I expect a constrained response, frankly. My first question is about the other criteria to determine interbasin transfers. What are some examples of what the possible criteria would be? Perhaps you could reference the Spring Valley decision. Did that come into play? My second question is would you provide an overview of how the public-interest piece plays out in Nevada? Perhaps you can give some examples of where the State Engineer has accepted or denied an application based on a public-interest point.

Jason King:

Mr. Bobzien, this is way too early in the morning to be answering those questions. The following is regarding other relevant criteria in interbasin transfer. In those hearings, everything gets thrown at our panel—things that have nothing to do with water law, things that have nothing to do with our purview. We take it all into the record and give it whatever weight we believe it deserves. It is so broad. People just bring everything. I am not sure I answered your question very well on that.

In terms of public interest, we have been clear that it is public interest as defined within Nevada water law. There are many state and county agencies that have different regulatory authority over air, for example. That is not under our purview. Our public interest simply deals with the use of water. Again, we would have people come to a hearing and remark that it is not in the public interest to have a pig farm here because of the smell. For that reason, they believe it is not in the public interest to issue that water right. We would tell them that their reasoning is outside of our purview. Our responsibility is determining the use of the water. Probably, in our three or four major rulings regarding interbasin transfers, we have defined how we view public interest.

Assemblyman Bobzien:

This is a follow-up to the first question. Referencing the Spring Valley decision, where there are pages upon pages upon pages of protests against the applicant, we knocked down every single point as not being relevant to the application. Are there times where you have ruled in the affirmative and proclaimed that the applicant may have had a pretty interesting point that should have been

considered? Is there an example that you can cite where you did make use of that?

Chair Kirkpatrick:

Mr. King, I am going to let you off the hook a little bit. You can get that information to the Committee at a later time. It is probably buried in many cases you have to go through. I have had several conversations with you, though, and I have never met you. I know you have been pretty fair about the way the process works. I think if you could, please, just get us that information.

Jason King:

Thank you, Madame Chair and Mr. Bobzien. I am not trying to be elusive. It is simply escaping me right now, but I will certainly locate some of those citations.

Assemblyman Munford:

I would like you to answer a few questions that apply to me personally. It may help the rest of the Committee. I was once on a domestic community well. You used the phrase "if you do not use it, you lose it." I believe I fell into that category. The well began to have mechanical problems. It was breaking down all the time. The other members of the community and I decided to convert to city water. There was a five year window that if I wanted to retain my well, participation or rights, I could have done so. I did not do that and, I guess, I lost those rights. You said something in your presentation about compensation when you had well rights. Am I entitled to any compensation? It has been a number of years. Are those rights sold or given to someone else to have a well?

Jason King:

If I may, Mr. Munford, could I ask where your community well was?

Assemblyman Munford:

It was in Las Vegas. I have spoken with the Las Vegas Valley Water District about it. They were telling me all kinds of things, but you are the man.
[Laughter]

Chair Kirkpatrick:

Mr. Munford, I am sure Mr. King would let you come over to his office and you could look up directly where you lived and he could help you out.

Assemblyman Munford:

Someone might hear this and have a personal question; that is why I asked if I was entitled to compensation for those rights I once had. That is the bottom line.

Jason King:

Mr. Munford, I am going to assume you were on a community well with a water right that was considered a "revocable water right." That could be wrong, but typically, that is the case in Las Vegas. The whole idea is once a water line reaches your property, you have to hook up to that water line and then that water right would go away. We would revoke it. Unfortunately, you are not entitled to compensation for that revocable right.

Chair Kirkpatrick:

Mr. Munford, I bet Mr. King could tell you the differences between the nonrevocable and the revocable rights. I think it is very clear with the well owners, especially in Las Vegas, because there are so few of them. They have their "well master," the person in charge of the well, who is very informed on the process of getting compensation. I know I have several well owners in my district and we have had several meetings on how it works. They know the difference between revocable and nonrevocable rights. I am sure there is a "white paper" he can provide to you.

Assemblywoman Pierce:

This is a question that is the opposite of Mr. Bobzien's question. This question is very broad. How similar or different is our water law compared to other states? Are most states similar or are there 50 entirely different ideas on water use in the country?

Jason King:

I would say our water law is very similar to most western states. It is not similar at all to the eastern United States. Our ground water law, in my opinion, is the best in the western United States. A lot of states come to us and ask how we regulate 256 hydrographic basins. That completely blows other western states away. We do not have a lot of surface water. In looking at our statutes versus Wyoming, Colorado, Arizona, Idaho, and Montana, there is lots of overlap in water law.

California is a completely different state. They do not have ground water law. They prescribe to the riparian doctrine. Our law is very similar to western states.

Assemblyman Settlemeyer:

I appreciate your comments dealing with interbasin transfers. I think it is always important, though, to point out the simple fact that you are in a difficult situation. You have to do what is best for the entire State of Nevada and not one particular community. Some communities limit growth to such a point that what occurs is the State Engineers cannot beneficially use their water in the foreseeable future. Yet, down the stream, they need that water today. That is one of the important things to point out. In regard to forfeitures and abandonments, why are municipalities exempt from forfeiture rights?

Jason King:

They are not exempt from forfeiture. Surface water rights are exempt from forfeiture; however, you can abandon surface water rights. Municipalities have the same requirements put on them. You can forfeit water rights. I will add that in Utah, in their past legislative session, they passed a law that basically says you cannot forfeit municipal rights; however, you can here in Nevada.

Chair Kirkpatrick:

Do the municipalities know that? I am asking because I think they told us something different.

Jason King:

They sure do. It is good to have it on the record.

Assemblyman Settlemeyer:

When was the last time one was forfeited?

Jason King:

I cannot remember. I am not even sure that it has occurred, to be honest with you. That does not mean that it cannot happen.

Assemblyman Claborn:

I have not heard the words "beneficial use" today. Could you explain the seven words to the Committee that go something like: "if you do not use it, you lose it"?

Jason King:

The foundation of Nevada water law is based on beneficial use. It is the limit and the extent of the right. Briefly, you file for a water right. You make an application and if it is approved, you get a permit. You put the water to beneficial use, and then you get a certificate. If you do not put that water into beneficial use, then that water right can be cancelled. The whole idea is that if

one is not using it, the right should be freed up for the next person in line who can use it.

Assemblyman Claborn:

So the old theory always applies: If you don't use it, you lose it. That is what I have been taught for many years.

Assemblywoman Spiegel:

As a freshman, I am attempting to understand all of this. Could you please explain how your division interacts with the various water authorities? What are the relationships? What is pertinent to understand?

Jason King:

Whether it is a farmer out in the middle of Nevada or a water authority, they are an applicant for a water right. Because of the sheer number of permits a water authority is dealing with, we deal with them more frequently. However, they are simply another water user to us. They still have to report their pumping. They are still under our statutory and regulatory authority.

Many of the projects they are proposing are contentious. We are more likely to be holding hearings over their water rights than over an individual's water rights. We have good relationships with the water authorities in southern Nevada and the Truckee Meadows.

Assemblyman Stewart:

We have a lot of terms such as "environmentally sound," "public interest," and so forth. Would you support efforts to better define some of those terms in the water regulations?

Chair Kirkpatrick:

I cannot help you on that one. You are on your own. [Laughter]

Jason King:

Yes. I believe we would.

Assemblyman Ed Goedhart:

We have some unusual circumstances. Sometimes it is the law of unintended consequences. For example, in the south end of Nye County in Pahrump, people are pumping water. This is a basin that we all know is in somewhat of an overdraft situation. Permitted water rights exceed the annual or perennial yield. Yet still, in that basin, they are required to use it or lose it. I have been approached by people over the years that are pumping that water for nothing. They are pumping out millions of gallons of water, and they are paying the

power bill, just so they can show "beneficial" use. What that does is exacerbate the overdraw in the basin.

I think there may be some appetite for the state to look at conservation in the future. At the request of the local governing body, the Division of Water Resources would be able to suspend pumping in a basin where there are already permitted water rights in excess of the annual perennial yield and the actual pumping is over the perennial yield. Right now we have people who are wasting power, wasting energy, and wasting water just so they will not lose their water rights.

In some cases, folks from the southern Nevada office come out and tell them they did not pump enough and they want them to grow another crop this year. Then they are pumping almost 12 months out of the year just to lock in their water rights. We are wasting water. We are wasting energy. It seems counterproductive. That might be something to look at in the future.

Jason King:

With all due respect, Mr. Goedhart, if they are out there pumping water just to "prove up," and not growing a crop for some economic benefit, we do not want that. We want them to put the water to beneficial use.

Assemblyman Ed Goedhart:

That is exactly what is happening, to the tune of hundreds of millions of gallons of water per year. I have people calling me all the time from Pahrump asking me if I can get a tractor out there, can I disk the field, can you rent me some irrigation equipment. Do not put any fertilizer on it. I just have to show that I have that many gallons of water used. It is happening to the tune of thousands of acre-feet a year. I wanted to let you know about that.

Jason King:

Thank you.

Chair Kirkpatrick:

Are there any other questions? Mr. King, since this Committee has worked with you and Mr. Taylor, who we hope has a speedy recovery, I believe the dialogue has gotten a lot better. I appreciate that. I know we cannot always control everything our employees do, but I think you have created an open-door situation that everyone in the Legislature feels comfortable with. Nevadans benefit all day.

Please get that answer to us by next week.

Kim R. Wallin, CMA, CFM, CPA, State Controller, Office of the State Controller:
Thank you for allowing me the opportunity to be before you today and to talk a little bit about what the Controller does. I know we have some new members. Often the Controller is the least known office in the state, yet it is a very critical one. I brought in a report, "The State of Nevada—A Report to Our Citizens, for the fiscal year ending June 30, 2008." ([Exhibit F](#))

Before we begin, I would like to introduce some of my critical staff here today. With me are my Chief Deputy, Karen Hoppe; my Assistant Controller, Mark Taylor; my Information Technology (IT) Manager, Alex Echo; and my Accountant III in charge of debt collection, Haydee Meeker. Next to her is Janet Prowse, Chief Accountant of Operations, and then, my right hand who helps me a lot in my office, my Administrative Assistant, Michelle Mann. I saved this one for last: I have my Comprehensive Annual Financial Report (CAFR) Accountant II, Brenda Laird. She is in charge of the financial reporting operation. Under her supervision, we continue to receive Awards of Excellence for our CAFR and for our Popular Annual Financial Report (PAFR). Kudos to her, her team, and the whole office. It is a team effort to do that.

We have distributed copies of our four-page PAFR report, which we also call our citizencentric report. It used to be 27 pages long and people's eyes would glaze over reading it so we made it simpler. It addresses our mission, our vision, and where we would like to be. It also addresses where we have had some progress and performance measures. As we begin to have more meaningful performance measures in the state, we will be adding that. There is also a quick "snapshot" where we stand—where we get money, what sources of revenue we take in, what percentage and dollar amounts. We also show where we spend our money, both in a graph form and the dollar amounts.

We also address our challenges. We all know what our challenges are. We have added something new this year, a section about our intergovernmental dependency. What that shows is how critical our relationship is with the federal government and the funds we receive from the federal government. It shows the impact that it would have if the fiscal stability of the federal government declines more than it already has.

For the people that are new here, I will give you a little bit of information about me. I am the first Certified Public Accountant (CPA) to be elected to this office in 50 years. I am the first Certified Management Accountant (CMA) to ever be elected to this office. I come from a public accounting background. In my practice, I helped my clients to operate more efficiently and more profitably in their businesses and, of course, stay out of Internal Revenue Service (IRS) trouble as well.

New this year is the mission statement of the Controller's Office. Our mission is to advance accountability, continuity, and efficiency in the state's financial operations. That is ACES for short. I think it is very important to have a person in this office who has an accounting and finance background. The Controller is the Chief Fiscal Officer of the State (CFO). We administer the state's accounting system which is often referred to as the IFS. That stands for Integrated Financial System. We prepare the annual financial statement; we oversee the annual audit; we settle all claims made against the state; we are responsible for collecting all debts owed to the state. We are also charged with looking for waste and inefficiency. We have been doing this internally and we plan to expand out to external agencies as well. My CAFR accountants are going to act as consultants to those agencies to help them look for areas where they may save some money.

"Why do you do it this way?" is what I ask my staff. They know it is the wrong answer if the response is, "That is the way we have always done it." As a result, we have actually changed many processes and how we operate. We have created many efficiencies. In fact, one of the new employees, a recent hire in the Debt Collection and Deposit area, came to her supervisor and reported that she photocopied a huge stack of papers to send to agencies to supply them backup documentation for their deposits. She suggested scanning them instead which takes less time. They are then emailed to the agencies. We have cut down on paper and time. The agencies love it because now they can easily find the documentation when it is on the computer instead of digging through boxes of papers. Many agencies were already scanning as well, and that is one of the many things we constantly do in our office.

This year, we added a new performance measure in our office. We track the dollars saved by having state employees do our programming instead of sending it to outside contractors. We estimate our office saves \$400,000 per year because of in-house programming. For example, if you take one programmer who makes about \$85,000 per year including benefits, and compare that with what an outside contractor would cost according to the Department of Information Technology (DoIT) schedule, the least expensive outside contractor I could hire would be \$125,000 per year. That could go all the way up to \$250,000 per year. You can see there is considerable cost savings, plus, having it in-house means we can get it done when we need it done. We do not have to wait for the contractor to get around to doing it.

Another example of our effort to create efficiencies in our state operations is working with various agencies to establish standardized grant reporting. This will allow us to use an eXtensible Business Reporting Language (XBRL) solution that Deloitte & Touche and UBmatrix created for the Nevada Department of

Agriculture. This was done at no cost and this was for grant reporting. What had been taking the grant person in the Department of Agriculture two weeks to do now takes him one day. As soon as we automate the process on our end, that time will be down to one hour, enabling him to have real-time information. He will not have to wait six weeks to get the needed information.

Every agency in the state experiences the same thing the Department of Agriculture has been experiencing as far as grant reporting is concerned. We are working to use this technology throughout the state. If we can cut down on the administrative paperwork the agencies are required to do, we can free up some resources to improve services to our citizens.

The major issue facing this office is in the debt collection area. We are collecting only about 11 percent of our debt. That is what is turned over to us each year. We receive about \$7 million in debt from state agencies. We do not collect debt for Taxation, Gaming, or the Department of Training and Rehabilitation Services (DETR). A major reason we collect so little of this debt is the age of the debt. The average age of the debt turned over to us is 486 days.

If we take the Department of Motor Vehicles out of this debt collection, which turns over much younger debt, the average age then goes up to 722 days. You can see on the chart published by credit reporting agencies that the percentage of debt one can expect to collect at a certain period of time depends on the age of the debt. Once the debt gets over one or two years old, collection goes down to less than 10 percent and that is why our debt collection efforts are not good.

I am not going to go into a lot of details because I am going to be before you regarding Assembly Bill 87 in a few weeks. That bill will help us get the debt turned over to the Controller's Office quicker. It will make it mandatory for agencies to turn debt over at 60 days unless the Controller deems otherwise. We need to collect monies owed to us. We currently have about \$41 million in our office we are trying to collect. Some of the debt turned over to us is very old; some debt is over 5,000 days old. We call that "The Mile High Debt Club." We have to have some humor in our office, right?

During last session, some of you may remember, I talked to you about having a geographically disbursed disaster recovery system in the state. I am happy to report that the Legislature did fund it for our office. The system is up and running in Las Vegas. We have had several tests with it and it has worked great. Kudos to my Information Technology (IT) Department who came in \$138,000 under budget. We can rest assured our state accounting system is

safe and sound in the event a disaster happens here. That is basically what I wanted to cover with you and I am now open to questions.

Assemblyman Stewart:

I had the privilege of flying back to Las Vegas next to Ms. Wallin last week. Dr. Hardy and I chatted with her the whole time and I would like to say she is doing some great, innovative things and she is a real credit to our state. I put her on my "Favorite Democrat List."

Kim Wallin:

Thank you, Assemblyman Stewart.

Chair Kirkpatrick:

I was just thinking. Did you include all the others on the Committee as well or just Ms. Wallin?

Kim Wallin:

You have to sit in the middle seat between him and Dr. Hardy!

Chair Kirkpatrick:

Are there any questions? I have one question. What are some things we did last session that helped you do better? I think it is crazy we have to pass a law to get state departments to turn over their debts. If it was in their regular personal checkbook, or they got their power shut off, of course they would pay their bills. Are there any other tools we can give you? It seems like two years is a long time to wait to make it work. Also, how long does it take from legislation being passed until it is enacted?

Kim Wallin:

Last session the biggest thing the state did to help us was disaster recovery, which was very critical. We asked for pay upgrades for my CAFR accountants and we got final approval from Personnel in December. That took two years. My staff was very happy to get those checks. It takes CAFR accountants a long time to get to the skill level they are. They are a critical piece of the state's operation and we do not want to lose them to outside public firms where they can make considerably more. That was very beneficial and it helps to keep the integrity of the state. If we did not have a full complement of the CAFR staff accountants, it could impact our state's Annual Financial Report. That could result in having an adverse opinion which results in our bond rating being degraded. That was probably the biggest thing they did last session that helped us.

The bill that designated the Controller's Office responsible for collecting debt helped. That statute states the Controller is responsible for collecting all debt in the state. Chapter 353C of *Nevada Revised Statutes* (NRS) states that we can collect all this debt except for DETR, Gaming, and Taxation. Then they put in the bill that agencies can send their debt to the Controller's Office if they want to. There is a disconnect there. I think that disconnect is what has impacted why agencies do not turn debt over. It is not something they get around to doing.

Also, it says before they can turn it over to my office they have to send certified letters out to the last known address. Many times agencies do not have the resources to find people; we have that capability in my office. Part of that bill will take away that requirement; all they have to do is turn it over. Some agencies say, "Great! How soon can I turn it over to you? Can you just bill the people from the very beginning?" We cannot quite do that.

There is another thing I noticed the LCB is doing now. Last session there were a few laws enacted that contradicted generally accepted accounting principles. In our statute, if a law contradicts generally accepted accounting principles, I can disregard the NRS and simply follow the generally accepted accounting principles. We now have a dialog with the LCB to discuss questions that arise regarding accounting principles to make sure we are doing things right this time. It is a good thing we are talking before the bill is written.

Assemblyman Settlemeyer:

There is one thing that concerns me. I appreciated last time when you came in and gave the presentation about "unclaimed property." It is kind of humorous how many of our legislators actually have family members and so forth that had...

Chair Kirkpatrick:

Mr. Settlemeyer, Ms. Marshall is the one that brings big checks to Ways and Means, not Ms. Wallin. I do not know if she brought any today. [Laughter]

Assemblyman Settlemeyer:

Okay. Wrong person, sorry about that.

Kim Wallin:

It happens all the time. I control the money and Kate Marshall gives out the money to you.

Chair Kirkpatrick:

Are there any other questions? Thank you very much. We appreciate your taking the time to come over and share with us and we will see you in a few weeks. Good morning, Ms. Masto.

Catherine Cortez Masto, Attorney General, Office of the Attorney General:

Thank you for the opportunity to provide a brief overview of the Attorney General's Office ([Exhibit G](#)). The information I will provide is at a thousand foot level. There is no doubt that at some point in time, your constituents will come in contact with some agency, board, or commission I sit on or represent, or some business we may be investigating for defrauding consumers. They may come in contact with us.

In general, my duties are set by the State Constitution and they are statutory. I am considered the "top cop" or top law enforcement officer of the state. Fundamentally what we strive to do is to ensure we are protecting all the state's agencies, boards, and commissions we represent, but we also have other statutory duties. We are responsible for protecting the consumers I just spoke about and other criminal priorities we take into account.

There are over 350 employees in my office. We have about 148 attorneys and 48 investigators. The remaining employees are support staff. My office is unique, however. Usually in law enforcement there are investigatory agencies, such as metropolitan police departments and the sheriffs. They conduct their own investigations. It is a separate agency from the local district attorney and prosecutors. My office is unique because they are all under one umbrella. This is typical for attorney general offices throughout the country.

For that reason, we handle criminal and civil cases in addition to the representations. When cases come into my office, I have to put up what we refer to as a "Chinese wall"—a legal term. That is put in place to protect the integrity of each type of case. It could be a civil or a criminal case or we may be representing an agency. For example, there is the endoscopy case that occurred. It touched my office in three areas where I had to build a "Chinese wall." We represent the state agency—the Bureau of Licensure who oversees these types of agencies. My attorneys representing the Bureau of Licensure and their activities had to be kept separate from the Medicaid Fraud Control Unit. They would come in and look at the Medicaid fraud side of that type of activity. That is an example of a "Chinese wall" put up to keep everyone separate. In that case, we also had the Bureau of Consumer Protection that came in to determine where the consumer had not been protected. They were looking where we could place provisions to protect the consumer.

Those were the three areas for which we had to build a "Chinese wall." The attorneys could not talk to one another. The investigators could not talk to one another. We have to protect the integrity of those separate investigations and/or civil investigations and prosecutions as they occur.

My office is broken down into five bureaus. They are Bureau of Government Affairs, Bureau of Public Affairs, Bureau of Criminal Justice, Bureau of Consumer Protection, and the administrative staff. The Bureau of Government Affairs is made up of separate divisions; one is the Gaming Division. We have five gaming attorneys. They represent the Gaming Control Board and the Gaming Commission. They also have recently taken on the Public Employees' Benefit Program (PEBP) as a client. Under that bureau is the Department of Transportation or the Transportation Division. There are several attorneys, investigators, and support staff who represent the Department of Transportation and the State Public Works Board. We have a corporate public works counsel that represents the Public Works Board as well as another deputy attorney general. Additionally, within that Bureau is Government and Natural Resources. You recently heard from one of them testifying for the Division of Environmental Protection. We also have the Department of Wildlife. We represent all our constitutional officers. The attorneys in that division represent our officers, and they represent the Public Employees' Retirement System (PERS) to name a few.

We have the Bureau of Public Affairs. This really is the bulk of the attorneys who represent all the state agencies, boards, and commissions. This is where you will see Business and Licensing; this is where we provide that representation. Public Safety is also where we represent the Department of Motor Vehicles (DMV), Department of Public Safety, and Department of Corrections. That division also handles complex litigation for inmate civil-rights actions, tort claim actions, Title VII actions, Americans with Disabilities Act (ADA) actions, and employment cases.

Another big division is a separate stand-alone department. It is the Health and Human Services Division. There are a number of attorneys representing that division alone in the Medicaid, Welfare, Child and Family Services, Aging Services, and Mental Health areas.

Next you can see the agencies, boards, and commissions we represent. We represent over 98 agencies. There are over 111 boards and commissions we represent; there are some boards and commissions we do not represent. In the statute, we are required to represent boards and commissions in all state agencies unless there is a specific provision that exempts them. These boards and commissions have a specific provision exempting them from having representation by my office. To put it in perspective, every time the Legislature

creates a new board or commission, unless they give me an attorney to represent them, existing resources must be allocated. That board or commission is added for us to represent. My concern is we are stretching our staff thin to have them represent these additional boards and commissions. Usually the board or commission wants to have their attorneys present so their attorneys have to be present and sit during hearings. They are there representing them however long the hearing may take. That takes their time away from the other work they are responsible for that they could be working on.

Next is the Bureau of Criminal Justice. In this Bureau, there are four divisions. The first Division is Special Prosecutions. This is where we have all of our federal habeas corpus actions. Those are all of the appeals. When an inmate in the State of Nevada appeals his conviction, we handle the appeal before the Ninth Circuit Court, before the Nevada Supreme Court and, sometimes, before the United States Supreme Court. I have a division used for writing briefs and arguing oral arguments before appellate courts in the state and the country. We also have a Public Integrity Unit. I have jurisdiction to investigate and prosecute any crime committed by a state official. That is handled in our Public Integrity Unit. Another unit is Elder Exploitation. This was created last session with the help of Assemblywoman Kathy McClain. This gives my office secondary jurisdiction to investigate and prosecute any type of elder abuse, neglect, and exploitation. Unfortunately, at that time, there was not enough funding to give us an attorney and the investigator to prosecute, so we had to use existing staff. Therefore, I have an existing attorney and investigator looking into these types of cases. They work with local district attorneys who have the primary jurisdiction to work on those cases. Another unit is Mortgage Lending Fraud. This unit was recently created as a result of the mortgage lending issues we are seeing in our state. I pulled together three attorneys; one from our Bureau of Consumer Protection, one from the Civil Division, and one criminal attorney. The criminal attorney heads this unit. We have two investigators assigned out of the Bureau of Consumer Protection (BCP) to support this unit. Needless to say, the criminal investigator and the other attorneys have been very busy. There is a lot of this type of crime going around in this state. We not only have our own unit that keeps us busy, we are also participating on the federal Mortgage Fraud Task Force. That is made up of the Federal Bureau of Investigation (FBI), the United States Attorney's Office, and some other federal peers we work with as well.

In our special prosecutions, we also have the Securities Fraud Unit where we investigate and prosecute securities fraud. We also work closely with the Secretary of State's Office to investigate security fraud cases. Our Missing and Exploited Children and our child advocate are in this division as well. We have

just created the tri-county prosecutor out of a STOP grant. [Explanation of STOP grants: STOP (Services-Training-Officers-Prosecutors) Violence Against Women Formula Grant Program; a federally funded program.] This is a pilot project where we have hired a prosecutor to prosecute cases in three counties: Lincoln, White Pine, and Eureka. We work with the district attorneys there to prosecute for any type of violence against women. That includes those crimes where there is sexual assault or violence against women. This is the first time we have been able to do this and work with those prosecutors. Within that division is the Medicaid Fraud Unit, Worker's Compensation Unit, and the Insurance Fraud Unit.

Next, I will address the Bureau of Consumer Protection. The main goal, obviously, is to protect consumers. When I talk about the Attorney General's Office, we do not represent single individuals as an attorney would. Particularly in the Consumer Protection Unit, we look for patterns and practices of fraud that occur by businesses. We then investigate, prosecute, and take action against those businesses. One of the components in that division is Consumer Fraud Protection. The other, which I am sure you are aware, is the Consumer Advocate. That is our utilities advocacy. We represent the interests of customers of Nevada's regulated public utilities. Eric Witkoski does an incredible job as a consumer advocate for the state.

We have an Anti-trust and Unfair Competition Division. My office was involved in the United Health-Sierra Health merger. That is the type of activity that unit would be investigating. Most important is the Consumer Education Division. This division also provides education to consumers to protect themselves from several things including identity theft and senior exploitation. This is an area where the consumer needs to be aware of what is happening so they can prevent the type of fraud that occurs against them. We make sure we get the pamphlets out there; we go out and talk with them; we are presenting at many events; we do rural road trips. We go throughout the state talking to individuals. We will make a presentation to anyone who will come to listen to us. We have literally made presentations where there were more of my deputies and staff in a room than there were individuals or consumers. We are happy to do that in any type of community setting.

I talked about our Investigations Unit. We have 48 investigators. They are all peace officers and they represent various bureaus throughout the office. They represent general investigations, worker's compensation, insurance fraud, consumer protection, missing children, tobacco enforcement, and our Medicaid Fraud Control Unit.

If that were not enough, most people are not aware we also have special units in the office. These include a domestic violence ombudsman who represents the state and does an incredible job working with various advocacy groups. The ombudsman does training with attorneys, prosecutors, and law enforcement on domestic violence issues. We also have an individual in my office who is the open meeting law attorney. Famous George Taylor receives the complaints on open meeting law violations. He does the investigation and the potential citation or whatever may result from those investigations.

In addition, we have the Cyber Crime Task Force, which I chair. This is a technological crime task force. Assemblywoman Pierce is on that task force and I thank her very much for her participation. It is made up of several individuals in federal, state, and local law enforcement. It also includes local business leaders, and some legislators. They deal with Yucca Mountain and tobacco enforcement, including tobacco stings. We have investigators working with youth. We work with high school students who actually go into establishments to see if they can purchase cigarettes and tobacco products. If a store sells to them, we cite. We do tobacco stings throughout the state. We also administer the master settlement agreement on the tobacco settlement that was done years ago.

I talked about Missing Children. We also have Senior Advocates on Guard. This program has a grant-funded senior advocate who works with seniors on Medicare issues. This advocate also educates seniors on ways of identifying Medicare fraud activities with their medical statements.

There is the Prosecution Advisory Council. In that, I work with the 17 district attorneys in this state. I chair that council. We are also working on Medicaid fraud issues and also on the Adam Walsh Act regarding sexual offenders. We are working on current laws. We have some cases pending. We are always working with local law enforcement to make sure we are protecting our constituents from sexual offenders.

Another thing that may be of interest is the Attorney General Opinions. The statute is NRS 228.150 (1). I know a lot of people see these opinions as the law. They are not the law. They are simply advice to our clients regarding the interpretation of the law so they can carry out the functions of their office. This statute specifies who may request these and who we can provide opinions to from the Attorney General's Office. The client list is very specific. However, we are also able to provide Attorney General Office Opinions to district attorneys and city attorneys upon their request providing it is regarding law relating to a respective office.

Next, you will see I sit on various boards. Those include the Board of Examiners, the Board of Prison Commissioners, the State Board of Pardons, the Transportation Board of Directors, the Executive Branch Audit Committee, the Prosecution Advisory Council, the Domestic Violence Prevention Council, the Advisory Board for Technological Crime, and the Advisory Commission on the Administration of Justice. That gives you a broad overview of my office and the responsibilities, various topics, areas, and issues we work on and will continue to work on.

I would answer any questions you have at this time.

Chair Kirkpatrick:

Are there any questions?

Assemblyman Stewart:

Thank you for being here. I talked with Spencer Taylor and Mr. Walchick and others in the Mortgage Lending Division concerning mortgage adjustment fraud. My concern is focused on when companies come in from California and charge several thousand dollars to adjust a mortgage when it can be adjusted for free. Are you aware of that and have you worked with the Mortgage Lending Division on that issue?

Catherine Cortez Masto:

Yes to both questions.

Chair Kirkpatrick:

The Consumer Advocate testified in support of a bill yesterday. Mine is an underlying question relating to Mr. Settelmeyer's question. A good point was brought up about people submitting their private and financial information to these companies. Their tax-return information, their identification, their driver's license, and other information are being provided to these companies. We do not know if these companies are great people. Are we already thinking there are identity theft issues we should be looking into now? Do we, unfortunately, have to wait until identity theft happens to someone before pursuing this?

Catherine Cortez Masto:

From the perspective of my office, unfortunately, we have to wait until it occurs. When I talk about my Mortgage Fraud Unit, we see the back end of the problem. We see crime that has occurred and we are prosecuting that crime. The front end is exactly what you talked about, Assemblywoman. That is where the regulator, which is not within my office but under the Executive Branch, should come in and regulate that on the front end to ensure that kind of activity is prevented and the crime does not occur. With that said, we see it on

the back end, and yes, we are seeing a number of things occurring. We are seeing some identity theft. We then investigate that. We are also seeing a number of individuals subjected to this mortgage fraud who are elders. That is playing right into our Elder Abuse and Exploitation Unit as well. There are a number of things we see on our end and we attempt to address this on all avenues.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblywoman Mastroluca:

Can you tell me what percentage of your budget comes from matching federal funds?

Catherine Cortez Masto:

I can get that information to you. I think the only one that receives matching funds is the Medicaid Fraud Unit. I will check that information further and make sure the answer gets to you.

Assemblyman Ed Goedhart:

I appreciate all the hard work your office has been doing. I represent the rural constituents. A lot of those, in their own way, are somewhat disadvantaged because they do not always have access to legal monies. If you get into the position where the Division of Water Resources asks you to prosecute a forfeiture case, I ask you to take a close look at the situation. Look at the legal merits of the situation because I hate to see state money wasted on prosecutions that will be overturned on a District Court or Supreme Court level. Thank you.

Catherine Cortez Masto:

I appreciate your comment. When you mentioned that situation earlier, I noticed you looked at me. I understood and I will check with the attorney who represents the water engineer. [Laughter]

Assemblyman Ed Goedhart:

I would be glad to discuss the numerous cases I have become aware of over the years.

Chair Kirkpatrick:

Are there any questions? I have one more question. I am always calling to ask for an opinion. Why is it set up this way? I am just curious.

Catherine Cortez Masto:

At least from the case law I have seen, the reason is the Legislature has the LCB. You have your own attorneys internally that provide legal advice. With that said, my intent coming into the Attorney General's Office is to ensure we are working closely with the LCB on the interpretation of the law. What happens is when the law is eventually passed, if anyone challenges the law as unconstitutional, my office is then obligated to defend it. We always want to make sure we are working together on the front end to make sure the law is good law and it is constitutional. My attorneys work very closely with the attorneys here at the Legislature.

Chair Kirkpatrick:

You and I have had this conversation numerous times. Am I clear that local government cannot ask you for an opinion? Constituents are saying, "I think they are wrong. I think they are wrong." I know you choose not to be in the middle and that you would like to stay out, but how do we balance that?

Catherine Cortez Masto:

I hear what you are saying. It is very difficult because the local jurisdictions can ask for an Attorney General's opinion but it cannot be in respect to their local ordinances or their local laws. That is for them to define and determine. They can ask me a question of state law and the interpretation so they apply it appropriately. That is number one. Sometimes, when I get opinions from local jurisdictions, we turn them down because it is on their local ordinance over which I have no control. With that said, if there is concern from a constituency at a local level, because I have good working relationships with the district attorneys and the city attorneys, I am not opposed to contacting them and talking to them about it initially. I do not have the jurisdiction to swoop in and take control of that and start taking a look at that.

Chair Kirkpatrick:

So if we give that to you, would we have to fund an attorney to do it?

Catherine Cortez Masto:

They would have to ask the questions, yes. I could not look at it without them wanting to look into it and ask the question in writing to my office. I do not know if that answers your question.

Chair Kirkpatrick:

No. I am just throwing this out there just to throw it out there. I am saying if we gave the Attorney General's Office the ability to...

Catherine Cortez Masto:

I would ask you not to expand my authority any more than what I have got.

Chair Kirkpatrick:

That answers the question. It is all good.

Catherine Cortez Masto:

I can talk about your concerns and address them.

Chair Kirkpatrick:

Thank you for coming and we appreciate all the information.

Kate Marshall, Nevada State Treasurer, Office of the State Treasurer:

Thank you very much for inviting me here. I am Kate Marshall and I am your State Treasurer. I work for you. I want to extend a special good morning to Assemblyman Settelmeyer. Hi. I live in Reno. It is not so far from where you live. I handle your money.

I will talk about the Treasurer's Office. Before your eyes glaze over, I have provided you with information about the Department ([Exhibit H](#)) and an organizational chart ([Exhibit I](#)), so you can see what we do. I will start with my information. I began my career as a lawyer working for the United States Department of Justice in Antitrust. I did criminal antitrust. I did civil antitrust. Antitrust is a story about corporations. Sometimes, it is a story about great business acumen—a wonderful American trait. Sometimes, it is a story about greed. Ultimately, we follow the money.

The then-Attorney General, Frankie Sue del Pappa, asked me to come to the State of Nevada to create an antitrust division for her. The state did not have one at that time. I did that and was very, very happy to leave Washington, D.C., and come back to the West where I am from and raise my children where I believe people can be raised well.

I ran for the State Treasurer's office and was elected in 2006. I began my term in 2007. What does that office do? We handle your money. Thirty-three percent of our expenditures are out of the State General Fund. You should know that. A lot of the expense of running the Treasurer's Office does not come out of the State General Fund.

Let us talk about the thing near and dear to our hearts—investments. We invest your money. You have less today than you had yesterday. I just want to make sure that everyone is aware of that.

You have about \$3.4 billion right now. What is the mandate in terms of investing your money? First and foremost, it is safety. Therefore, you will see in this market I am making less interest monies for you. That is because the market is very risky. My staff and I pull back, and we pull back, and we pull back, and we pull back. When it comes time to buy mattresses, I will come in front of you and ask you for the money to buy mattresses. We are not quite there yet, but we are getting close.

Next is liquidity. We have cash management and we have to pay our bills. Last is return, where I am actually trying to make money off your money.

We also handle money for local communities. We have a local government investment pool. Water districts, municipalities, cities, counties, and school districts can pool their money and we will invest it for them. Some states have had a hard time with that. I am happy to say our investment pools are sound and safe. They have not lost any money.

Last session you helped me very much by raising the limit—the amount of money the school districts could borrow against the Public School Guarantee Fund so they could maintain and build new schools. That has been a godsend in this market. You raised the limit from \$25 million per school district to \$40 million per school district. It costs absolutely no money to the State of Nevada. It does not cost you a nickel. These school districts have been able to use that collateral, if you will. It is like your dad signing for your car. That enables them to go out and build and maintain schools. The key right now is the Permanent Public School Guarantee Fund. Without that, it is not the fact they would pay more to issue bonds, it is the fact they could not issue bonds at all. We have had seven school districts that used the Permanent Public School Guarantee Fund. Really, the thanks go to you.

We invest your money, but we also issue debt on your behalf. Critical to that debt is the credit rating of this state. Currently, we are AA+. I hang to that rating dearly with both hands and both feet. It is very, very critical to this state. I just talked to you about the Public School Guarantee Fund, and I told you about school districts accessing that fund. If a school district did not have that fund, it may not be able to issue debt at all in this market. The same holds true for Nevada. If our credit rating is downgraded because we cannot solve this budget crisis, we may simply not be able to go out in this market. Please keep that in the back of your mind. It is absolutely critical for the state to maintain its high credit rating. You have a lot to do with that. States maintain their credit rating by how they manage the financials in this time of restraint. I can manage your investments, I can manage your debt; however, you are the

ones who decide on the budget. Okay, so that is a heavy weight on your shoulders. I do not envy you.

We manage your cash. You have it, we are managing it. It is okay. You do not have as much as you used to have. [Laughter]

We administer the Millennium Scholarship Trust Fund ([Exhibit J](#)). I am happy to say it is good through 2019. There are ways I can extend that. I keep trying to eke out another year, and then another year. You will see in the information I gave you a list of how many Millennium Scholars are in each district of every Assemblyman and Assemblywoman. You might focus on that. Those are the children, the parents, and the grandparents who have been able to take advantage of this great program. You can see how many of them in your district have been able to take advantage of that. That list is not a science. We are really going by high school graduates. If there is a high school that overlaps between your district and the district next to you, then we are going to show an overlap of numbers. I thought that could be of interest to you.

Prepaid Tuition is a defined benefit plan. It is a great plan for Nevada. That is a plan that stipulates you pay into it today at today's tuition rates, and then when your child is 18, he can go to the University of Nevada in Reno or Las Vegas, Truckee Meadows Community College, or Great Basin College at today's tuition rates. That is a lovely plan. It is very, very difficult in this market to maintain the investments of that plan. We are, however, doing it.

We also have college savings plans. We have four of them. One of the things my office has been attempting to do is to increase the number of Nevadans that save for college. We implemented a payroll deduction program for state employees with great success. We hope to expand that to counties, other municipalities, and large corporations in the state.

Finally, the subject I know you have all been waiting to hear about—unclaimed property. I have some. I am told it is not appropriate for me to walk up and hand you a check in the middle of a public meeting, so I am going to give you claim forms. I do try to be nonpartisan in this. Kelvin Atkinson, you do have money. Chad Christensen, you do have money. See how bipartisan I am? Mr. Claborn, you do have money. If you guys want to donate to the Millennium Scholarship, we do have the ability to take grants. Assemblywoman Spiegel, you are new, and I wanted to welcome you. You also have money. I will hand those claim forms over to the side. Mr. Settelmeyer, I tried, but you just did not have any money.

I am willing to open up for questions.

Chair Kirkpatrick:

I guess we know who is buying dinner tonight, right? Any one of the four will.

Assemblyman Settlemeyer:

One of the things that concerns me regarding unclaimed property is the security issue. Are we being secure about sending out this information? I find it amazing we have so many people who win money in the State of Nevada and then decide not to claim it. The idea of a \$5,000 check may alert someone else of the fact they should not have been in the State of Nevada and that could cost them their marriage, so they do not claim their money. I find that amazing! How do we send out this information and make sure that process is secure? How do we ensure that their social security number and private information are not just out there?

Kate Marshall:

We are required by statute to advertise. We do not advertise social security numbers, I promise you that. We advertise the name of the person, the last known address of the person, and the amount of the money they may have coming. That is so they can then make a claim. In speaking with your colleagues, you will see I do not actually have a check here. I have a claim form. They need to prove to me they are who they say they are. In fact, without being named, there was a state senator whose office called and asked if they could get their check without providing a copy of their driver's license. The answer was no. You will see we have certain requirements in place. You have to prove who you are before we will send you money. We also have bonding in place. On the rare occasion an estate may have competing claims, and we did not realize that and paid on a claim, we would be bonded against that error.

Assemblyman Stewart:

Thank you for your hard work, Ms. Marshall. You mentioned Nevada is holding on by its fingernails to that AA rating...

Kate Marshall:

AA+ . Do not forget that plus!

Assemblyman Stewart

Sorry, AA+ rating. Can you give us any general advice on what we should or should not do as legislators in order to keep that high rating?

Kate Marshall:

There are three credit rating agencies: Standard & Poor's, Moody's, and Fitch Ratings. This week, Moody's put out a small, 15-page document on states and

their credit ratings. Nevada is mentioned on multiple pages. I would like to send that to you because it lists the five things they focus on when rating. It explains what they are looking for regarding what legislators are doing. I will send that to you.

Assemblyman Stewart

One of the things that kept our rating high is the fact we have a proposed balanced budget. Is that correct?

Kate Marshall:

Nevada and many states do.

Assemblywoman Pierce:

Some of these rating companies are the entities that kept rating banks high in this economic mess when, in fact, nobody knew how much debt those banks carried. Is there not some loss of credibility in many of these bond rating systems?

Kate Marshall:

Since the credit rating agencies rate the State of Nevada, I will not make a personal comment about such activities. Let me tell you what was reported in the newspapers recently. You can judge for yourself the value of those statements. Basically, there have been accusations and concerns regarding the commercial credit ratings all three major credit rating agencies have been doing. It has been reported that they accept money in return for a "pre-rating" review of the documents on a particular corporation or an IPO or a particular type of financial product. They then gave them a "heads up" on where they thought that rating would go. Then they were again paid to provide the actual rating. If you read the press, there is some suggestion that it was quite a lucrative area for them to pursue. Sometimes this reached 40 percent of their income. One can read that and, perhaps, be concerned about that.

One of the things the market has done in response to their concerns is they have begun to do a lot of their own research. What that does for a state like Nevada, or for any municipality, is that now in order for me to issue a bond, I need to present a lot more information to individual investors. I need to engage with them. That requires a lot more time and effort. It has moved many, many states from doing competitive bond issuances where you just do it on the computer to doing negotiated sales. This is because it has become a much more retail function. In fact, this whole situation has increased our cost of reaching those potential purchasers of our debt.

Chair Kirkpatrick:

Are there any questions? Ms. Marshall, a lot of local governments are close to tipping to the opposite side on some of the ventures they do. The Legislature allows them to go out and be creative and innovative. What would happen if a local government tipped and could not make the bonds they bonded out—for instance, redevelopment, STAR bonds, and other kinds of innovative ideas the legislators created. What would happen if a local government could not make its bond payment? What is the responsibility of the state? How does that affect our state level?

Kate Marshall

On a technical, legal level, the state does not back those bonds. Therefore, we do not have an obligation. Taking a slightly broader perspective, we are all in this together. We are sharing this small meal together. The line of credit opened up which, by the way, we have not used a nickel of, was something the municipalities did for us. Therefore, I would think we would try to work with them. We would try to help them, to assist them in any way possible. However, legally, we do not have an obligation. The only obligation we would have would be if a school district went belly-up and could not pay the bond under which the Permanent Public School Guarantee Fund was used as collateral. When I came last session and sought to raise that fund so that each school district could access up to \$40 million, I ran the numbers. If all school districts failed, we would still have enough money in the fund to pay out. That is why I did only \$40 million.

Chair Kirkpatrick:

I know they helped us during Special Session. This is something totally different. There may be some local governments that have over-extended. It is like my buying a car I could not afford but I keep trying to make those payments and I am getting farther and farther behind. If that local government cannot pay, what happens to the constituents? What happens to that bond?

Kate Marshall:

The moral obligation of the state does not back that bond. There are other things that come into play. We have the School District Account. If the school district cannot make their funds, we make that up. That is in our law, right? So other things happen. Like I say, we share this meal together. You are asking about whether the state is legally required to pay those bond holders. The answer, to the best of my knowledge—and I am not the attorney on this—is no.

Chair Kirkpatrick:

Are there any questions? Thank you for bringing good news to some on the Committee who will be buying dinner. Maybe they will be providing lunch for

the rest of this week. We will be pleased to see you again and we look forward to working with you.

Kate Marshall:

Thank you. I enjoyed it and have a good day.

Chair Kirkpatrick:

Is there any public comment? [There was none.] Is there anything from the Committee? [There was none.] We will get all those answers to you by Monday so you can go back over them.

Meeting adjourned at 10:02 a.m.

RESPECTFULLY SUBMITTED:

Renee Ekleberry
Committee Secretary

Patricia Blackburn
Editing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: February 12, 2009

Time of Meeting: 8:02 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Sheets
	C	Susan M. Holecheck, Mayor, City of Mesquite	Mesquite Nevada Fact Sheet
	D	Jason King, P.E., Acting State Engineer, Division of Water Sources, State Department of conservation and Natural Resources,	State of Nevada Department of Conservation and Natural Resources Government Affairs (12 page PowerPoint)
	E	Jason King	Nevada Water Law – An overview (pamphlet)
	F	Kim R. Wallin, CMA, CFM, CPA, State Controller, Office of the State Controller	State of Nevada Report to Our Citizens for Fiscal Year ending June 30, 2009
	G	Catherine Cortez Masto, Attorney General, Office of the Attorney General	Overview of the Nevada Attorney General's Office (18 page PowerPoint)
	H	Kate Marshall, State Treasurer, Office of the State Treasurer	Overview of the Treasurer's Office
	I	Kate Marshall	Organization Chart of Treasurer's Office
	J	Kate Marshall	Governor Guinn Millennium Scholarship Program by Assembly District