

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

**Seventy-Sixth Session
May 4, 2011**

The Committee on Government Affairs was called to order by Vice Chair Irene Bustamante Adams at 8:30 a.m. on Wednesday, May 4, 2011, 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/76th2011/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 Irene Bustamante Adams, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Teresa Benitez-Thompson
Assemblyman John Ellison
Assemblywoman Lucy Flores
Assemblyman Ed A. Goedhart
Assemblyman Pete Livermore
Assemblyman Harvey J. Munford
Assemblywoman Dina Neal
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

Assemblywoman Marilyn K. Kirkpatrick (excused)
Assemblywoman Melissa Woodbury (excused)

GUEST LEGISLATORS PRESENT:

Senator Dean A. Rhoads, Rural Nevada Senatorial District
Senator Michael A. Schneider, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Cynthia Carter, Committee Manager
Jenny McMenemy, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Mike L. Baughman, representing the City of Caliente; and Executive Director, Humboldt River Basin Water Authority
Steve Walker, representing the Truckee Meadows Water Authority; Lyon County; and Carson City
Kelvin Hickenbottom, Deputy State Engineer, Office of the State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources
Andy Belanger, representing the Southern Nevada Water Authority; and the Las Vegas Valley Water District
Kyle Davis, representing the Nevada Conservation League
K. Neena Laxalt, representing the Nevada Cattlemen's Association
Randy Weaver, Private Citizen, Las Vegas, Nevada
Renaldo Tiberti, Private Citizen, Las Vegas, Nevada
Dean Baker, Manager, Baker Ranches, Inc.

Vice Chair Bustamante Adams:

[Roll was called. A quorum was present.] We will open the hearing on Senate Bill 153 (1st Reprint). The mayor of Caliente has sent someone to be a representative.

Senate Bill 153 (1st Reprint): Revises provisions governing the appropriation of water by municipalities. (BDR 48-821)

Mike L. Baughman, representing the City of Caliente:

The City of Caliente requested S.B. 153 (R1) to address a number of issues the city had encountered with regard to its water resources in that small municipality out in southeastern Lincoln County. There were a variety of concerns raised with the bill as introduced. As a result, the bill was significantly amended. Many of the provisions that were stricken were provisions that the city was initially interested in, however, in several meetings with the

Office of the State Engineer, we believe that many of those issues were resolved and can be dealt with administratively. The surviving principal change in statute is to extend from five to ten years the time period through which the party municipalities need to provide their proof of beneficial use. The city does support that provision as a purveyor of water rights. They think it would be a benefit to them. Other than that, at this point the bill does not do a lot for the City of Caliente. Other parties are getting some benefit as well.

Vice Chair Bustamante Adams:

Can you give a brief history of why you brought the bill forward and what you were hoping to accomplish?

Mike Baughman:

The principal issue that we were faced with was the city had a well that was destroyed in a flood several years ago. The city sought to construct a new well. They got a grant from the state, the Environmental Protection Agency (EPA), and others to construct a new well. They decided to locate that well in a different portion of the city to move it out of the floodplain. They pursued construction of that well. When it finally went into operation, it did not produce as much water as the original well had done. They could only prove a portion of the water right associated with this new site. One of the provisions of the original bill would have allowed the State Engineer to grant and perfect a portion of a pending water right, rather than proving beneficial use on the entire amount which is current practice. We were seeking legislation that would allow for a portion of the right to be certificated while beneficial use is being proven. There were a variety of issues that arose with that. Administratively, we can work with the State Engineer's Office to address those issues.

Assemblyman Ellison:

You said that you have worked with the State Engineer and he is on board with this?

Mike Baughman:

The primary concern of the city was that if they did not prove up the entire amount of water that they would lose all of it. The State Engineer said that was not his intent. He did not want to cancel the entire application. He made it so that you could prove a portion of it at one location and develop another well within that area for the rest of the application and at another location prove up the whole thing. We felt very good about that.

Vice Chair Bustamante Adams:

I will call up those in support of S.B. 153 (R1).

Steve Walker, representing the Truckee Meadows Water Authority; Lyon County; and Carson City:

Senate Bill 153 (R1), because the City of Caliente received nothing from it, turned into somewhat of an orphan. It does one thing. In northern Nevada, when you are developing property, the developer has to provide water rights for the development. In that process, just before the houses are built, the water rights are dedicated to the municipality or the purveyor, which is typically a government. The water rights are then held by the government until the home is built. That home provides the beneficial use. Once the water right has beneficial use, then it is certificated, and it becomes a solid and good water right from then on. During the period between when the water right is dedicated and given to the purveyor and the house is built, the purveyor has to constantly apply to the State Engineer for extensions of time until the beneficial use is shown. Last session Senate Bill No. 66 of the 75th Session took this extension of time from one year to five years. The municipality files for the extension of time once every five years. The Office of the State Engineer reviews it and either approves it or does not. That reduces administrative workload by 80 percent because it was being done annually prior to that. Going from five years to ten years, you would have that same administrative workload reduction or efficiency. We would also address the economy that we are dealing with right now. Houses are not being built, and people are waiting for the market to pick back up. When this bill came up, the water group found the opportunity to further extend it to ten years. That is all that is done. Even though there are only two edits in the bill, there is one edit that needs to be fixed. Kelvin Hickenbottom from the State Engineer's Office will explain that. We are in support of going to ten years for municipalities to hold these water rights.

Assemblyman Stewart:

We are back to five years with the amendment?

Steve Walker:

Right now, without this bill, we are at five years. If this bill goes through, the State Engineer would have the discretion to extend this to ten years before you have to file the time extension on these water rights for beneficial use. The amendment would be best explained by the Office of the State Engineer.

Assemblywoman Pierce:

Why are we not going to work with the five-year plan for a while? It seems awfully quick to be making a new decision.

Steve Walker:

I do not have an argument. I agree with you. There was an opportunity to do something with this bill. We extended it to ten years. There is not a lot of commitment to it. The five-year provision has only been in effect for two years. Most of the water purveyors would be fine with that.

Vice Chair Bustamante Adams:

In the original bill, Caliente had asked for 50 years. The ten-year provision will attempt to help them in their need because of the economic conditions.

Assemblyman Anderson:

It is only municipal uses that this would apply to. Is that correct?

Steve Walker:

That is correct. It is strictly municipal.

Vice Chair Bustamante Adams:

I will now call up those who would like to testify as neutral.

**Kelvin Hickenbottom, Deputy State Engineer, Office of the State Engineer,
Division of Water Resources, State Department of Conservation and
Natural Resources:**

Our office is neutral on the bill. We would like to offer two amendments ([Exhibit C](#)) to the bill. [Read from prepared testimony ([Exhibit D](#)).]

Assemblyman Stewart:

With the amendment, the bill would be neutered. We would not have to add anything to statute. It would be the same as it was before. Is that correct?

Kelvin Hickenbottom:

Currently under our statutes, we have the discretion of one to five years for extensions for municipal and quasi-municipal rights. This would give us the discretion to go from one year to ten years.

Assemblyman Stewart:

Where does it say that?

Kelvin Hickenbottom:

It is on line 34, page 2.

Assemblyman Stewart:

With the first reprint, we have gone from five to ten. With the amendment, it looks to me as if we are going from ten to five years.

Kelvin Hickenbottom:

On line 21, page 2 that is correct. We did not feel that giving ten years automatically makes them put the water to beneficial use without showing some due diligence. We thought that ten years was too long. That would mean that every time someone wants to file a change application he gets another ten years automatically to prove beneficial use.

Assemblyman Stewart:

Line 34 was back to five years as well. Is that correct?

Kelvin Hickenbottom:

No, it goes to ten years. The way that we were doing the tracking changes, it struck out the ten years. It put a red line through that. It gives us the discretion, if a municipality wants to come in and file an extension for up to ten years, we could give those ten years or we could deny them that right.

Assemblyman Stewart:

Just to be clear, line 21 we are at five years and line 34 we are at ten years.

Assemblywoman Pierce:

Is having people come back every five years a problem for the State Engineer's Office?

Kelvin Hickenbottom:

No. It would not be onerous for our office if it stayed at five years.

Assemblyman Anderson:

I have a concern that a person's rights could get all tied up indefinitely. If you approve over five years, what if you had to hold a hearing on it or something? What if someone really does need that extension for a legitimate reason? Would a hearing be a way to determine extenuating circumstances? Caliente apparently thinks they have the right criteria. If it is anything longer than five years, why not just hold a hearing?

Kelvin Hickenbottom:

We already have the ability to do that. If we believe a water user is not showing due diligence, we can schedule an administrative hearing to have the user answer questions that concern us. We were going to schedule one last year for utilities in Pahrump because they have had extensions over the past 20 years or more. They have certain criteria. They have to go through the Public Utilities Commission (PUC). Once they answered our questions and PUC reported to us, we did not proceed with the hearing. We did have a lot of questions that we wanted answered. We already have that ability. If someone

knows that someone else has filed an extension on their water right applications, they can appeal that decision as well. It will then go to hearing on those extensions. If we do not feel that they are performing in good faith, we will bring them in to answer questions or give us a report in order to explain why they have not progressed to put the water to beneficial use.

Andy Belanger, representing the Southern Nevada Water Authority; and the Las Vegas Valley Water District:

After reviewing the State Engineer's amendment, I believe neutral is the best place for me to testify in. We support the State Engineer's amendment as it relates to subsection 1 of *Nevada Revised Statutes* (NRS) 533.380. We believe that ought to be five years. On the question of subsection 3, changing from five to ten years, which is included in the first reprint, we are somewhat ambivalent. We participated as one of a dozen parties in discussions in the Senate on how to help Caliente solve the issues that it wanted to solve. The original bill had a 50-year time frame. One of the things that the group had discussed was, does a ten-year increment for extensions of time make sense? I am not sure that it does. We only did the five-year provision, two years ago. If the testimony of Caliente and other parties is that it does not make sense to make this change now, I am not sure that there is any purpose or real benefit in processing this bill this session. Obviously we support the concept of giving the State Engineer the flexibility to manage the paperwork associated with routine proofs of beneficial use or extensions to those proofs. If the five-year period has not been a problem, I am not sure we need to change it at this point.

Assemblyman Ellison:

I can understand why the municipality is trying to do this. It is to go back to get the paperwork all together. It will be another two years before they have another opportunity. It is a lot of work to try to go back even though the beneficial use is going to be shown in this city. I can understand why Caliente is doing this.

Assemblywoman Pierce:

Southern Nevada Water Authority and I are agreeing on something. There must be pigs flying somewhere.

Vice Chair Bustamante Adams:

We will take those that are in opposition to Senate Bill 153 (R1).

Kyle Davis, representing the Nevada Conservation League:

I am also in agreement with Southern Nevada Water Authority, so pigs must really be flying. When looking at the bill, I am still trying to see the need for this piece of legislation. Last session, we had a situation where you would be able

to file for one-year extensions. We recognized the economic times that we were in, and we changed that law to allow for up to a five-year extension. Two years later we are looking to extend it to ten years with no real demonstrative need to why we would need to extend this to ten years. I do not see why we would need to do this.

The other issue is that it is inequitable. We are saying that municipal water holders can hold it up to ten years, but for those that hold other types of water rights, like agriculture or wildlife water rights, this avenue would not be available to them. It would be available only to municipal holders. We can recognize where there are situations where we need to treat municipal water rights differently than other types of water rights. This is a pretty wide chasm between the two, and ten years is a very long time.

It can also lead to water speculation. Someone applies for a ten-year extension on water where there might be a development there someday where people talked about it when times were good. We get nine years down the road; they turn around and sell that water and make a profit off of it. That is a bad way for us to do water law in this state. This state has historically done things in our water law to make sure that we do not have cases of water speculation. We would not want to open up an avenue for that. The main point is that water is the most precious resource we have in this state and it is incumbent on all of us to use those water resources as wisely as we can. I do not think that allowing for a ten-year extension of putting those water rights to beneficial use is in the best interests of the resource. It could be a case of where you have proven sustainable water resources, tied up in a long extension of requiring to be put to beneficial use when other water is needed. We are then trying to go out and develop resources that are not as sound. If we have sound and sustainable water resources, those need to be put to beneficial use. That has been the hallmark of Nevada water law since the beginning. We should continue with that. We just changed it to five years only two years ago. Five years is a good amount of time. We have seen how quickly things can change in this state in five years. Where are we going to be five years down the road? That gives an amount of time to where they will need to go back to the State Engineer to prove that they are doing due diligence and putting this water to beneficial use. If they are not, then they should not be sitting on this water and it should be used for a more beneficial purpose.

Vice Chair Bustamante Adams:

We will close the hearing on S.B. 153 (R1). We will take a brief recess.

[Committee recessed at 8:59 a.m.]

[Committee resumed at 9:04 a.m.]

Vice Chair Bustamante Adams:

We will open the hearing on Senate Bill 361 (1st Reprint).

Senate Bill 361 (1st Reprint): Authorizes the issuance of a temporary permit to appropriate water to establish fire-resistant vegetative cover in certain areas. (BDR 48-285)

Senator Dean A. Rhoads, Rural Nevada Senatorial District

I am the Chairman of the Legislative Committee on Public Lands. Senate Bill 361 (R1) was drawn out of testimony from the Wildfire Conservation Group to the Public Lands Committee. [Read from prepared testimony ([Exhibit E](#)). Referred to [Exhibit F](#) in testimony.]

Vice Chair Bustamante Adams:

I know that Mr. McLain did provide a summary of his testimony ([Exhibit F](#)) for the Committee's use.

Assemblyman Ellison:

I cannot thank you enough for bringing this bill forward. We lost over two million acres in the last several years between Humboldt and Elko County. Lack of grazing was a lot of the problem. Anytime we can extend the water rights on some of these areas to try to get the native plants back in there, it is a good thing. One of the areas that Senator Rhoads did not talk about is that some of these areas that were burned out and we are trying to get water on, were some of the largest sage grouse habitats in the country. We have to do whatever we can to get the native plants growing back in those areas. We need to get the sage grouse back into these areas. This is a good bill. I never would have thought of this.

Assemblywoman Pierce:

Why did you not want to specify when you said "vegetative cover?" Why did you not say indigenous or native species instead so that at some future point you do not get someone who uses an invasive species as a vegetative cover?

Senator Rhoads:

Is your question why we want to plant a native species?

Assemblywoman Pierce:

I feel like there needs to be some requirement in the bill that you are only using a native species as a vegetative cover, just to make sure that, at some future

point, someone is not going to use something as bad as cheatgrass for vegetative cover. The bill needs some oversight that says that you can only use native species or indigenous plants.

Senator Rhoads:

The bigger part of the bill is the use of the water on a temporary basis so that you do not take someone's water right away from them. As far as native species versus cheatgrass, that is something we can look into. Cheatgrass burns like gasoline, whereas a native species does not burn as easily. It takes a hot fire for it to burn. The point of the bill is to use water on a temporary basis to establish other species that do not burn as fast.

Assemblyman Livermore:

I echo my colleague from Elko regarding the merits of this bill. Would permits be issued to an assortment of people or are they private land holders or public agencies?

Senator Rhoads:

The bill addresses both private and public land. Eighty-seven percent of our land is owned by the federal government. Most ranges we graze livestock on are a mixture of both public and private lands.

Assemblyman Livermore:

For some of the public lands that are relevant to this bill, Mother Nature is taking care of irrigating those. I am confused on how a public agency may use water to irrigate public lands.

Senator Rhoads:

It would probably be pumping it out of a creek, for instance. Some of the lands that did burn where it was followed up with a good moisture year look like a golf course. A lot of burns are not that bad. Some of it is actually good. When we had a million-acre fire and then the next year we have a drought, that is when we have problems. We are trying to reestablish a grass that will not burn.

Vice Chair Bustamante Adams:

Is there anyone else in support of S.B. 361 (R1)?

K. Neena Laxalt, representing the Nevada Cattlemen's Association:

We strongly support this bill.

Mike L. Baughman, Executive Director, Humboldt River Basin Water Authority:

The Humboldt River Basin Water Authority (HRBWA) includes Elko, Eureka, Humboldt, Lander, and Pershing Counties. The HRBWA does support this

legislation. I would like to respond to some of the questions that were asked this morning. In terms of the vegetative cover that might be proposed, in section 1, subsection 2, paragraph (a) it requires a plan for establishing vegetative cover that is resistant to fire in the area. Section 8, on page 12 of the bill provides for that plan at the discretion of the State Engineer to review by the State Forester. That will help to ensure that the vegetation that is being put into place is not going to cause more problems than are already there. The concept is not to go out and plant thousands of acres of this vegetative cover. The concept is green stripping. We would take key areas where you would put this fire-resistant vegetative coverage in. It would be established and it then prevents the catastrophic fires that we have. It covers hundreds of thousands of acres. It creates fire breaks.

With regard to the application of public and private lands, in section 1, subsection 1 of the bill it says, "A person may apply for a temporary permit to appropriate water to establish vegetative cover that is resistant to fire" The courts have found that in our statutes, "a person" in our water law is a federal government, state government, private individuals, nongovernmental organizations (NGOs), et cetera; it represents a lot of different persons.

Kyle Davis, representing the Nevada Conservation League:

We are in support of this bill. Assemblyman Ellison outlined the problem very clearly that we are trying to solve. That is the fact that we do have over two million acres of prime habitat that has been burned. We are trying to fix that problem and restore some of that habitat. There are benefits for the ranching industry but also for wildlife habitat. We want to make sure that we can do this. Some members of the Committee have heard this before; this is another issue where we are trying to do what we can to improve the habitat for sage grouse so that we do not see a listing under the Federal Endangered Species Act.

Mr. Baughman addressed the point about Assemblywoman Pierce's concerns. That would be talking about the type of vegetative cover that you would be putting into place. We want to make sure not to exacerbate the problem by putting in a species that would cause as many problems as cheatgrass has caused. That is where those two provisions are helpful. Speaking for the agencies in place, if you would like to make sure that these plans are being reviewed to make sure the vegetative cover makes sense, rather than forward a plan to the Division of Forestry, you could require that and say, "shall." That might ensure that the species are correct. I feel that "may" is probably adequate considering these two divisions are in the Department of Conservation and Natural Resources and work closely together.

Assemblyman Ellison:

We talked about the green stripping in some of the areas. To get the native plants back into those areas is important. You can actually go back in and try to establish those sage grouse areas. Are you putting a lot of money into this area?

Kyle Davis:

Yes. As you know, sitting on the Assembly Committee on Natural Resources, Agriculture, and Mining, that is one of our main goals this session. We would like to figure out how we can get some more money into restoring sage grouse habitats. There are certainly private dollars in play here. There was a bill last session that created the partnership between the State Department of Conservation and Natural Resources and the Department of Wildlife. They have been successful in getting federal money in to work on this and also in partnering with states around us. We are hoping to continue those efforts and looking to try to create other avenues where we can make some progress. This bill is part of that.

Assemblyman Stewart:

Are we talking about putting water where the natural grass would come up, or are we doing seeding as well?

Kyle Davis:

This would be a plan that would be submitted to the State Engineer to establish vegetative cover. As I read it, it would be a case of where there would be some seeding done. The goal is to establish native species that are fire resistant. In some cases, that may require seeding and in others it might not. That would be a question that is best left to biologists or people who do this for a living.

Andy Belanger, representing the Southern Nevada Water Authority; and the Las Vegas Valley Water Authority:

We are in support of this bill. We applaud the sponsor for his leadership in protecting wildlands and ensuring areas that were burned by fire can be restored to their natural vegetative cover.

Steve Walker, representing Lyon County and Carson City:

Both of the entities that I represent are in support of this bill for the reasons that have already been stated.

Vice Chair Bustamante Adams:

We will move to those that would like to testify in neutral on this bill.

Kelvin Hickenbottom, Deputy State Engineer, Office of the State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources:

Our office has offered an amendment ([Exhibit G](#)) to S.B. 361 (R1). Hopefully you have it in front of you. [Read from prepared testimony ([Exhibit H](#)).]

Assemblyman Ellison:

On the amendment, the only thing that you have changed is on page 2, section 1, lines 28 and 29. You crossed off, "but may be extended by the State Engineer in increments not to exceed 1 year in duration." Is that for reapplication? Is that to go back and refile with publication?

Kelvin Hickenbottom:

No, it would not be for publication. Just like any other temporary application that we have, they are good for one year from the date of issuance. In this case, they should have to refile another temporary application for another year and not grant them an extension for a year. That was what we were trying to bring out.

Assemblyman Ellison:

Has Senator Rhoads seen this amendment?

Kelvin Hickenbottom:

I do not know if he has seen it. We were working on this. I would have to ask the State Engineer if he has talked to the Senator.

Vice Chair Bustamante Adams:

We can verify that to make sure that the Senator has seen it.

Assemblyman Ellison:

I would like to. It is important to get water on these burned areas. If not, we are going to have twice the problem five years from now. We will have more cheatgrass out there than we can handle.

Assemblywoman Benitez-Thompson:

Can you tell me a little bit more about the temporary permit process and how it is the same or different than the application process?

Kelvin Hickenbottom:

Temporary permits are only good for a one-year time period. An application needs to be filed just as if it were any other water right. They do not have to provide us with a water right surveyor map. They can use a paper map so that it cuts down on their costs for the temporary application. It does not go to

publication, so there is no fee associated with that and there is no four-week period for publishing it in the newspaper. That is not to say that it cannot be protested, but it does not go to publication. We can act on temporary applications almost immediately if we have all of the information before us and the application is in order. Initially, these temporary applications were for emergency purposes. For instance, a farmer's well goes down and he needs to have another well drilled immediately in order to keep his crop from burning up or to put his crop in for that coming year. This was a way to expedite the application process because then they would file a permanent application behind it. Over time, temporary permits have been used for different purposes. If someone just needs water for one year, they will lease it or buy it from someone else. They will move it temporarily to their place of use, and then the next year it reverts back to the base right that it came from.

Assemblywoman Benitez-Thompson:

Within the language, is there a process by which an application for water rights for fire prevention could be put into statute?

Kelvin Hickenbottom:

I do not believe that I have seen one. Under our current statute, they could file a temporary application changing an existing right to do the same thing that this bill is introducing. This is also allowing them to file a new application if there is water available in the basin for that one-year temporary period. Yes, they could do something like that now.

Assemblyman Stewart:

The way the bill is now without the amendment, you would grant the extension without a protest period and publication. Is that correct?

Kelvin Hickenbottom:

As the bill is written, it is a temporary application and it does not go to publication. It does not say that someone could not protest it, but generally they do not go to publication and unless someone is looking at our website continually, they would not even know that it was filed. We generally extend a permanent right for a one-year period but temporary permits expire in one year. That is why we are saying that we would prefer them to file a new application if they need water for an additional year rather than having to file an extension of time which other temporary permits do not have the ability to do.

Assemblyman Stewart:

What I am concerned about is if we need the water for a second year to keep the grass growing and make this fire barrier, if there is a protest period and publication, it might delay it to the point where they would not get the water.

Would that be a possibility, or would you handle it so that there would not be a delay?

Kelvin Hickenbottom:

If there was a protest, we would have to review the protest and see if it had merit in order to not issue that permit. That is the situation with any temporary permit. There is generally no publication period. It goes through really fast. That does not stop anyone from filing a protest. We would have to address that protest. If we issued it for the first year and they came back and filed another application for the second year, I doubt that it would be protested then either.

Vice Chair Bustamante Adams:

You require that a new application be submitted every year as the current process for all temporary applications. You would like to keep it that way. That is why you are striking this language. Is that correct?

Kelvin Hickenbottom:

That is correct.

Assemblyman Livermore:

This bill has a fiscal note on it. I do not see a reference to it on my copy. Do you anticipate this having a fiscal element in your department?

Kelvin Hickenbottom:

I do not believe that we submitted a fiscal note. We did not feel that this was going to be any different from filing any other application. I do not know that it was going to put an additional burden on our office and that we needed more personnel. I do not believe we filed a fiscal note on this bill. We felt we could do it just like any other application.

Assemblyman Anderson:

To my colleague from Carson City, sometimes when a bill is drafted they will solicit a fiscal note from the division, but in this case it came back as zero. It says there may be an effect on the state even though there is none. It is just something that happens when a bill is drafted.

This bill is important because we have heard a lot about the sage grouse in another committee. I am personally concerned that it could curtail economic development if we cannot save the sage grouse habitat and it gets listed under the Endangered Species Act federally. I am concerned about the amendment ([Exhibit G](#)) because it was not adopted in the Senate. I do not want this amendment to stop this bill from going through. It is important that we do

whatever we can to save habitats. I am trying to get closer to the issue. When I read the bill, either way your office would have discretion. We are not mandating that you extend anything. In all practicality, if they apply for a new temporary permit it is the same as granting a one-year extension. Either way, your office still has the discretion. So, what is the issue? Do you just want to extra fee? What is the reason for the amendment?

Kelvin Hickenbottom:

On the Senate side, Mr. King addressed the one-year extension period. It did not make it as an amendment to that bill draft originally. We just felt that it was a temporary permit, and we allow for those temporary permits already. They are good for one year for any other use. We just felt that these should conform to the same one-year time period. We would grant it if another application is filed. We are really in support of the bill, other than the fact that the one-year extension language is in it.

Assemblywoman Bustamante Adams:

I am sure that Susan Scholley will talk to the Senate staff to see what happened to that portion and why it was not amended to the bill and make sure there is clarity. Is there anyone else who would like to testify as neutral? [There was no one.] Is there anyone who would like to testify in opposition to S.B. 361(R1)? [There was no one.] We will close the hearing on S.B. 361 (R1). We will open the hearing on Senate Bill 362 (1st Reprint).

Senate Bill 362 (1st Reprint): Revises provisions concerning groundwater basins. (BDR 48-926)

Senator Michael A. Schneider, Clark County Senatorial District No. 11:

I would quickly like to voice my support of Senator Rhoads' bill. It is a very good bill, and with global warming, there are fires all over the world and we should do what we can to stop the fires in Nevada. Senate Bill 362 (R1) is another water bill. I am bringing this forward for a constituent of mine in Las Vegas. His name is Mr. Randy Weaver. Also here to testify is Mr. Renaldo Tiberti. They are both familiar with what happened in western Nebraska with pumping the Ogallala Aquifer dry. They were looking at Nevada and how we had to true up water in Nevada. We actually had to pump water out and waste it to true up the water. They approached me about this bill. We passed it out of the Senate. There was a 700,000 population cap put in there. That may or may not be controversial this morning. I would like to turn it over to Mr. Weaver.

Assemblywoman Bustamante Adams:

With the amendments that were put on the bill in the Senate side, does that take away the fiscal note that had been attached to the original bill?

Senator Schneider:

Yes, I believe it does.

Randy Weaver, Private Citizen, Las Vegas, Nevada:

I would like to ask the Committee for your support on this bill. I have been dealing with the water scenario since I was a young child. My mother was in the Bureau of Reclamation and my cousin was in charge of water rights for the western half of the United States. Two years ago, I started a committee which included my cousin, Senator Schneider, Mr. Tiberti, the former State Engineer, and several others. What was brought to my attention was that our water law under the current "use it or lose it" has created some complicated scenarios. Take my experience in Nebraska, where they drained the Ogallala Aquifer, which was the largest aquifer in the northern hemisphere. There was no big city that stole the water. It was strictly the farmers overirrigating. They made no move to solve the problem until a federal magistrate ordered that the problem be solved.

In Nevada, we have basins that have been overallocated for years and that is due to our current water law. We have worked with the State Engineer to come up with a plan to give him the ability to bring these overallocated basins back in to what they should be allocated. We would also like to give the State Engineer the ability to look at different basins that need this. The only way for him to bring them in, currently, is for him to take the water or for someone to surrender it. So far, that plan for the future has not been working. We have tried to come up with verbiage that we hope can help the State Engineer determine which basin is in need. The Pahrump Valley and the Blue Diamond are two. We would like to include the entire state. He can look at each basin individually. The wording in the bill says that. I am concerned because I am not sure where the 700,000 population cap came from. I would propose that that be removed.

That is why I brought this bill forward. I have no water rights or utilities. I have been a New York Life Insurance agent for 26 years. I felt, as a citizen of Nevada, we need to be paying attention to what is going on with our water. In Nebraska, they pay users to save water. In Nevada, if a user does not prove the use, they penalize him and if a user does not waste it he loses it. It is something we should look at. It is important. In our last meeting, it was brought up that Utah could sue us, but I think it is something we need to move forward on in trying to help the State Engineer get a plan for this state.

Assemblywoman Bustamante Adams:

The 700,000 population cap was suggested because of the new census information. Obviously, you are still in support of the bill because this is just in response to new population numbers.

Assemblywoman Neal:

In section 2, page 3, lines 37 to 43, there is a five-year period where it says that the State Engineer could cancel the permit or forfeit the owner's right, how long is the period supposed to be? Is it five years? What is the temporary period where the owner is supposed to cease making withdrawals? How long is that?

Randy Weaver:

To my knowledge, the current law is five years. There is no set period in this current bill. It would be up to the management plan that the State Engineer approved for each basin.

Assemblywoman Neal:

That is not new language? It looked like that was new.

Randy Weaver:

You may need to ask the Office of the State Engineer that question. They are more versed in that issue. I think that is under current law. They are trying to stay within current law for the State Engineer.

Assemblywoman Neal:

You would like it measured against the perennial yield. I saw that there is similar language in the amendment. On the Assembly side, we had a bill that came through trying to define perennial yield. It is a future definition that may occur in 2013. How will this work when it has not been defined by statute what perennial yield is?

Randy Weaver:

I was not aware of any of those hearings. Perennial yield, to my knowledge, has been what they have allocated that that basin can actually pump out. I would have to refer that question to the State Engineer as well.

Assemblywoman Bustamante Adams:

I would like to stand corrected, Mr. Weaver. I believe that your intention on your original bill was that you did not want have a population cap. Is that correct?

Randy Weaver:

We do not want a population cap. By putting that in there, it would state that the plan would only be for Clark County because there is no other 700,000 population county. We started out trying to cover all the other counties but Clark County. It did not make sense to have a bill that excluded one county, so we wanted to include Clark County. I know they have a current water management program in process in Clark County that I think is working for them. I am not aware that they are currently considered an overallocated basin.

Assemblywoman Bustamante Adams:

Your original intent was to have it as a statewide bill. Is that correct?

Randy Weaver:

Absolutely.

Assemblyman Stewart:

That was my question. I would like to make it clear that it was a statewide program.

Assemblyman Anderson:

Could we go over Assembly Bill 419 (1st Reprint) at some point? That is the bill that Assemblywoman Neal referenced that is going to be a back-and-forth thing that we need to figure out how those two bills would work together.

Assemblywoman Bustamante Adams:

Yes, A.B. 419 (R1) was Assemblyman Goicoechea's bill that dealt with the same topic.

Renaldo Tiberti, Private Citizen, Las Vegas, Nevada:

We are here in support of this bill. A water right holder has a five-year period in which he uses it or loses it. I do own water rights in the Las Vegas Valley. The five-year period is too short. It does not give a lot of room to come up with a possible beneficial use for the water. The key word is beneficial. It forces people who own water rights to come up with a scheme to maintain their water rights that may or may not be beneficial. This would give the State Engineer a way to extend that time period to use it or lose it until the holder finds a true beneficial use for that water right. With the recession, it gives us time to put the water to beneficial use.

Assemblywoman Bustamante Adams:

Is there anyone who would like to testify in support of S.B. 362 (R1)?

Dean Baker, Manager, Baker Ranches, Inc.:

It is important that there is more emphasis put on the use and what water is available. I am not complaining about the State Engineer. The tradition of the drawdown has been acceptable to a point that it has overused different basins. There are many examples of this in Nevada and other states. It is possible to put this bill together with A.B. 419 (R1). It is important, and it needs to be studied. The drawdowns can affect both the person who has applied for the water and those who were already there. It will leave a situation that will be bad in the future. It will be devastating to the applicant and the existing water right holders. I support this bill.

Assemblywoman Bustamante Adams:

We will call up those that are neutral on S.B. 362 (R1).

Andy Belanger, representing the Southern Nevada Water Authority; and the Las Vegas Valley Water District:

We are neutral on S.B. 362 (R1) for the purposes of supporting the amendment that Mr. Weaver and Senator Schneider mentioned regarding the population cap. We have some concern whenever water law is specific to a county. We believe it makes most sense for water law to be applied evenly statewide so that there is one set of rules that all parties are following and working towards. We understand that A.B. 419 (R1) was passed by this Committee. It approached this issue in a somewhat different way. That bill, when it moves over to the Senate, will be heard and processed in some way. This bill does some similar things to that bill. It does it in a different way.

In the Senate, when this bill was processed, the commitment that we heard universally from the Committee was that A.B. 419 (R1) is in existence and we want to have another vehicle in case that bill is stalled somewhere. However, A.B. 419 (R1) was the bill that was going to address these issues. Both sides understood that it was the preferred place. We support the concepts of this bill. We believe in groundwater management plans. We understand the issues as they relate to basins that are overappropriated and getting those basins back into balance in a reasonable period of time. We support the concept of giving parties tools so that they can find voluntary ways to reduce overappropriation. We have done that in the Las Vegas Valley for the last 14 years. It has been tremendously successful. The Legislature gave us authority in 1997 to create a groundwater management program. That program has helped hundreds of well owners in the Las Vegas Valley who have wanted to get off of their wells and connect to a municipal system, thereby reducing drawdown on the groundwater basin there. It has been tremendously successful; it is paid for by the well owners in the valley. That is the way the Las Vegas Valley works as it relates to this concept. The language in this bill helps to make that universal and

statewide. We appreciate Senator Schneider's leadership on this issue. We appreciate the issues that Mr. Weaver and Mr. Tiberti brought up. We stand ready to work with the Committee and other parties to process a bill related to groundwater management plans this session.

Steve Walker, representing the Truckee Meadows Water Authority:

We are neutral on the bill. We have concerns as the bill is written. The 700,000 population cap was not spontaneously generated. It happened at the Senate Committee on Government Affairs to get the bill passed on April 15. That is where it came from. Putting a population cap or a county delimiter on a water bill that deals with hydrographic basins makes no sense. If you look at the 236 hydrographic basins in the state, they are squiggly. The county lines are straight. There is no nexus between them. The statement that every five years I am forced to waste water is called agriculture, at least in northern Nevada. You put the water to beneficial use, either you build houses, grow crops, dedicate it to wildlife, et cetera. It is a beneficial use. If, in fact, you are wasting water, in the 2007 Session on Senate Bill 487 of the 74th Session, we developed a fining system for wasting water that would be more effective. Wasting water is the wrong term. It is a beneficial use.

We think that A.B. 419 (R1) that this bill has been related to is good. Taking aspects from this bill that are positive and including them in A.B. 419 (R1) would give us a way to manage water better in the state where basins are designated and where you have records that pumping of the water exceeds the perennial yield of the basin and that there is evidence of that by dropping groundwater levels.

Assemblywoman Neal:

You stated that the 700,000 population cap was added in so it could pass the Senate committee.

Steve Walker:

That was my opinion, and that is what I saw.

Assemblywoman Neal:

I will ask the question based on what you think you understood. If it goes back to the Senate from us and we take the 700,000 out, then when they try to agree on our amendment, do you think this will kill the bill?

Steve Walker:

I do not know that it would kill the bill. The 700,000 cap on this bill does not work. The aspect that you are asking for, that instead of proving beneficial use, you would pay a fee so that you did not have to prove beneficial use, is counter

to state water law as a "use it or lose it" state. That aspect alone will kill the bill.

Assemblyman Ellison:

I agree. If you look at the votes, this bill passed 11 to 10 out of the Senate. If they made the amendment to get the bill out, then it will die if we send it back over without the population cap in place.

Steve Walker:

The vote 11 to 10 happened on the Senate floor. The vote I am referring to happened in the Senate Committee on Government Affairs.

Assemblyman Anderson:

I have a tendency to agree with you. I feel that we should not be worried about getting things out of Committee. We should make sure it is good policy. Your comments about a basin, that is right on. We do not create the earth's geography in this body. When we are dealing with groundwater basins, they ought to conform to something that has to do with groundwater basins and not the lines that we draw. We should not be making water law that applies to one county.

Kyle Davis, representing the Nevada Conservation League:

We are now neutral on the bill. I will echo the previous comments that have been made. I agree that this should be something that applies statewide. We should not have water law apply to one specific county. It sounds like that is a universal attitude from the sponsor as well as the people that you have heard from today. The second point is that we need to consider how this bill works with A.B. 419 (R1). We did support A.B. 419 (R1) in this Committee and this house. It does a good job of addressing what we see as the problem. We want to make sure that this bill will work with that bill. As these bills move forward, I think that is important to keep in mind.

**Kelvin Hickenbottom, Deputy State Engineer, Office of the State Engineer,
Division of Water Resources, State Department of Conservation and
Natural Resources:**

Our office appreciates the effort of the bill's supporters to provide our office with additional tools to deal with overappropriated basins outside of the heavy-handedness of simply regulating by priority. [Read from prepared testimony ([Exhibit I](#)).]

Assemblyman Ellison:

You are saying that some of the studies were done back in the 1960s on the appropriation of water rights. There are a lot of disagreements with the studies

made off the mountain tops to what actually is. Is the state going to go forward and do actual tests? The counties have already done this. Is the state going to step up to the plate and go back and look at some of these water basins and determine if they are overallocated? You are basing a law on overallocation. The state should have to show proof.

Kelvin Hickenbottom:

Are you suggesting that we go back and look at the perennial yield of each one of the basins that we have overallocated?

Assemblyman Ellison:

There is a lot of discrepancy on some of these basins. Some are actually overused and some are not. There has been a lot of money spent to determine that they are not being used enough or too much. We are creating bills that say that we should go off of how much water is there currently. I disagree. If the state is going to do that, the state should have to show proof.

Kelvin Hickenbottom:

We try to manage all of our groundwater basins on the perennial yield. From the first State Engineer forward, I imagine that none of them anticipated that the basins that are in trouble now would have been in trouble because of the issuance of permits. The ones that we see that are significantly overappropriated are ones where we had desert land entries during the 1960s and 1970s. The success rate throughout most of the state was only three percent of those permits issued ever proved beneficial use. There are those exceptions; Diamond Valley is one and Pahrump is one. The success rates in those basins reached 20 percent. That is where the overallocation of those basins came from. Their success rate and putting water to beneficial use came from those studies as compared to other basins that only achieved a three percent success rate. It was not intentional; it was just what happened. We have to go back and try to work with those people. Our office went out to Diamond Valley in 2009 to address the problem of dropping water levels because of overappropriations and what we could do to get the basin back into balance. They told us that they were fine. They would regulate themselves. We have gone to Pahrump and met with the utilities to figure out ways to bring the basin back into balance. We do not want to go into a basin and strong-arm people into only allowing certain priorities to put water to beneficial use. It would have a huge impact on the whole economy near those basins. We would rather work with the individual right holders in the basin to figure out ways to bring the basin back into balance. That is what A.B. 419 (R1) is trying to address.

We are not going back to every basin to figure out what the perennial yield is. Generally, people come to us with new studies and say the perennial yield is much higher. We found that looking at the old studies that were done by the United State Geological Survey (USGS) was not out of line. They are spot-on for the technology that they use. We do not see a significant increase. There are some that show more water, but for the most part we are talking about five or ten percent maximum. As people want to develop water in those basins that are not developed now, they will come forward with studies. We will require them to conduct a study to see whether or not there is that water available. We have that ability under our statutes now. We are trying to go forward with that. We are trying to make people who have filed applications for large amounts of water to prove that there is that much water in the basin. That is under *Nevada Revised Statutes* 533.368. We do have that ability. We are assessing them. It is usually a case-by-case basis rather than going through the entire state. We have over 252 basins and subbasins in the state. It is really expensive to conduct a study to collect the required data in order to determine the perennial yield of the basins. Every basin is different. Some have surface water and some do not. Some basins have phreatophytes where you can determine what the discharge of the basin is. There is a whole realm of techniques.

Assemblyman Ellison:

That is what I was trying to get across. One law does not fit all. Every basin is totally different. That is why I thought A.B. 419 (R1) was a good bill.

Assemblywoman Neal:

When you get these plans, how do you scrutinize the value of a plan that has a 10 percent or 5 percent difference? How do you deal with that deviation? Is that readily accepted that it may not be the actual amount of water in the basin?

Kelvin Hickenbottom:

Nothing is readily accepted. In these large projects, the applications are protested. There is the applicant side of what they believe is correct in terms of the perennial yield or the availability of water within that basin, and on the other side, there is the protestant. They do their own studies to determine how much water is in the basin. We have our own experts on staff who review the reports as well. We look at the hydrology and geology of the basins. We look at all of the different techniques they use in order to determine what they feel the water availability in the basin is. We do scrutinize these basins. We go to hearings as well. We have expert testimony on both sides. Water projects are contested if they are of any size or magnitude. There is a lot of scrutiny that is put on by our office as well as the public.

Assemblywoman Neal:

On section 2, subsection 2(b)(4) of the bill, when they enter into the agreement with all the owners of water rights in the basins to regulate the use of the water, can you give me an example of what that would look like? These are options. Is that correct? If the State Engineer finds that they may not be using the water in the manner that they should, they can be taken away. What does that look like? It says that the method should be based on the conformity with the priority of rights. The person who is trying to enter into this agreement is possibly going to lose his rights. How does this priority work for group regulation of the use? Let us imagine this is a homeowner's association (HOA) for water. I am going to lose my rights within this situation. It is being challenged. I will then go to the other owners and say that they need to regulate me. We are then going to agree on how I use my water. Is that what this looks like?

Kelvin Hickenbottom:

It would be how you do not use your water. If they have a junior priority, they do not have anything to leverage. If you are a junior right holder and we have to go and regulate by priority, the higher priority will get their water first. A junior appropriator would approach these more senior ones and have them not use their water in order for them to continue to use theirs. I do not understand subparagraph (4). To go through some of the other options, these are already things that can be done. Subparagraphs (1), (2), and (3), can already be done in a basin without any bill to allow it. People go out and buy water rights all the time. I do not think that anyone will go out and relinquish their water for free. It does have a value. Someone else could then go and purchase it from them, and then either use it or relinquish it.

Assemblywoman Bustamante Adams:

Mr. Weaver, would you be able to answer Assemblywoman Neal's question?

Randy Weaver:

I will try. I hate to refer to Nebraska, but under the federal magistrate, we were forced to come up with guidelines that we would not have come up with before. They went against state law. I do not have to point out the problems because of the overallocated areas and the State Engineer was very helpful. When I approached this bill originally, it was based on if I was a water holder, I would like the option to not have to prove up my rights for a period of two, three, or four years and pay a fee to the State Engineer's Office. That fee would be used only to buy back water rights. That was the plan for the future. That was how to help these basins out, because right now we do not have a plan.

Unfortunately, that type of thinking goes against our “use it or lose it law” in Nevada which we have to maintain. Instead of putting those types of specifics in a bill, we tried to come up with a bill that allows the State Engineer more tools to work with those designated areas and try to keep within the current state water law. Assembly Bill 419 (R1) was a great bill, but I did not feel that it had enough teeth to it. The State Engineer needed to move forward with a plan for the future. Although we can already do some of the verbiage in this bill, such as voluntarily relinquishing water rights and so on, the bottom line is there are not too many people that voluntarily relinquish their water rights. We are trying to give the State Engineer tools where he can work with an individual area. If they come up with a plan for the future, it is something he can do without violating state water laws. That was the original intent of this bill. We have taken out enough verbiage and put new language in that it works in their favor. It was on Friday when I saw the population cap. I felt that completely threw the bill out because this is for the entire state and not just for one county. I am glad to hear everyone supports that. I do not know if that answers Assemblywoman Neal’s question. That was the original idea behind the bill. We are trying to come up with a plan for the future. As far as the priority rights, you are getting out of my level of understanding. There are people that have priority rights that are over the junior water rights. The State Engineer’s Office that handles that.

Assemblyman Livermore:

Water rights are personal property. If this plan would potentially eliminate people’s ownership of water rights, would that be deemed a taking? Would the state be responsible to pay for that taking? Could this go to court?

Kelvin Hickenbottom:

We are not out to take anyone’s water right. If you are not using it for five consecutive years, and this applies to groundwater rights, you have the potential of forfeiture. That is not a taking. You have not put your water to beneficial use. You may not need it any longer. That is just the way the statute has been set up. If we had to regulate by priority, I guess you could look at that as a taking. However, our law is set up that, on surface water in particular, the senior right holder got his water first in times of shortage and everyone else got theirs as water became available. It applies to groundwater as well. It is in the law. They can contest any decisions that we make by appealing our decisions to a court. I do not know that it would be a taking.

Assemblyman Livermore:

I served on the Carson Water Subconservancy District for almost 11 years. There are other basins with which we have been involved. The potential process of what this plan would do, you look at the modeled water rights and

the perennial yield, and there is a blue line drawn right across the plan of the senior and junior water right holders. If the plan was adopted, the junior water right holders have no water; the value is gone. That is what I am questioning.

Kelvin Hickenbottom:

I agree with you. We have gone out and given presentations where we would show what priorities would be cut off if we had to limit the amount of draft on the basin to the perennial yield. There are a lot of other things that go into the decisions that we make. It is not just the perennial yield itself. If there are irrigation rights, we look at return flows. We look at other things to establish how much we think the safe yield of the basin is. Sometimes we have exceeded that, but I have stated the reasons for that. To enforce the water law, that is the way we have to do it. We draw a blue line across that list of rights within that basin. We would say, for example, that a 1965 water right is the highest priority that can be pumped. Then, everyone else has to cease. We would prefer to work with the basins to bring them back in line. We have the ability to change applications from agricultural use to any other use. We can take the consumptive use of that right and only transfer it. There are a lot of other safeguards in there. There are dedication rates for subdivisions that go into play. They actually dedicate more water than one house typically uses. That goes back to getting the basin balanced. On paper it may not be balanced, but in actual pumpage of the groundwater it does come back into balance. Those are things that we look at. We would not just go out and draw the line. We look at all of those other pieces to say this would be the level of curtailment if there was one.

Assemblywoman Bustamante Adams:

Is there anyone else who would like to testify as neutral for S.B. 362 (R1)? [There was no one.] Is there anyone who is in opposition? [There was no one.] We will close the hearing on S.B. 362 (R1). Is there any public comment? [There was none.]

Meeting adjourned [at 10:19 a.m.].

RESPECTFULLY SUBMITTED:

Jenny McMenomy
Committee Secretary

APPROVED BY:

Assemblywoman Irene Bustamante Adams, Vice Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: May 4, 2011

Time of Meeting: 8:30 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 153 (R1)	C	Kelvin Hickenbottom, Office of the State Engineer	Amendment
S.B. 153 (R1)	D	Kelvin Hickenbottom, Office of the State Engineer	Prepared Testimony
S.B. 361 (R1)	E	Senator Dean Rhoads	Prepared Testimony
S.B. 361 (R1)	F	Senator Dean Rhoads	Summary Testimony
S.B. 361 (R1)	G	Kelvin Hickenbottom, Office of the State Engineer	Amendment
S.B. 361 (R1)	H	Kelvin Hickenbottom, Office of the State Engineer	Prepared Testimony
S.B. 362 (R1)	I	Kelvin Hickenbottom, Office of the State Engineer	Prepared Testimony