

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

**Seventy-Sixth Session  
February 21, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:04 a.m. on Monday, February 21, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, 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/](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Marilyn K. Kirkpatrick, Chair  
Assemblywoman Irene Bustamante Adams, Vice Chair  
Assemblyman Elliot T. Anderson  
Assemblywoman Teresa Benitez-Thompson  
Assemblyman John Ellison  
Assemblyman Ed A. Goedhart  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblywoman Dina Neal  
Assemblywoman Peggy Pierce  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Lucy Flores (excused)  
Assemblyman Lynn D. Stewart (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Jason King, State Engineer, Division of Water Resources, Department of Conservation and Natural Resources  
Keith Munro, First Assistant Attorney General, Office of the Attorney General

**Chair Kirkpatrick:**

[Roll was called.] We have some housekeeping items that I would like to go over with the Committee. For those of you who were here on Assembly Bill 182, if you have any comments please have them to our staff by 5 p.m. today so that we can give them to the Committee members. There was some opposition. Those were posted on the Nevada Electronic Legislative Information System (NELIS) but we were having some trouble with that. We are doing everything possible to fix that problem. On February 14, 2011 the Committee members received an explanation from the Public Utilities Commission of Nevada (PUCN) on Assembly Bill 17. It was slightly confusing. If you need another copy it will be on NELIS. That is much simpler than the testimony that we received on February 9 in this Committee. There is also a document about payment in lieu of taxes (PILT) funding that some local governmental agencies have been discussing with the Committee ([Exhibit C](#)). Additionally, there is a copy of the county overview ([Exhibit D](#)).

We will start with the Division of Water Resources presentation first. There are approximately 21 water bills in process right now. We have at least three scheduled in this Committee currently. The record needs to be very clear as we go through these water bills. Even though this will be my third session I still do not have all the answers and some of these water laws can be complicated. Please do not hesitate to ask questions, especially those people from southern Nevada because they do not deal with these laws on a regular basis.

**Jason King, State Engineer, Division of Water Resources, Department of Conservation and Natural Resources:**

I have a handout ([Exhibit E](#)) which has many slides. If you would like to go in a different direction than I am going during the presentation please let me know. Water is a big issue everywhere, but it is an even bigger issue in Nevada. We

are the driest state in the nation. We average about seven inches of precipitation on an annual basis statewide. When coupled with the fact that out of 21 of the past 24 years we have been the fastest-growing state in the nation, water rights become an even larger issue.

**Chair Kirkpatrick:**

If the Committee has any questions it is better to stop the presentation and ask those questions rather than save them for the end. It is easier to ask when the issue is in front of us than to make notations.

**Jason King:**

The topics of my presentation will provide an overview of Nevada water law ([Exhibit E](#)). I will talk briefly about the appropriation process, maintaining a water right, ownership of water rights, groundwater and surface water and how our office has administered those sources over the years, and criteria that our office uses when deciding to approve or deny an application.

Our mission statement 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" ([Exhibit E](#)). The Division of Water Resources and the State Engineer's Office are one and the same. I will use them interchangeably throughout this presentation. We have cited all of the *Nevada Revised Statutes* (NRS) where our water law is found.

**Chair Kirkpatrick:**

We see NRS Chapter 533 more than anything else. Is that correct? Could you go over that statute in more detail?

**Jason King:**

*Nevada Revised Statutes* (NRS) Chapter 533 and NRS Chapter 534 are really the meat of our water code. Chapter 533 of NRS primarily deals with surface water, although it does speak to the appropriation process as well. *Nevada Revised Statutes* Chapter 534 refers to the groundwater portion of our water law. It is typically NRS Chapter 533 and NRS Chapter 534 we are dealing with when we talk about water law.

Nevada's water law is not perfect. However, I am being genuine when I say that I do believe that it is one of the most complete and comprehensive water laws in the United States, after dealing with my counterparts in other Western states. Our office has been around since 1903. Many things have happened in 108 years and that means that there needs to be some changes to our water law.

In Nevada, our water law is based on the prior appropriation doctrine, which means first in time is first in right. In other words, priority is king. The first person to file an application and get a permit has priority of every subsequent water right in that particular basin or stream system. Priority matters greatly. Beneficial use is the limit of the water right, and then one must use it or lose it.

I would like to go through the water right application process. A person who would like a water right makes an application through our office. If they were to get a favorable decision, once they have filed that application our office issues a permit. Once that permit is obtained, there are certain things that have to be done. The water must be put to beneficial use. Once someone has put the water to beneficial use after getting a permit, our office then issues a certificate. In overview of the process, there is an application, a review, a permit, beneficial use of the water, and certification. As I already mentioned you either use the water or lose the water. That is another major foundation of our water law; if someone holds a water right then it needs to be used. If the water is not used our office will get the water to someone else who is going to use it beneficially. There is the possibility of losing the water right even after certification.

**Chair Kirkpatrick:**

Is beneficial use determined in statute? What would determine beneficial use?

**Jason King:**

Beneficial use, as it says in statute, is the limit of the water right. For example, if there is a water right for the irrigation of 40 acres of alfalfa, if at some point, the most that can be irrigated of that alfalfa is 25 acres, there will need to be a piece of paper that is filed to our office stating that only 25 acres are being put to beneficial use. There would then be a field investigation which might include looking at meter readings. Based on that use, our office would then issue a certificate for the irrigation of the 25 acres. The balance, which would be 15 acres, would then go back to the water source.

**Assemblyman Livermore:**

Would you describe personal property right?

**Jason King:**

Water rights are real property. They can be bought and sold.

**Assemblyman Livermore:**

How do you forfeit something that is a real property right?

**Jason King:**

It is in statute. The law calls for the appropriation of water, and this is the way that water right is obtained. If you only prove beneficial use on a portion of your water right, then that portion which is not being used is not real property.

**Assemblyman Goedhart:**

It is equivalent to having a piece of real property and not paying your taxes on that property for several years. Has your office been looking in basins that are at or above the perennial yield where there is a request by a municipality or county to suspend the use it or lose it doctrine? An example of this would be in Pahrump, which on paper is over-allocated. The annual pumping is at or above the perennial yield, and we still have people spending tens of thousands of dollars on power bills to pump water out of an aquifer to maintain their water rights standing. It seems counterintuitive that we would have a law on the books that would encourage anything less than the best use of a limited resource.

**Jason King:**

There are two bills in this session that are going to try to address that issue, although we have not seen the language on those bills yet. While I am completely in favor of working out a solution to bring basins back into balance, throughout my professional career the concept of beneficial use has been burned into my brain. The idea of not putting water to beneficial use and there being no penalty for violation is upsetting to me. I certainly understand the concept, and I am anxious to see what these two bills are going to look like. I would also like to see if we can work on bringing those basins back into balance.

A common unit of measure that we use in our office is the acre-foot. An acre-foot of water is 326,000 gallons. Think of an acre of ground, which is almost a football field that is covered with one foot of water. That is an acre-foot. It is enough water to supply two families of four for one year, depending on the outside irrigation.

Supplemental rights are another important concept. The best way to think of a supplemental right in an agricultural community is, for instance, if there is a river system that is the primary source of water that will supply water for agriculture. In years of drought, however, our office has issued supplemental groundwater rights that would then allow a farmer to pump that supplemental groundwater in those years where there is not surface water, so that they can continue to grow that crop. Commingled rights are when more than one source is used together. It could be surface water and groundwater, or it could be effluent. The definition is that two sources of water are combined together.

Our office has the ability to declare preferred use. For example, in some basins that are almost fully appropriated, we will come out with an order stating that it is not in the best interest for our office to issue any new appropriations for irrigation or other purposes. However, we will say that preferred use is commercial, small industrial, or municipal.

**Chair Kirkpatrick:**

When you look at those preferred use requirements, if the water is not used for agricultural purposes can it be utilized for small commercial property? We have seen that happen up North. Is that correct?

**Jason King:**

Yes, that is correct. We have also seen that happen down South. We have seen it in Pahrump and Las Vegas as well. It occurs in those basins that are almost or are fully appropriated. We shut down the basin to larger uses of water. We have not stopped the small uses so that we can still have the economy grow.

**Chair Kirkpatrick:**

Does one industry use more than another, or is it still limited to the acre-feet of their certificate?

**Jason King:**

It is limited to new appropriation. For example, in Pahrump we are not going to issue any new water rights except for small commercial and industrial for two acre-feet a year. In this way, not only do we establish a preferred use but we also establish what the withdrawal of water can be.

All sources of water within the boundaries of the state whether surface or groundwaters belong to the public. All use of the water requires a permit from our office except for domestic wells. In the State of Nevada, if you live outside of an area that can be served by a municipality, you have the right to drill a well that will serve up to two acre-feet per year for one single-family dwelling, lawn, garden, and domestic animals. Domestic use is the only exempt water right.

**Chair Kirkpatrick:**

For the Committee, can you explain the difference between these two?

**Jason King:**

I will again use the example of Pahrump. In Pahrump there are approximately three water purveyors that serve water to the homes in the area. There are domestic well owners or lot owners that cannot be served by a municipality. In order to get water, those owners are allowed to drill a domestic well. There are

over 13,000 domestic wells in Pahrump, which is a separate problem. There is also a potential to drill another 20,000 domestic wells. At some point there will be entities coming forward and asking that the number of domestic wells be limited in a basin. Based on the number of domestic wells in Pahrump right now we are exceeding the amount of recharge in that basin.

**Assemblyman Anderson:**

What is the mechanism for someone that drills their own well to know how many acre-feet they have used? It says they are limited to two acre-feet per year.

**Jason King:**

I will go through the process from start to finish. Take, for instance, a lot that is purchased which cannot be served by a municipality service area. A well driller would then have to be contacted. The well driller would then contact our office and submit a certification card and start the process to drill a domestic well. We look to make sure that the proposed well is not inside the service area. We approve it. The well driller then drills the well and it is able to be used. Our office does not know whether or not that well is having more than two acre-feet pumped out of it unless someone contacts us and gives us an indication that more water is being pumped out of it than the set amount. That is the only way we know that there is more water than the set amount being pumped out, unless our office puts everyone in the area on a totalizing meter that will monitor all the water use in the area. We would then read it or have it provided to us by the owners of the well.

**Assemblywoman Neal:**

How does someone lose their water right on the basis of limited use? You cannot get a water right by adverse possession. The only way you can lose the water right is if you stop using it. How do you find out if someone has stopped using their water? The presumption that they are going to continue is overwritten. The only person who can come in and offset a water right is the state.

**Jason King:**

Later on in my presentation I will talk about forfeiture, abandonment, and cancellation. I will get into how that is done.

I would like to go over the application process now. An application is filed with our office, and there is a supporting map that goes along with that application. It then goes to an internal review process. Once it has gone through that process, we then send it out for publication in the local newspaper where there is a point of diversion. It is published for four continuous weeks. After that,

there is a 30-day protest period in which anyone who wants to file a protest may come forward. From the first time that application is filed, someone can come and file a protest. They do not have to wait until that 30-day protest period. If no one protests it, it is called ready for action. If it is protested, then we determine how compelling the protest issues are and whether or not we can overrule the protest without a hearing. Then, the determination is made. We either approve or deny an application.

**Assemblywoman Benitez-Thompson:**

What percentages of the applications have protests filed against them?

**Jason King:**

In my recollection, it is around 30 percent. I would like to go back and get the exact number and I will get that to you.

**Assemblyman Goedhart:**

When you get that percentage, could you also give us a breakdown of those protests? What portions of those protests have been filed by a local, state, or federal government entity?

**Chair Kirkpatrick:**

Is the Committee clear on maintaining a water right, or do we need to go into more detail?

**Jason King:**

One thing that is worth repeating on the appropriation process is that the priority is king. When a person files an application with our office, it establishes priority. If an application is filed today, it is going to have a priority of a certain time and date. If there is a change application of that right and a change application is filed on that base right, then that change right maintains that same priority of the base right. For example, if someone has a change application that has today's date on it for a water right that was issued in 1943, that change application will have the priority of a 1943 right.

**Chair Kirkpatrick:**

I just learned that at a water conference that I went to. I did not understand how priority worked.

**Jason King:**

I will move on in my presentation to maintaining a water right ([Exhibit E](#)). An application has been filed, has received a favorable review, and then a permit has been issued. There are at least two conditions on a permit that we issue. We establish time frames for proof of completion of diversion and proof for



placing the water to beneficial use. If someone has a permit and beneficial use, we call that water right perfected. It can only be perfected if the completion of the diversion works is made and the water is placed to beneficial use. Under our law, those time frames are limited to five years for filing a completion and ten years for filing a proof of beneficial use. Failure to submit those proofs by the time specified results in cancellation of the water right. For instance, a permit is issued by our office and someone has to file a proof of completion within five years and they are not able to do that. Our office would then come in and cancel the permit. However, if by the end of five years, someone came in and filed an extension of time, which the law allows, we review that and if it meets the criteria, then we were able to grant that extension of time.

A person requesting an extension has to submit a reason as to why he needs an extension. Our office will then review it and consider whether the person holding the permit has been proceeding in good faith and reasonable diligence to complete the work to put the water to beneficial use. Failure to file the extension results in a cancellation of the permit.

**Chair Kirkpatrick:**

Your office does a lot of outreach to get notification out to the public. Also, you work with the applicants to help them to keep moving forward in the process. There were some examples in the water conference that I went to. With the economy, sometimes people were unable to keep up with the process. I understood from the water conference that the Office of the State Engineer was good about working with people. The last thing anyone wants to do is forfeit their water rights.

**Jason King:**

Yes, that is true. Before our office would cancel a permit we would send a 30-day notice. This would state that a proof of completion was not filed and that there is a 30-day period in which the owner needs to file something, whether that is a proof of completion or an extension of time. We go to that effort. We have statutory requirements that we have to meet for extensions that we receive. We are very sensitive to economic downturn. We understand that people need additional time to spend money on a well, for example.

**Assemblywoman Neal:**

How many people own water rights? It must be a limited amount if the term can be continual. It is also a 100-year doctrine. How many cancellations have occurred?

**Jason King:**

We monitor 2,800 active water rights throughout the state. We have cancelled approximately 2,000 to 4,000 rights over the years. We do that frequently. If we do cancel a right there is still another chance. Our office can cancel a right and someone can come forward and appeal that decision to our office. It is not before a district court. It is appealed, it comes before our hearing office, and that cancellation can be appealed. We can then rescind that cancellation and give the permit back. There is, however, a penalty. If we rescind your cancelled permit, the new priority date of your permit is the date that the cancellation was rescinded. If someone had a 1950 water right that was cancelled and we rescind it in 2011, that would go from a 1950 priority right to a 2011 priority right. That is significant.

**Assemblyman Goedhart:**

As we go further down the road the priority right might become more important than it is now. Have there been some basins where your office has already had to adjudicate based upon a priority date?

**Jason King:**

In groundwater basins we have not. In surface water we have. We do that all the time. We are shutting off by priority on stream systems all of the time. We have done something similar to that in a couple of groundwater basins that we have seen as over-appropriated. The State Engineer has called for all proofs of beneficial use. Our office sends out letters which state that the basins are over-appropriated and the owner has 30 days to file the proof of beneficial use on how much water is being used. That is one way our office has stopped the water use without coming in and doing it on a priority basis.

**Chair Kirkpatrick:**

Some of the Committee members are probably wondering what groundwater and surface water are, but I see that you are going to get to that later on in your presentation.

**Assemblyman Munford:**

I, at one time, was on a community well, and I know that the doctrine is if you do not use the water then you lose it. We had some problems with that. When I lost my groundwater rights I was under the impression that if we lost our rights that someone else was able to purchase those rights. Were we entitled to any compensation because we lost our water rights? I heard you mention earlier about the appeal process, but you did not mention compensation. I do miss my water rights. I am on city water now but my next-door neighbor does have well rights and they are using their well.

**Jason King:**

The short answer is no. There is no recovery of cost for having lost water rights. There is always the ability to appeal our decision. That is a very timely question because the slide on page 13 covers equitable relief by the courts ([Exhibit E](#)). In terms of a cancelled water right, the first appeal is through our office. In terms of a forfeited water right, you also have the ability to appeal that. There are time frames associated with that appeal. You can appeal that to a district court. A district court judge can grant equitable relief and give back a forfeited right. It happens frequently. Our office has not had much success with forfeiture. The courts have found it to be heavy-handed even though it is in statute and has been in statute for a quite a long time. There is always recourse through the courts, but there is no monetary compensation.

We will continue on with maintaining a water right and speaking to certificating and appropriation. Once the proof of completion has been filed and accepted, then a proof of beneficial use needs to be filed. A field investigation would be performed by our office to confirm that the water is being put to beneficial use. We would then issue a certificate for that use.

If you have a permit but it has not become a certificate and you have failed to file the various proofs or extensions, we can cancel that right. That is one way that a right can be forfeited. That is true for both groundwater and surface water. Once a water right is proved upon and the certificate is received, for groundwater, it can be forfeited by five consecutive years of nonuse. If there are five years of nonuse, our office can come in and forfeit that water right. The whole idea is use it or lose it. If water is not going to be used by those who hold the right, then our office needs to get this water in the hands of people who can use it.

There is also the issue of abandonment. Surface water cannot be forfeited. That was changed in statute. Surface water can only be abandoned. It is really difficult to prove abandonment. Our office looks to see whether or not there has ever been delivery of water, payments of maintenance in the delivery of water, payments for costs of capital improvements, or if maintenance was made. If we can find anything that looks as if surface water is still being utilized on the property we will not abandon it. Someone pretty much has to stand on the court steps and state, "I do not want this water any more." It is almost that difficult for us when it comes to abandonment of surface water.

In the case of forfeiture of groundwater rights, it is five consecutive years. A person holding a permit can file for an extension of time. Another provision in our forfeiture statute was amended in the mid-1990s. We conduct a number of basin inventories out in the field, looking at crops and both water and electric

meters to see who is using their water and how much of it is being used. Originally those inventories were done because our office would get a better feel for the health of the basin. That inventory has now morphed into a way for us to look at forfeiture as well. In those basins where we are conducting inventory, like Truckee Meadows, Las Vegas, Pahrump, and Diamond Valley, if we find a water right holder has had four years of nonuse our office is required, by law, to send a notice to that water right holder stating that they have one more year, and then the water is subject to forfeiture. That is another attempt by our office to let those water right holders know that they need to do something with their water. We send out letters with four years of nonuse. If at the end of that one-year time frame the water right holder has not filed anything with our office which could be an extension of time, our office can then forfeit the water right. Then, of course, the water right holder can appeal that to a district court. Our office is not limited by the number of extensions that can be filed. Someone can file year after year. At some point in time if our office is getting Xerox copies of extension forms from the previous ten years, our office is going to forfeit on the basis of not seeing a steady application of effort to put the water to beneficial use.

**Assemblywoman Neal:**

I am just trying to get a framework. This is new for me. Do most of the debates happen when you adjudicate the loss of the right or the transfer of the other person? What are the factors that you use for good faith? Is there a specific case that exemplifies good faith criteria that is used by the state?

**Jason King:**

We used to look at whether or not we were going to go after a cancellation or a forfeiture of a water right when we would get a change application in our office. That was the way it was 20 years ago. Now, more things have been written into the law in terms of giving the water right holders notification of action on the part of our office. That does not occur too much anymore, whether or not we get a change application. If it is under an extension of time and it is in good standing, we do not really look past that too much. We would now just process the change application, whereas 20 years ago we would try to pursue that in terms of cancellation.

*Nevada Revised Statutes* 534.090 deals with forfeiture ([Exhibit E](#)). In determining whether to grant or deny an extension the State Engineer must consider among other reasons: is good cause shown as to why the water could not be put to the beneficial use for which the permit was granted; the unavailability of water beyond the control of the holder; and any economic condition or natural disaster that would prevent the water from being used. We use that a lot these days when it comes to forfeiture extensions in terms of

economic condition. Also, has the holder demonstrated efficient ways of using water for agricultural purposes such as center pivot irrigation; and is there any prolonged period in which precipitation in the basin in which the water right is located is below average for that basin, in other words, drought conditions. Those are five criteria that are in statute.

In terms of the steady application of effort for extensions of time, our office is given pretty broad discretion to look at that. I tell staff engineers who review these extensions of time, when you look at a water right file and there are 15 extensions of time, then it should read like a book, in my opinion. It should demonstrate a steady application of effort. If it is the same thing every year then we start to run into problems with people. In some cases it is the same Xerox copy, only they have lined through the old signature and put the new signature on top. Those are the ones that raise the red flag.

**Chair Kirkpatrick:**

I went to a water conference before session started and I have some examples of where people actually do things like that. I do have some examples that the Committee can look at where people have crossed out their signatures and signed over it. You wonder how the Office of the State Engineer is supposed to do its job with so little information.

**Jason King:**

Our water law is riddled with anti-speculation language. We are trying to avoid people getting a water right and holding onto it for a long time until the market reached an all-time high and then selling it. That may be what eventually happens after you put the water to beneficial use. That happens because it is real property. However, on an extension of time, if the reasoning for that application is waiting for the market to get better so that it can be sold, we do not like that.

Our office does not assign title. We only confirm or do not confirm a report of conveyance. In all our notifications we are required to notify who the owner of record is in our office only. If people do not file those changes in ownership with our office, we have no idea that ownership change has occurred.

Water right is considered real property and can be owned separately from the property. Water rights are in pertinence to the property and are passed from seller to buyer unless the rights are specifically excluded in the deed. For a long time we just had deeds. If the person selling the property did not specifically exclude the water rights, then those water rights transfer with the land.

The owner of record in our office is a result of filing copies of deeds and reports of conveyances from the permit holder to the current owner. The assignment of ownership does not occur automatically when the deed is recorded in the county. It must be filed in our office. Title companies do not research water rights, and they will not issue title insurance or water right ownership.

Approximately 20 percent of our staff in Carson City work on water right ownership. It is a big part of things that we do. If we get a change application that is in a farmer's name and he changes another farmer's water right, we have to be able to bring ownership into the first farmer's name before we can issue that water right. It is a very important part of what we do.

Our water laws have been around since the early 1900's. The surface water law has been primarily put into NRS Chapter 533 and our groundwater administration has been put into NRS Chapter 534. Because they have been in different chapters many people feel that Nevada treats groundwater and surface water as two separate sources that never commingle. That has never been the case. We obviously understand that there is connectivity between surface water and groundwater. They were simply put in the statute in separate chapters many years ago. We are doing our best today to deal with these new issues that are coming up in terms of appropriating groundwater in a basin where a river runs through it. People who have old senior water rights on a river are upset when we issue a groundwater right next to the river because that groundwater eventually gets to the river and, in their mind, it is taking their water. That issue is being addressed in a number of venues and is going to become more contentious as time goes by.

**Chair Kirkpatrick:**

That is why we need the record to be clear when we hear all the water bills.

**Jason King:**

Most of our surface water was used prior to our state water law. Therefore those water rights have been adjudicated and are subject to a decree. Any surface water that was not being used prior to 1905 is now being appropriated through the process that I described earlier in terms of filing an application, getting a permit, putting the water to use, and getting the certificate.

Pages 22 and 23 ([Exhibit E](#)) show some of the various streams throughout the state. There are approximately 3.25 million acre-feet of surface water runoff within the state. In terms of groundwater, the second slide of page 23 demonstrates that in the State of Nevada we have 256 hydrographic basins. Every one of those footprints is its own groundwater basin. You can think of it as its own watershed. That is how Nevada has appropriated water since 1913.

For every one of those basins, there is an estimate of what we call perennial yield. Perennial yield is the estimated amount of water that can be appropriated on an annual basis without harming the resource. We have perennial yield estimates for all 256 hydrographic basins. We are the envy of a lot of Western states because this is how we have regulated groundwater for a long time. Other Western states do not have that luxury. In a perfect world, if we establish that the perennial yield in the basin is 5,000 acre-feet, we would issue water rights up to 5,000 acre-feet and cut it off. In many basins it has occurred but in some we have over-appropriated.

**Chair Kirkpatrick:**

We have done a better job in the last few sessions with getting an inventory so that issue does not come up for the future. Is that correct?

**Jason King:**

Yes, there has been language put in for this session as well as some bill draft requests that look to inventory how much water is being used, and how much water is available in these basins to give us good baseline data so that we can make better decisions moving forward.

**Assemblywoman Benitez-Thompson:**

For these 256 basins, how do you go about measuring the watershed in those basins?

**Jason King:**

These perennial yield estimates have come from a cooperative project with the United States Geological Survey (USGS). That is the service they provide. They have gone in and done scientific analyses of these basins and come up with estimates of recharge and perennial yield. Some of the earlier studies were done in the late 1940s. Many of them have been updated but some have not. Even those old estimates by USGS are very good. There are other entities out there that have the skills and expertise to gauge the watershed. For example, an applicant may want to come in and appropriate water in a greater amount than our office feels is there. That person will then hire his own consultants, who will put together a study and present it to our office for review. We also collect data that way.

**Assemblywoman Benitez-Thompson:**

Some of these basins have more current scientific data than others. Would you give me a percentage to how many of these basins have current data versus data that may be more antiquated?

**Jason King:**

I would venture that about 30 to 40 percent have recent studies within the last two decades.

There are 256 hydrographic basins in the state, and 120 of those are designated. A designated basin is when our office has gone in and has seen that it is getting close to being fully appropriated. It could be designated for a number of reasons: because there is a lot of activity, because there are a lot of geothermal wells being drilled, because their area has a lot of domestic wells being drilled, et cetera. For some reason it has risen to the level that our office needs to start watching the basin a little more closely. We then designate that basin. By designating a basin, it gives our office additional tools to manage the water resource in that basin. Out of the 256 statewide basins, 120 are designated.

In terms of groundwater, we have about 1.7 million acre-feet of groundwater within 256 hydrographic basins. The Columbia River at The Dalles, which is a gauging station, flows about 200,000 cubic feet per second ([Exhibit E](#)). Enough water passes that station in 16 days to equal the total amount of surface water and groundwater supply in all of Nevada. It is an interesting comparison to see what some other states have versus what water we have.

I will now go over criteria used by the State Engineer when deciding to approve or deny an application. An application is filed, it goes through the review process, it goes through the publication and protest period, and then becomes ready for action. At this point, our office needs to decide what to do with it. There are four primary criteria found in NRS 533.370. The first is whether or not there is unappropriated water. Second, does it conflict with existing rights? If that municipality pumps 2,000 acre-feet, it may affect these farmers' rights and the water right cannot be issued. Third, whether the use of the water proves detrimental to public interest. Finally, if the use conflicts with existing domestic wells, we do not issue that water right. Domestic wells do not require a water right from our office; it is an exempt well. However, the Legislature has recognized the importance of domestic wells and includes it in the same criteria as an equal; that is we cannot issue a water right if it is going to impact existing domestic wells adversely. There were additional criteria added in 1993 and 1995. The applicant has to be able to show faith to construct the works necessary to put the water to beneficial use, and an applicant also has to have the financial ability to construct the project. That gets towards the speculative language that I was discussing earlier.

The criteria are for all water rights. There are some additional criteria that were added for interbasin transfers. An interbasin transfer is when the pumping of a



water right from a well in one of the 256 hydrographic basins previously mentioned occurs, and water is moved to another basin. The water is taken out of the basin and moved. That is an interbasin transfer. Some people misunderstand the purpose of an interbasin transfer. For instance, if the City of Reno needed more water, it could go over to Elko and purchase water rights and file a change application to move the point of diversion over to Reno. That scenario is not possible. The water has to be pumped in the basin where the water right lies and that water has to be delivered through a pipeline. That is an interbasin transfer. Interbasin transfers are not anything new. They get a lot of press and headlines. Our first interbasin transfer was in 1873. The second slide on page 28 ([Exhibit E](#)) shows other interbasin transfers. State water law has allowed for interbasin transfers for a long time. Much of the western United States has been developed on interbasin transfers. People do not necessarily live where water is so the water has to be brought in.

The Southern Nevada Water Authority's (SNWA) import project shows the various basins from which they are looking to import water. On page 29 the second slide outlines the water rights that our office has issued, thus far, to SNWA. In 1989, it was then the Las Vegas Valley Water District, filed 146 applications in 27 basins in order to import in 180,000 acre-feet. They withdrew 32 of those applications from ten of the basins. We had issued arranged permits for 74,000 and 94,000 acre-feet. Many of you may remember the Nevada Supreme Court decision that came down stating that our office had abused our power and issued permits after a one-year time frame that was set by statute. Now four of those permits that had been issued to SNWA are now in application status again. We are now going to go through a second round of publication, protest period, hearings, and entertaining those applications again.

There are some additional criteria for interbasin transfers which were adopted in the 1999 Session. When the Office of the State Engineer looks at an interbasin transfer, we have to decide whether or not the applicant has justified the need to import the water. We have to determine whether a plan for conservation of water is advisable for the basin to where they are bringing the water. Additionally, whether the applicant has demonstrated that such a plan has been adopted is another criterion. In other words, if an applicant is trying to bring water into their basin and wasting it, then we will not allow them to bring that water in from another basin. Another criterion is whether the proposed action is environmentally sound as it relates to the basin from which the water is exported. This is a big issue. The law does not define what environmentally sound is. Another criterion set forth in 1999 is whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin. Our office has interpreted that as we need to leave

enough water in the basin so that other applicants, even those junior to the interbasin transfers, can get water for future economic growth in the basin.

**Assemblyman Anderson:**

Does the Office of the State Engineer fall under federal guidelines for what the federal government might consider environmentally sound, as many of these basins are on public lands?

**Jason King:**

No, it does not. It is at our discretion. In our concept of perennial yield and our capture of groundwater in basins, much of that analysis deals with capturing discharge from plants. That is what our groundwater law has been based upon. In terms of the perennial yield, how much water is available to appropriate is based on being able to capture water from that plant discharge. There is a little bit of disconnect there. Our groundwater appropriation is based on capturing this discharge from plants and when it comes to interbasin transfers, we have to look at how it is environmentally sound. That is a huge issue before us now.

**Assemblyman Livermore:**

There are different standards for both surface water and groundwater. Is that correct? Can you briefly tell me the differences between surface water and groundwater?

**Jason King:**

In interbasin transfers, 99 percent of the time it is groundwater when someone is pumping a well in a certain hydrographic basin and taking it somewhere else. The criterion I was just speaking to applies to groundwater in interbasin transfers. However that same criterion does apply to surface water but, as you can imagine, it is a different concept if there is a stream system and it is flowing down through a number of basins. It is easy to argue that it is an interbasin transfer of surface water because of all the basins that the water is going through. The criterion applies the same to both, but for surface water it has not gotten the same attention as groundwater because, in groundwater, someone is putting it in a pipeline and taking it somewhere. There is also the fact that we do not have a lot of surface water.

**Assemblyman Livermore:**

There was a case a couple of years ago where groundwater was purchased upstream and got downstream. There were a number of detractions at the point of diversion of how much water the user received.

**Jason King:**

Are you talking about using a river system to transfer the water?

**Assemblyman Livermore:**

Yes, that is correct.

**Jason King:**

That is an option, especially in basins that have a river-dominated system, which is a method to get water from one place to another where a pipeline does not have to be built. If there is water available in an up-gradient groundwater basin and it is needed in a down-gradient groundwater basin, it is possible to pump that groundwater, put it in a river, and let the river wheel it down to the focus area. However, there are a number of losses and there are many complications with that process. It becomes a question of how you protect that water. How do you allocate that water so that everyone else who has water rights on the river is not taking the water that has been allocated for that purpose. There are evaporation and system losses.

**Chair Kirkpatrick:**

Does the Committee have any more questions? We are going to try to hear the water bills at the same time. There are no questions that you should not ask.

**Assemblyman Ellison:**

Is the state going to look back at some of these aquifers and do a new analysis of what is there? The cities are doing their own study of some of these basins and coming up with a whole different number from what the state is coming up with.

**Jason King:**

In a perfect world we would be doing studies on all of these basins. However, without the revenue to do that we still have the ability to do some studies. That is something we are starting to do more. There is a provision within the statute that if an application comes before us to appropriate water and we believe it is an excess of what is there, then we can require that applicant to pay for a study. The money is paid to our office. We then go out and contract an entity with USGS and decide what the scope of the project is and the applicant would pay for that. That is another way to get those studies done without the state having the revenue to do those studies.

**Assemblyman Ellison:**

What happens with the counties that go out and use USGS to get a study done? Would you take that under advisement?

**Jason King:**

Yes, we would.

**Chair Kirkpatrick:**

Last session we raised the water engineer fees for the first time in many years. Previously you could get a blueprint copy for \$5. We are starting to give the Office of the State Engineer more resources. We, as a state, need to start putting the resources into the State Engineer's Office because water is a precious resource.

**Assemblyman Goedhart:**

We had given an increase in resources to the State Engineer's Office during the last legislative session. At that point in time you had been doing well at working on the backlog and some of the transfer applications. How has that been going in the last two years? How much progress has your office been able to make?

**Jason King:**

In 2005 the Legislature sought to give us 11 new positions as a result of our backlog. At that time, our backlog application was at about 3,100. It is now down to about 1,600. We have almost cut it in half. The last two years, even though our fees were raised, we have had budget cuts where we offered up positions although not all of what we offered was taken. We have made a huge difference in our backlog, but it is starting to flatten out as a result of having to keep positions vacant in order to meet our General Fund budget cuts. I am concerned that it is flattening out. I think that we can prevent it from going back up, but we are going to continue to drastically reduce our backlog.

**Chair Kirkpatrick:**

We were fortunate that other states followed suit after we tried to get rid of the backlog. At this time we are going to open the hearing on Assembly Bill 61.

**Assembly Bill 61:** Creates a permanent entity to study issues relating to substance abuse in this State. (BDR 18-290)

**Keith Munro, First Assistant Attorney General, Office of the Attorney General:**

I am here today to provide testimony on behalf of Attorney General Catherine Cortez Masto. In 2007 the prior Governor formed the Governor's Working Group on Methamphetamine Use. Since 2007, the working group has studied the impact of methamphetamine use in this state, including its impact on law enforcement, correctional facilities, social services, and community services. The working group has reported to this Legislature on its findings. The mandate for this working group expired on December 31, 2010. Previously we provided copies of the 2009 and 2010 minutes. We have also provided a copy of the final report (Exhibit F). This group was highly successful. The working group found substantial evidence of methamphetamine abuse around the state as well

as extensive problems caused by illicit use of other types of substances including prescription drugs. The group was so successful that the members of the group wanted to continue their work and expand upon other areas to assist the citizens in our state. Specifically, the group wanted to not just study and look for solutions in combating methamphetamine use. The group thought it would be beneficial if it studied other substances as well. Therefore we have come forward to this Committee with A.B. 61.

The intent of this legislation is to provide a focal point for organizations in the state to work together to address the broader issue of substance abuse problems. By working together, the intent is to improve the State of Nevada's ability to identify and address substance abuse issues. As you will note from section 4 of the bill the issues the group will review are: the effect of substance abuse on law enforcement, prisons, and other correctional facilities; the sources and manufacturers of substances which are abused; methods and resources to prevent substance abuse; the manufacture, trafficking, and sale of substances which are abused, et cetera. That will be the duties of this working group.

The working group will gladly submit a report of its findings and recommendations to the Director of the Legislative Counsel Bureau by January 15 of each odd-numbered year so that the legislative body can look at the recommendations and decide if any are worthwhile to implement on behalf of the state. There is no fiscal note attached to this bill. The Attorney General's Office will staff the group with existing staff and provide facilities necessary for the meetings. There is an amendment attached ([Exhibit G](#)). We respectfully request that this working group sunset in four years. Attorney General Catherine Cortez Masto is term-limited and she will not be the Attorney General in four years. We will leave it to the next Attorney General to decide whether he or she wishes for this group to continue.

In closing, A.B. 61 creates a permanent substance abuse working group to study substance abuse throughout the state. It requires the group to study specific issues, to meet quarterly, and to report on its findings and recommendations to each regular session of the Legislature. Members of this working group will serve without compensation and will not be entitled to per diem on travel expenses. We request the Committee approve A.B. 61 in order to create an opportunity for state government, law enforcement, treatment and prevention organizations, tribes, and other groups to come together in a team effort to understand and fight substance abuse in the state at no cost to the General Fund. [Submitted a letter from Attorney General Cortez Masto in support of the bill ([Exhibit H](#)).]

**Assemblywoman Neal:**

Do you have a report of the past successes from the previous term? Is there an impact shown on specific groups or minorities that you encountered?

**Keith Munro:**

We provided an electronic copy of the minutes in the report ([Exhibit F](#)) so that should be available to you.

**Assemblyman Ellison:**

We have a bill draft request submitted by former Assemblyman Carpenter, and Assemblyman Goicoechea and I are cosponsors on it. It relates to spice. We will be trying to bring that forward, and this will follow along with what you are doing with the group. It is important that we have your help.

**Keith Munro:**

I would be happy to work with you. That is one of the things that the group wanted to expand. Some of these issues get broader than you could even begin to imagine. Spice is an example of that. Another thing out there is using bath salts for illicit purposes.

**Assemblywoman Benitez-Thompson:**

Is there any consideration by the working group to take into its scope the effect of substance abuse on child welfare and its impact on child abuse? It tends to be one of the biggest causes of child abuse and neglect. Is there some discussion on that?

**Keith Munro:**

I am not sure specifically whether there has been any discussion. The idea is to expand this group and take issues like that and bring them to the table. That would be things that the group wants to look at.

**Chair Kirkpatrick:**

When you go onto the Nevada Electronic Legislative Information System (NELIS) or the State Legislature website it will have a direct link to the fiscal notes for all bills. Is there anyone who would like to testify in support of A.B. 61? [There was none.] Is there any opposition? [There was none.] Anyone who is neutral? [There was none.]

There is an amendment with the sunset date. I just want to make sure it is clear. We do not move bills out of this Committee without a 24-hour waiting period. I want the Committee members to be sure they understand that, if it comes to a work session, that the amendment is proposed by the Attorney General's Office. We will now close the hearing on A.B. 61.

Is there anyone who would like to speak during public comment? [There was none.]

There is one Committee bill introduction for today. This Committee bill is on behalf of the Legislative Commission, which is our oversight group. It revises provisions pertaining to informational statements provided for the adoption of administrative regulations. It is not overly complicated.

**BDR 18-83—Revises the provisions governing the inclusion of contact information in the information statements regarding administrative regulations. (Later introduced as [Assembly Bill 201](#).)**

ASSEMBLYWOMAN PIERCE MOVED FOR COMMITTEE  
INTRODUCTION OF BDR 18-83.

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN FLORES AND STEWART  
WERE ABSENT FOR THE VOTE.)

If you have any comments for [Assembly Bill 182](#) from last Friday please submit them by 5:00 p.m. today.

The meeting is adjourned [at 10:24 p.m.].

RESPECTFULLY SUBMITTED:

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Jenny McMenomy  
Committee Secretary

APPROVED BY:

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Assemblywoman Marilyn K. Kirkpatrick, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** February 21, 2011

**Time of Meeting:** 9:04 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Susan Scholley, Committee Policy Analyst	PILT Fact Sheet
	D	Susan Scholley, Committee Policy Analyst	Nevada Counties Overview
	E	Jason King, State Engineer, Division of Water Resources	PowerPoint Presentation
A.B. 61	F	Keith Munro, Assistant Attorney General for the State of Nevada	Memorandum
A.B. 61	G	Keith Munro, Assistant Attorney General for the State of Nevada	Amendment
A.B. 61	H	Keith Munro, Assistant Attorney General for the State of Nevada	Letter