

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-fifth Session
February 11, 2009**

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 1:42 p.m. on Wednesday, February 11, 2009, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator John J. Lee, Chair
Senator Terry Care, Vice Chair
Senator Steven A. Horsford
Senator William J. Raggio
Senator Randolph Townsend
Senator Mike McGinness

COMMITTEE MEMBERS ABSENT:

Senator Shirley A. Breeden (Excused)

STAFF MEMBERS PRESENT:

Heidi Chlarson, Committee Counsel
Michael Stewart, Committee Policy Analyst
Olivia Lodato, Committee Secretary

OTHERS PRESENT:

Patricia Mulroy, General Manager, Las Vegas Valley Water District, Southern Nevada Water Authority
Kay Brothers, Deputy General Manager, Engineering and Operations, Southern Nevada Water Authority
Richard J. Wimmer, Deputy General Manager, Administration, Las Vegas Valley Water District, Southern Nevada Water Authority
Steve K. Walker, President, Walker & Associates
Jason King, P.E., Acting State Engineer, Division of Water Resources, State Engineer's Office

Senate Committee on Government Affairs
February 11, 2009
Page 2

Wes Henderson, Government Affairs Coordinator, Nevada Association of Counties

Bruce R. Scott, P.E., P.L.S., Principal, Resource Concepts, Inc.

George M. Thiel, P.E.

Matt Leck, Assistant Management Analyst, Las Vegas Valley Water District, Southern Nevada Water Authority

Kyle Davis, Policy Director, Nevada Conservation League

David Emme, Chief, Bureau of Administrative Services, Nevada Division of Environmental Protection

Chair Lee opened the hearing of the Senate Government Affairs Committee. He announced the Southern Nevada Water Authority (SNWA) was presenting a discussion on water usage in Nevada.

Patricia Mulroy, General Manager, Las Vegas Valley Water District, Southern Nevada Water Authority, said the Committee had received a handout from her organization. She said Southern Nevada Water Authority (SNWA) was created in 1991 as a partnership between all the water and wastewater agencies in southern Nevada. She said SNWA overcame many difficulties in the 1990s. In 2000, SMWA presented a resource plan to the Water Authority Board giving southern Nevada a guaranteed 40- to 50-year water supply from the Colorado River.

Ms. Mulroy said the drought began in 2000. She said many climate scientists said it was an early indication of challenges the West was experiencing as a result of climate change. She said the drought caused a second round of difficult negotiations between SNWA and the other Basin states.

In December 2007, the Basin states' representatives signed a document where the states agreed to reoperate Lake Powell and Lake Mead. Ms. Mulroy said a shortage-sharing policy was agreed to among the lower Basin states. Benefits for southern Nevada included return-flow credits on water brought into southern Nevada from outside the hydrographic basin, and participating and paying for construction of a reservoir along with partners in Arizona and California. The state of Arizona agreed to guarantee a water bank of 1.2 million acre-feet of their unused entitlement stored in their groundwater basin. The SNWA had an agreement with California for a virtual bank with 70,000 acre-feet banked to date. She said it helped California today during their dire times. She said some items were available during shortages and some were not available.

The relationship between the seven Basin states was very strong. The lower Basin states, Central Arizona Water Conservation District, the Metropolitan Water District of Southern California, and SNWA were joint-venturing multiple projects. Ms. Mulroy said they were exploring starting up and reoperating the Yuma Desalter in Arizona, which treated Wellton-Mohawk Irrigation and Drainage District runoff. She said the project was completed by the U.S. Bureau of Reclamation in the 1980s and never used. The Yuma Desalter was designed to meet water quality standards as dictated by a treaty with Mexico. She said there were discussions among various states and agencies concerning opportunities for desalters constructed on the Mexican coast for the benefit of Mexican communities and providing water resources during nonshortage times for urban areas in the United States. She said the situation for southern Nevada on the Colorado River was extreme. Ms. Mulroy stated 90 percent of the water supplied to the Las Vegas area came from the Colorado River.

Kay Brothers, Deputy General Manager, Engineering and Operations, Southern Nevada Water Authority, referred to slide 4 ([Exhibit C](#)). She said the slide referred to normal flow on the Colorado River and concerned the drought issues. Ms. Brothers next referred to slide 5 of [Exhibit C](#) concerning Lake Mead water levels. The SNWA responded to the decline at Lake Mead with conservation and drought plans. Ms. Brothers said gallons per capita had declined, [Exhibit C](#). She referenced slide 9 in [Exhibit C](#) concerning elevation levels at Lake Mead.

Ms. Mulroy said for perspective, elevation 1,050 feet was the point at which Hoover Dam stopped generating electricity.

Ms. Brothers stated SNWA anticipated installing 11 new pumps in the second intake to increase capacity. The new pumps will increase capacity from 600 to 730 million gallons per day. The SNWA had begun sinking the shaft for Intake No. 3. The tunnel-boring machine was going under Lake Mead for approximately three miles. The intake will provide access to cooler water at elevation 860 feet, [Exhibit C](#). She said the estimated cost for Intake No. 3 was \$817 million. She referred to slide 12 of [Exhibit C](#), showing SNWA was working to develop resources beyond the Colorado River.

Ms. Mulroy said a reservoir which held 25 million acre-feet would have less than 5 acre-feet remaining. The demand on Lake Mead was 9.5 acre-feet annually.

Ms. Brothers said it was important to diversify their portfolio and look at other resources for water as shown on slide 12, [Exhibit C](#).

Ms. Mulroy said any supply of water coming to southern Nevada as an alternate supply through the Colorado River was of no use to SNWA. She said every state kept every drop of water possible.

Ms. Brothers discussed activities to protect the environment, slide 13, [Exhibit C](#). She said SNWA was establishing a monitoring network for biology and habitat as well as hydrology and groundwater levels.

Ms. Mulroy discussed the ranches receiving publicity. The SNWA bought the ranches in order to manage the groundwater basin. She said SNWA bought significant surface water rights. She said it was important the early spring runoff not sit on the playa and evaporate. It was important to build infiltration basins at the base of the mountains and force water into the groundwater basin. She said that was the goal of the surface water rights purchased by SNWA in Spring Valley.

Ms. Brothers said in addition to looking at the groundwater system in eastern and central Nevada, the seven states recognized the growth in the Southwest required additional water. She said an augmentation study identified many options available, [Exhibit C](#).

Ms. Mulroy said SNWA's immediate goal was the completion of the third intake. The project goal was to have all the permitting completed as soon as possible. She said it was a project of last resort because there was no other alternative. She said the cost may exceed the estimated \$830 million. The third intake is the most difficult construction project undertaken in the United States. It is more difficult to build than the Chunnel, and the hydrostatic pressure is worse. She said the cost range was from \$817 million to \$1 billion.

Richard J. Wimmer, Deputy General Manager, Administration, Las Vegas Valley Water District, Southern Nevada Water Authority, referenced slide 15 of [Exhibit C](#). He said SNWA faces financial challenges, and slide 15 showed the financing plan for infrastructure. The pie chart showed the funding sources to pay for major regional infrastructure. He said 57 percent of funding was anticipated from connection charges; 15 percent from rate-related charges; 28 percent was included to diversify the revenue sources. Mr. Wimmer next

referenced slide 17, [Exhibit C](#). He said connection charges declined by 90 percent in 2008. Last month, he said, they had a net loss of over \$1 million. The financial plan was structured in a manner that maintained reserves. He said slide 18 of [Exhibit C](#) showed water sales were flat. He projected selling less water in this year's calendar year than in the year 2000. Mr. Wimmer said SNWA cut approximately \$29 million in spending and deferred \$259 million worth of projects. He said any growth-related projects were postponed. The third intake was essential if the drought persisted. He said slide 20, [Exhibit C](#), showed reserves had accumulated over time. The reserves were used to pay for future debt service payments, maintain a high bond rating and finance projects when things were difficult.

Chair Lee asked the Committee for any comments.

Senator Townsend thanked the group for the concise presentation. He said Ms. Mulroy's efforts in conservation were remarkable. He asked her about the statement concerning energy received from Hoover Dam and the impact of the water change therein. He asked for an overview of the amount of megawatts taken from the Dam and the amount of megawatts SNWA used.

Ms. Mulroy said it was difficult for the entire Western grid. She said Nevada was fortunate it only had 11 percent of the Hoover Dam capacity.

Mr. Wimmer said SNWA had a small percentage of hydropower from Hoover Dam.

Ms. Mulroy said the challenge was for southern California. Nevada was interconnected with California. California had a huge dependency on Hoover Dam. She said if Hoover Dam was lost, Glen Canyon Dam was also lost. The City of Ely received power from Glen Canyon.

Senator Townsend said the concern was the fluctuation of the cost of energy. At one time, over 50 percent of the cost of water in southern Nevada was due to the cost of energy. He said the relationship between the cost of energy and the cost of water impacted everybody involved.

Ms. Mulroy said SNWA had an excellent relationship with NV Energy and was able to realize over \$52 million in savings on the energy side.

Senator McGinness referenced a headline in the *Reno Gazette-Journal* about a conservation group discussing a potential lawsuit against U.S. agencies over Nevada water projects. He asked Ms. Mulroy to comment on the statement.

Ms. Brothers said the suit involved the Moapa dace. She said the lawsuit said when U.S. Fish and Wildlife Service granted the habitat conservation plan for the tortoise at Coyote Spring, it did not consider the impact the pumping would have on Muddy Spring. The SNWA pumping in Coyote Spring Valley might be entwined with the lawsuit due to a memorandum of agreement with the federal agencies.

Senator McGinness asked for a time reference for resolution of the lawsuit.

Ms. Brothers said it was a procedural lawsuit. She said they were working a Recovery Implementation Plan with the U.S. Fish and Wildlife Service. The SNWA was trying to install fish barriers and recover the species. She hoped to delist the species.

Ms. Mulroy said SNWA spent tens of millions of dollars to protect the fish. She said they acquired the Warm Springs Ranch for \$72 million in order to give U.S. Fish and Wildlife Service the necessary land protection area and put in the monitoring stations and habitat for the dace.

Senator McGinness asked about SNWA relationships with partners in other states. He said he heard the presentations concerning some of the tax mitigating issues in eastern Nevada. He asked Ms. Mulroy to characterize SNWA relationships with fellow Nevadans in northeastern Nevada.

Ms. Mulroy said their relationship with Lincoln County was superb. She said an agreement with Lincoln County was amended to include them in the project. She said Lincoln County will benefit by about \$350 million when the project was built. She hoped the relationship with White Pine County improved over time. She said it was difficult.

Chair Lee asked if the snowpack in Colorado benefitted Nevada.

Ms. Brothers said the snowpack was 80 percent to 85 percent of normal. The number was only an indication, and better information was available after April or May.

Chair Lee opened the discussion on Senate Bill (S.B.) 66.

SENATE BILL 66: Allows for longer periods to complete work and apply water to a beneficial use for certain municipal and quasi-municipal uses. (BDR 48-618)

Steve K. Walker, President, Walker & Associates, said he represented Douglas County. He requested delaying the hearing on S.B. 66. He said an issue arose with distribution of the amendment ([Exhibit D](#)). The issue was specific to the extension of time to Nevada Revised Statute (NRS) 533.450. He said Douglas County, the State Engineer, SNWA, Truckee Meadows Water Authority and Washoe County needed to address the issue and fix the bill. He said S.B. 66 was a popular bill. He also requested Michael Stewart participate in the discussion.

Jason King, P.E., Acting State Engineer, Division of Water Resources, State Engineer's Office, said he agreed with Mr. Walker. He said the language needed a small change.

Chair Lee asked Mr. King to explain the problem.

Mr. Walker said water purveyors who worked with land developers used a process that included a tentative map and final map where water rights were dedicated to the purveyor. He said water rights were held by the purveyor until the homes were built. He said an extension was filed with the State Engineer's Office each year the home was not built. The legislation increased the time extension to every five years. The proposal reduced paperwork on the purveyor and the State Engineer by up to 80 percent ([Exhibit E](#)). He said the time extension was typically \$100 for each year. The extension would be filed for five years and cost \$500. He said there was a request from the State Engineer to add additional language to the bill.

Mr. King said the second part of the bill dealt with a stay provision within the water law. The stay allowed anyone aggrieved of a State Engineer's order or decision to go to a court and receive a stay. The language does not discuss the bond for the stay. He said the second part of S.B. 66 added language taken from Nevada Supreme Court rules on injunctive relief. The language gave the courts additional criteria when deciding how much the bond should cost.

Senator Care asked Mr. King if he was referring to the most recent case from the Supreme Court discussing the burden concerning injunctive relief. He said the Court would consider the factors without the new language.

Mr. King responded the Supreme Court was not considering the things proposed in the amendment to S.B. 66 without the new language. He said there were decisions by the State Engineer where courts had issued stays for a bond value of \$500.

Senator Care asked Mr. King to provide copies of the cases discussed. He asked if the courts considered all the factors involved.

Mr. King said the factors proposed in S.B. 66 were not considered by the courts.

Senator Care asked Mr. King for the published case law concerning the language referenced in the bill.

Wes Henderson, Government Affairs Coordinator, Nevada Association of Counties, said his organization was supportive of S.B. 66, including the new amendment.

Bruce R. Scott, P.E., P.L.S., Principal, Resource Concepts, Inc., said he was the engineer for the Town of Minden. He said they supported the five-year extension subject to the conditions the State Engineer's Office had concerning the bill. He said a number of applications to change Town of Minden water were held up by an injunction or a stay received by the Pyramid Lake Paiute Tribe on the implementation of a State Engineer's decision granting changes to existing water rights. He said the stay was obtained with a \$1,000 bond. The stay was holding up economic activity in Minden and Douglas County. He said the Town of Minden was not noticed on the hearing. He said the language gave the judge the ability to hear the situation and make a more-informed decision.

George M. Thiel, P.E., said he was a consulting engineer involved in the water rights field for the past 30 years. He was involved in two recent cases before the State Engineer's Office. He represented the Tahoe-Reno Regional Industrial Center. He said through a lengthy hearing process, they established a preponderance of the record. The State Engineer granted additional appropriation for water. He said the decision was held up based upon a fairly

small bond. He said the project was stayed by the Pyramid Lake Paiute Tribe for a small bond amount. He said a Dayton Valley hearing in Lyon County was a protest based upon existing water rights and an application to move the water rights. The protest was issued by the Pyramid Lake Paiute Tribe and Churchill County. He said a bond was posted for a minimal amount. He said the issue involved small users of the water, not large industrial users. He said his clients did not have the ability to say to the courts the cost of the stay caused great harm to the area. He said the current vogue was to settle the cases for a price. Mr. Thiel was in favor of the amendment and the five-year extension.

Senator Care said the amendment did not mention what occurred if the stay was dissolved. He said perhaps there was an inability of the aggrieved party to seek a stay.

Mr. Thiel said the State Engineer was involved 97 percent of the time and prevailed the majority of the time.

Matt Leck, Assistant Management Analyst, Las Vegas Valley Water District, Southern Nevada Water Authority, said they supported the idea of an extension and wanted to be involved in discussions clarifying the language. He said SNWA was interested in the stay and wanted to know the intent of the proposed language.

Kyle Davis, Policy Director, Nevada Conservation League, said the first section of S.B. 66 concerning the five-year extension elicited a neutral response from his organization. Mr. Davis's concern with the amendment was the court already had the kind of authority as outlined in the amendment. He said his organization had concerns about the amendment.

Chair Lee closed the hearing on S.B. 66 and opened the hearing on S.B. 105. He said Michael Stewart would brief the Committee on the bill.

SENATE BILL 105: Revises the provisions governing the matching funds required for grants made by the Board for Financing Water Projects. (BDR 30-502)

Michael Stewart, Committee Policy Analyst, said Senator Dean A. Rhoads requested Mr. Stewart provide background about S.B. 105. He said he staffed

the Legislative Committee on Public Lands during the interim. Mr. Stewart read his testimony ([Exhibit F](#)). He referenced the Board for Financing Water Projects, known as the Assembly Bill 198 Grant Program. He said during the final meeting of the Public Lands Committee, representatives from the Division of Environmental Protection approached the Committee with a technical amendment to NRS 349. The amendment was designed to offer greater flexibility to the Board for Financing Water Projects and award grants based on the percentage of the total project cost rather than the requested grant amount.

David Emme, Chief, Bureau of Administrative Services, Nevada Division of Environmental Protection, said his agency worked with Senator Rhoads' Committee on Public Lands during the interim. He said the bill related to water infrastructure capital improvement grant programs ([Exhibit G](#)). The Board for Financing Water Projects oversaw the grants program. He said S.B. 105 provided a technical correction determining the amount of local matching funds required for grant projects, [Exhibit G](#). The bill proposed relating the local match to the total project cost. The change clarified the statute and gave the Board more flexibility in determining the amount of local matching funds, [Exhibit G](#).

Mr. Scott said he was chairman of the State Board for Financing Water Projects. He said the Board was successful in funding projects in every county except Carson City. He said the organization was a small-system program. He said they did not have a low enough floor on the range of grants they provided. Their criteria for grants included median household income and a number of other criteria that helped them improve the grant amount for a community unable to afford the cost. He said the Board needed a better operating range and a lower floor for grants. He said affluent communities needed a smaller amount of grant funds and a broader range at the lower end of the spectrum.

Mr. Leck of SNWA said his organization supported S.B. 105. He said the Board for Financing Water Projects had helped Clark County in providing the necessary infrastructure in small areas.

Mr. Walker said he was a board member on the Board for Financing Water Projects and represented rural Nevada. He said S.B. 105 offered more flexibility for working at the low end more effectively with the funding.

Senate Committee on Government Affairs
February 11, 2009
Page 11

Chair Lee asked if there was further testimony on S.B. 105. As there was none, he closed the hearing at 2:42 p.m.

RESPECTFULLY SUBMITTED:

Olivia Lodato,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE: _____