

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

**Seventy-Sixth Session  
March 9, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:04 a.m. on Wednesday, March 9, 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  
Assemblywoman Lucy Flores  
Assemblyman Ed A. Goedhart  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblywoman Dina Neal  
Assemblywoman Peggy Pierce  
Assemblyman Lynn D. Stewart  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Senator Dean A. Rhoads, Rural Nevada Senatorial District  
Assemblyman Pete J. Goicoechea, Assembly District No. 35

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Jason King, State Engineer, Division of Water Resources  
Kyle Davis, Policy Director, Nevada Conservation League  
Andy Belanger, Management Services Manager, Southern Nevada  
Water Authority  
Mike L. Baughman, Executive Director, Humboldt River Basin  
Water Authority  
Steve Walker, representing Truckee Meadows Water Authority, and Lyon  
and Douglas Counties and Carson City  
Gordon H. DePaoli, representing Truckee Meadows Water Authority  
Stephen D. Hartman, representing Vidler Water Company  
Dean Baker, representing Baker Ranches, Inc.  
Vahid Behmaram, Water Rights Manager, Washoe County  
Cadence Matijevich, representing City of Reno

**Chair Kirkpatrick:**

[Roll was called.] We are going to go out of order today. We are going to start with Assembly Bill 114.

**Assembly Bill 114:** Revises the amount of the fee for issuing and recording a certain permit for an existing water right for irrigational purposes. (BDR 48-209)

**Chair Kirkpatrick:**

The record is very important to me. Water is a big issue in our state. If there are any amendments, we need to discuss them and know what the legislative intent is. I am not letting any water bills out of this Committee unless we have very clear legislative intent. I am standing my ground on that. If anyone proposes amendments, please let us go through them carefully.

**Senator Dean A. Rhoads, Rural Nevada Senatorial District:**

Thank you, Chair Kirkpatrick and members of the Government Affairs Committee, for the opportunity to introduce A.B. 114—which was sponsored by the Public Lands Committee. [Read from prepared text ([Exhibit C](#)).]

**Chair Kirkpatrick:**

Does anyone have questions? We made great strides in increasing some of these fees for the first time in years. We were apparently overzealous. Other states were adopting them too.

**Assemblyman Pete J. Goicoechea, Assembly District No. 35:**

In the last session, we were a little bit overzealous. Senator Rhoads and I took a lot of heat from our constituents in rural Nevada. I did not realize that the section of the bill exempting agriculture from having to pay the \$3 fee was in there. I missed it. I have told my constituents that we would fix it this session. I have talked to Assemblywoman Mastroluca, who sponsored the bill last session, and explained the problem to her. The real issue with paying \$3 an acre-foot on any transfer or change in the point of diversion is that a lot of these are large acreages that have significant water. They are only doing record cleanup. It does not change the water right at all. They acquired these rights 30, 40, or 50 years ago. When you put a \$3-an-acre-foot fee in place, these people are paying as much as \$40,000. Senator Rhoads and I have both had constituents pay that much to clean up their water records because we have put this \$3 fee in place. In a number of cases, it is the lender, banker, or mortgage holder that wants to make those water rights current. The money has to be borrowed to bring the water rights current in order to maintain them. That is the issue.

I need clarification. In section 1, there is still a \$3 fee. The bill says in the italics "or for irrigation purposes which change the point of diversion or place of use." On lines 37 through 40 of page 2 it states that it is only a \$500 fee. I need to clarify; if you own the water, it looks like this is somewhat repetitive. I am asking this Committee and this body for consideration. It clearly was an error. We never intended to give someone a 300-percent increase. That is what we did to agriculture. It has clearly made it to where people are not cleaning up their records. Ultimately, we end up with more litigation and protests down the road. I realize there is a big fiscal note on this. Look at the bottom line and see the litigation we will avoid by having an affordable process where people can clear up their water rights.

**Chair Kirkpatrick:**

We were all trying to ensure that the Office of the State Engineer had enough staff to process this.

**Jason King, State Engineer, Division of Water Resources:**

To clarify Assemblyman Goicoechea's question, the section 1 that he discussed is for a new appropriation of water for irrigation. It is not changing an existing right. If someone comes to our office and files a new appropriation, there

would be that fee of \$250 plus \$3 per acre-foot the first time they appropriate water for irrigation. Thereafter, what this bill proposes is any change in point of diversion or place of use of an existing irrigation right would be a flat \$500 fee.

**Assemblyman Goicoechea:**

Is there some way we can clean up that language? That is fine if it is for a new appropriation, but how is that reflected in the bill? Did I miss something within the language?

**Chair Kirkpatrick:**

The confusion is on line 26 where it says, "recording each permit to change an existing right." When you add in line 33 it probably creates the problem.

**Jason King:**

Assemblyman Goicoechea is absolutely correct. I just read through it. The intent was not for it to be a change but a new appropriation. That is something that needs to be cleared up.

**Chair Kirkpatrick:**

Are you okay with that, Assemblyman Goicoechea, on line 26, deleting the word "change?"

**Assemblyman Goicoechea:**

Yes, I am fine with that. As long as we reflect the new appropriation rather than the change application; otherwise it is redundant.

**Chair Kirkpatrick:**

We are just clarifying the legislative intent for the record.

**Assemblyman Ellison:**

I want to make sure the language is put into the bill.

**Chair Kirkpatrick:**

We will talk about the issue; that is the way I do it. The issue for Assemblyman Goicoechea was to make sure it was clear.

**Jason King:**

I apologize. The provision that Assemblyman Goicoechea was talking about does speak to issuing and recording each permit to change an existing right. It also excepts out several manners of use including: generating hydroelectric power, watering livestock or wildlife, or for irrigational purposes. The irrigation was being excepted out of that \$250 plus \$3 an acre-foot.

**Chair Kirkpatrick:**

On line 28, the clarification would be that the word "except" . . . ?

**Jason King:**

In that provision, we are excepting out irrigation changes of point of diversion and place of use from being charged \$250 plus \$3 an acre-foot. The new provision is the \$500 flat fee and new appropriation. It is in line 19. Irrigation would be subject to the fee of \$300 plus \$3 an acre-foot. The key is the word "except." I apologize for the confusion.

**Assemblyman Goicoechea:**

As I read it, it says "except for generating hydroelectric power which results in nonconsumptive use of the water, for watering livestock or wildlife purposes." It is my understanding that there is an intention to impose the \$3-an-acre-foot fee if it is a new application. Is that correct?

**Jason King:**

Yes, if it is a new appropriation, it would be \$300 plus \$3 an acre-foot. The intent of A.B. 114 was to change the fee for changes of agricultural rights for points of diversion and place of use only. That is \$500 flat. In lines 32 through 34, the intent was to except out the \$250 plus \$3 an acre-foot, just as we did with generating hydroelectric power and watering livestock and wildlife. There might be a clearer way to write that.

**Assemblyman Goicoechea:**

I am fine with that as long as it is established as legislative intent in the record that the \$3 an acre-foot does not apply unless it is a new appropriation. I think we could clean the language up a little bit.

**Chair Kirkpatrick:**

On our legal end, we could make that more clear. You have my word that the legislative intent will be very clear.

**Assemblyman Goicoechea:**

My concern is that, as you read it, someone might misconstrue this. After Mr. King leaves, someone else in his seat might construe this as the new appropriations do not apply. We need to clean up the language a bit. I misread it, and someone else might too.

**Assemblyman Goedhart:**

In many cases, we are talking about hundreds of acre-feet. The \$3 per acre-foot versus \$500 is going to be lower in most cases. There are also cases where an agricultural producer will buy an acre-foot randomly, sometimes only

five or ten acre-feet at a time. In that case, even though there is an existing appropriation of water, there are unintended consequences. The \$250 plus \$3 an acre-foot would be less than the \$500, which is now established as the floor, even for one or two acre-feet of water.

**Jason King:**

Could you rephrase that?

**Assemblyman Goedhart:**

This bill states that for every change, it is \$500. Under the old regulation, it is \$250 plus \$3 an acre-foot. What happens if you are only moving ten acre-feet? It is then only \$280 versus the new language of \$500. It helps people transferring large amounts of water, but for people that only transfer small amounts of water, the smallest properties are going to be hit with the biggest increase.

**Jason King:**

Prior to the 2009 change, it was a \$200 flat fee. You could make the same argument that when small amounts of water are being moved it was still expensive to move that water. It is true what you have said. Are you looking for a sliding scale?

**Assemblyman Goedhart:**

You could say it is going to be a minimum of \$250 plus \$3 an acre-foot or something of that nature. We could change that language. The way this language reads right now, it will increase the amount from \$250 plus \$3 an acre-foot to \$500. Is that correct?

**Chair Kirkpatrick:**

I worked on Assembly Bill No. 480 of the 75th Session. We do have to have some increases in order to keep the State Engineer's Office going. It has been years since we have done that. Going over the top, and having people pay \$12,000 as opposed to \$4,000 was not the intent. *Nevada Revised Statutes* (NRS) Chapter 533 is very unclear to begin with. If we start adding sliding scales and other complications, someone will always try to circumvent the system. Are there that many people moving smaller amounts of water? People do not want to move smaller amounts because of the cost. I have the information from last session about the breakdown of how moving water works. I do not want to do a sliding scale.

**Jason King:**

I cannot say with certainty that most of the changes are for large amounts of water. We do get small amount changes of agriculture rights as well. I cannot tell you whether or not that would adversely affect those types of users.

**Assemblyman Goicoechea:**

I understand where you are coming from with this. Unfortunately, we have to draw the line someplace. The maximum that someone would pay is \$500. If you take just an average quarter section, which is 160 acres, with the four acre-foot duty it would be expensive. If someone is transferring ten acre-feet of water right, it may cost you a couple hundred dollars more. The amendments to the bill make it affordable for those people on a quarter or forty-acre section. It will be cheaper for them. We cannot make it to where there are discounts on everything. I know there is a significant fiscal note in this. I saw some numbers that are as high as \$165,000. It will reduce their fees. That concerns me as well. The bottom line is I know the impacts it will have to people who just will not clean up their water rights because they cannot afford it.

**Assemblyman Goedhart:**

Does this affect a water right that is taken over and there is a change in point of diversion or place of use? If there is a protest launched against it, in some cases a proof of beneficial use (PBU) cannot be filed. An extension of time must be filed because of the protest; permission has not been granted. In some cases, these fees will be paid for years without actually using the water because of the protest. There is no provision that suspends those annual renewal fees in the case of a protest. Is that correct?

**Jason King:**

That is correct. We would still be requesting the extension of time fees.

**Assemblyman Goedhart:**

Those are not relative to the size and the amount of quantity of water being moved. It is just relative to a set fee. Is that correct?

**Jason King:**

That is correct.

**Chair Kirkpatrick:**

Do you have anything else to bring before the Committee on this bill?

**Jason King:**

Our office is neutral on this bill.

**Chair Kirkpatrick:**

We believe that the legislative intent is correct for lines 26 through 35. We also believe that we can write it in a clearer manner to ensure that it does not apply to people trying to clean up their water rights.

**Assemblyman Goicoechea:**

If we could get language in there that says it only pertains to new appropriations, that accomplishes the extent of what we need to clarify in the bill.

**Chair Kirkpatrick:**

Those that would like to testify as neutral on A.B. 114 please come up at this time.

**Kyle Davis, Policy Director, Nevada Conservation League:**

The most appropriate position on this bill was neutral on the policy point. I do not have an opinion on what the size of the fee would be and what the most appropriate amount would be. How much is the cost of processing these applications for the State Engineer's Office? The fee should be commensurate with that cost. The one issue that I will raise is the fiscal note. It makes me uncomfortable to blow what looks like a \$320,000 hole in the budget of the State Engineer's Office over the biennium, in a time when they are already cutting positions and reducing the effectiveness of that office. It is important to the State of Nevada to have an effective State Engineer's Office that can safely guard our water resources. That does concern me.

**Chair Kirkpatrick:**

The more we can clean up these records for the long-term, the better. We want to get these records cleaned up.

**Andy Belanger, Management Services Manager, Southern Nevada Water Authority:**

We are neutral on A.B. 114. In 2005, the Legislature increased the office budget by 11 positions for the State Engineer's Office. Those positions have all but been eliminated in this budget cycle. That is a concern to our office and to everyone who uses water in the state of Nevada. One concern I have with the bill is in subsection 3. It states that the money is deposited in the State Treasury for credit to the General Fund. I would feel more comfortable if the money generated from the fees was retained by the State Engineer's Office and used to make sure that the office is robust and accomplishing its purpose, the purpose for which the fees were generated in the first place is for the State Engineer's Office. On the point of whether irrigation rights should be treated differently than any other water right in the state of Nevada, this is a policy



discussion that the Legislature should have. Irrigation in Nevada is a robust industry. Eighty percent of the state's water goes to agriculture. If we are serious about conservation in the long-term, we need to think about how to ensure that everyone who uses water is conserving water. I recognize that is not the point of this bill. We are neutral on this particular bill.

**Chair Kirkpatrick:**

Let me clarify. It is section 1, subsection 3 you are referring to. Is that correct?

**Andy Belanger:**

Yes.

**Chair Kirkpatrick:**

We had this discussion last session. The money goes back into the General Fund, but the State Engineer's Office receives a portion of their budget from the General Fund. The Governor swept the whole thing this time. Is there anyone else who is neutral on A.B. 114? [There was no one.] Is there anyone who is in support of A.B. 114?

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

The Humboldt River Basin Water Authority (HRBWA) does support the initiative by the Legislative Committee on Public Lands to resolve this issue during this session. The threshold that was discussed earlier is 20 to 25 acres at 3 1/2 to 4 acre-feet per acre. That is the threshold that is being looked at. Agriculture, which is the subject of the water that is being used here, provides enormous benefits to the state of Nevada; benefits that are not often recognized. The unemployment rates in our state during this recession should be looked at as an example. Unemployment in the five-county HRBWA, which is the northeastern part of Nevada, was among the lowest in the state during that time. That is largely because of the dependence on natural resources in that area at that time. Agriculture is a natural resource-based industry. Water is a very important part of agriculture. Irrigated agriculture is providing tremendous environmental benefits, particularly in the area of wildlife species conservation. If you go out in this area at this time of year you will see elk, deer, and antelope feeding on the hay fields. There are upland game birds that occupy these areas as well. We have water fowl that benefit from the irrigation system too. There are many conservation benefits associated with the agricultural industry that are not valued. It is something that is provided. The state benefits from that as well as our residents. There is a \$165,000 fiscal note annually that is applied to this bill. I would ask the Committee to bear in mind that there are tremendous economic, environmental, and fiscal benefits that accrue to the

state as a result of irrigated agriculture. The small investment of \$165,000 a year is reaping significant rewards.

**Chair Kirkpatrick:**

Is there anyone else who would like to testify in support of A.B. 114? [There was no one.] Is there anyone who is opposition? [There was no one.] We will then close the hearing on A.B. 114. We will open the hearing on Assembly Bill 115.

**Assembly Bill 115:** Revises provisions governing the appropriation of water for beneficial use. (BDR 48-207)

**Senator Dean A. Rhoads, Rural Nevada Senatorial District:**

Thank you, Chair Kirkpatrick and members of the Government Affairs Committee, for the opportunity to introduce A.B. 115—which was sponsored by the Legislative Committee on Public Lands. [Read from prepared text ([Exhibit D](#)).]

**Chair Kirkpatrick:**

We are going to do the testimony differently than normal. I have two amendments in front of me. We are going to go through this bill and the next bill section by section. I know both water authorities have amendments which conflict with each other. Those two amendments are going to come up first. We are going to start with these amendments and then go through each section of the bill. We will start on section 1.

**Andy Belanger, Management Services Manager, Southern Nevada Water Authority:**

Our amendment ([Exhibit E](#)) to section 1 is cleanup only. *Nevada Revised Statutes* (NRS) 533.370 has to do with allowing the Office of the State Engineer to not rehear decisions it has already made on applications that are in the same manner of use. This cleanup would reference that and exempt it from the 30-day publishing requirement.

**Chair Kirkpatrick:**

What is your opposition to subsection 5 of the bill?

**Andy Belanger:**

Subsection 5 is language stricken from the Legislative Counsel Bureau (LCB) draft that came out. The red language is language that we support being stricken from the draft.

**Chair Kirkpatrick:**

You want to strike subsection 5 and put in subsection 2. Subsection 2 states "Except as otherwise provided in subsections 3 and 11 and NRS 533.365, the State Engineer shall approve or reject each application within 1 year after the final date for filing a protest." Is that correct? This is a clean copy of NRS 533.370 as it exists. The Committee needs to know what subsection 2 says. We are not water experts. We are citizens. I want the Committee to know what subsection 2 says.

**Andy Belanger:**

We are referencing the new subsection 2 that is in the bill draft. That is, "If a previous application for a similar use of water within the same basin has been rejected because the application did not meet the requirements set forth in subsection 1, the State Engineer may reject a new application without publication." That is the reference in A.B. 115. The new subsection 2 that is listed in A.B. 115 as introduced in the bill draft is what we are referencing.

**Chair Kirkpatrick:**

The amendment ([Exhibit E](#)) says subsection 2 of NRS 533.370. That is what I just read, so we need to make that clear. Can you restate that?

**Andy Belanger:**

Subsection 2 of NRS 533.370, as amended in A.B. 115, says, "If a previous application for a similar use of water within the same basin has been rejected because the application did not meet the requirements set forth in subsection 1, the State Engineer may reject a new application without publication."

**Chair Kirkpatrick:**

We will now go to section 2 of the bill. Are there any amendments for this section?

**Steve Walker, representing Truckee Meadows Water Authority, and Lyon and Douglas Counties:**

The lawyer for Truckee Meadows Water Authority (TMWA) on water legislation is Gordon DePaoli. He wrote these amendments. He will explain where we are on A.B. 115.

**Gordon H. DePaoli, representing Truckee Meadows Water Authority:**

I would like to go back to section 1. The approach that I took to amend NRS 533.370 was to direct the amendments entirely at the issues that were addressed by the Nevada Supreme Court's decision in the *Great Basin Network v. Nevada State Engineer*, 243. P.3d 912 (2010) case and to refrain from including many of the changes that were made to NRS 533.370. For

subsection 1, my amendment ([Exhibit F](#)) would, at line 3, page 2, leave in the reference to subsection 5 of NRS 533.370. I am not reordering that section the way the bill does.

**Chair Kirkpatrick:**

At the top of the amendment ([Exhibit F](#)) it says, "Amend the Bill by deleting section 1, page 2, line 1 through page 3, line 5, and renumber section 2 on page 3, line 6 as Section 1." Can you explain that to me?

**Gordon DePaoli:**

I would leave NRS 533.360 just the way it is in the statutes today. My amendment does not make any changes.

**Chair Kirkpatrick:**

In section 1, is there anything else that you wanted to change?

**Gordon DePaoli:**

No.

**Chair Kirkpatrick:**

Are there any changes to section 2?

**Andy Belanger:**

We have no changes to section 2.

**Gordon DePaoli:**

We have not made changes to section 2, other than that it would be renumbered as section 1 under my proposal.

**Chair Kirkpatrick:**

On the amendment that you gave us ([Exhibit F](#)), the italicized sections are the copy of what you had?

**Gordon DePaoli:**

Yes, they are.

**Chair Kirkpatrick:**

I need more help on section 2. I have tried to compare what is in the amendment ([Exhibit F](#)) with what is in the bill. I cannot find the same language.

**Gordon DePaoli:**

Section 2 in the bill would remain as it is in the bill under my amendment. It is addressed at the top of page 2 ([Exhibit F](#)) which says, "Amend the bill by

deleting section 1, page 2, line 1 through page 3, line 5, and renumber section 2, on page 3, line 6, as Section 1.” That is the only change that I am suggesting in section 2. Other than that, I would not change anything in section 2.

**Chair Kirkpatrick:**

In section 2, is that really section 3 in your amendment?

**Gordon DePaoli:**

Yes it is.

**Chair Kirkpatrick:**

It is section 2 of the bill and the amendments that we have from TMWA. It says section 2, but it is really section 3 because he has renumbered them. I wanted to make that clear. That way it is clear for everyone. So section 2, as stated, there would be no amendments. I am working off the bill. So section 2 has no amendments?

[There were amendments from testifiers.]

**Andy Belanger:**

Our first amendment ([Exhibit E](#)) to section 3 has to do with the new subsection 2 in A.B. 115. We would like to strike the word “similar” and replace it with “same manner of use.” This language is clearer but has the same meaning. The purposes of the rest of the language are in the bill in paragraphs (b) through (d) and are the provisions of subsection 1 that the State Engineer has discretion with. He asks questions about unappropriated water and whether the proposed use conflicts with existing uses or protectable interest and domestic wells, as well as whether the proposed use or change proves detrimental to public interest. Those are the parts where the State Engineer has to make decisions. Everything else deals with fees and intent to construct. Those are site-specific to the application. Only paragraphs (b), (c), and (d) are things that the State Engineer can decide once and not have to decide again.

**Chair Kirkpatrick:**

Did you add anything to lines 10 through 16?

**Andy Belanger:**

No, we did not. That exists in A.B. 115. We are making a reference to that new language in A.B. 115.

**Chair Kirkpatrick:**

Your changes start on page 4, line 29 of the current bill. You took out the word "similar."

**Andy Belanger:**

We added "the same manner of use."

**Chair Kirkpatrick:**

On line 31, you refer back to paragraphs (b) through (d), which are lines 10 through 16. Does the Committee follow this? On page 4 of this bill, they are proposing to make an amendment on line 29 to change it to say "the same manner of use." They are also making a change to line 31 which refers back to paragraphs (b) through (d) which are lines 10 through 16.

**Assemblywoman Pierce:**

Why do you want to take out paragraph (a) on line 31?

**Andy Belanger:**

We are not taking out any of those provisions. We are saying that once the State Engineer has made his decision on whether there is unappropriated use of water, he does not have to make that decision again. That decision stands for all other applications after that decision is made. If the State Engineer makes a decision that the proposed use or change of use does not conflict with existing rights, he does not need to continually make that decision in future hearings. He can make that decision once. Paragraphs (a), (e), and (f) are specific to the application that is before him. It could be whether they have paid the prescribed fees, whether the application adversely affects the cost of water in an irrigation district, whether the applicant provides proof satisfactory to the State Engineer on the application's intent and good faith to construct. Those provisions are specific to the applicant. He has to consider those things for each application, even though there are some things that he may not have to consider because he has already made a decision in those areas that would allow him to not have to cover those things in future hearings.

**Assemblyman Goedhart:**

So if we are talking about a basin and the State Engineer needs to decide if there is any more water to appropriate, if that basin is fully allocated he does not have to make continual findings on whether or not that basin is fully allocated. Is that correct?

**Andy Belanger:**

That is correct.

**Chair Kirkpatrick:**

Can you go over line 34 which discusses subsection 11? You are striking NRS 533.365. Can you also explain lines 33 through 44?

**Andy Belanger:**

Subsection 11 refers to a new subsection 11 that we will discuss later in the bill. This is actually language where we add a new subsection 10. We are renumbering right there. *Nevada Revised Statutes* 533.365 is a reference to the section we previously discussed. With the language that is being stricken in the bill, in NRS 533.365, subsection 2 of A.B. 115, that reference is no longer needed.

**Chair Kirkpatrick:**

However, NRS 533.365 is the procedure concerning the verified protests. You are taking that out. Is that addressed somewhere else in the bill?

**Andy Belanger:**

Yes. The reason why it is referenced is because of the notification section that was subsection 7 in NRS 355.365. The introduced version of A.B. 115 strikes that. That reference is no longer needed. The publication reference is taken out of NRS 533.365. That is why we are recommending that this language no longer be necessary. This addition was added in 2007, as part of S.B. No. 274 of the 74th Session. That was the bill at the end of the session that was the omnibus water bill and everything was added to it. The bill drafters have cleaned up all of the different sections where publication requirements were interspersed in other sections. They are putting it all in NRS 355.370. As a result, the reference to those things can go away.

**Chair Kirkpatrick:**

I just want to make sure we are not getting rid of the process. Mr. DePaoli, do you have any changes to section 3, which is section 2 on your amendment, that you would like to propose?

**Gordon DePaoli:**

If I can just briefly explain the approach I have taken, it might be helpful to put it in context for the Committee. I have proposed amendments to NRS 533.370 which would deal with the issue of how much time the State Engineer has to take action, on what basis the State Engineer can postpone taking action, and the consequences for the State Engineer to take that action in a timely manner. My proposed amendments to this section of the bill are different than the way the bill is written. I would point out that the language in the bill at section 3, page 4, lines 10 through 16, and the language at lines 21 through 32 is actually already in NRS 533.370. It is stated in a slightly different way in NRS 533.370

subsection 5, page 5, which is stricken. I am not opposed to the language. I just do not think it needs to be reshuffled the way it is here. My focus is strictly on the Great Basin Water Network matters which start to come up when speaking of time for action and postponement of action.

**Chair Kirkpatrick:**

Is this just a matter of how this is written in the statute? You both agree that the process has to be this way, correct?

**Andy Belanger:**

Yes.

**Gordon DePaoli:**

Yes.

**Chair Kirkpatrick:**

We are clear within section 3 up to lines 44, that everyone is on the same page as far as the notice is given and the process is done.

**Assemblywoman Benitez-Thompson:**

It seems to me that the two amendments create different time frames. With the TMWA ([Exhibit F](#)) it is saying two years for nonprotested applications. Protested applications can take up to four years. The Southern Nevada Water Authority (SNWA) amendment ([Exhibit E](#)) is asking for a one-year decision whether it is protested or not. Is that correct?

**Andy Belanger:**

The TMWA amendment and the SNWA amendment are different in that respect. What the SNWA did with our amendment was to look at A.B. 115 as the baseline and made changes to that. Assembly Bill 115, as it was introduced, specifically mentioned a two-year time frame for all applications, and we did not change that in our amendment. We kept what was introduced in A.B. 115. Truckee Meadows Water Authority did it slightly differently with the two-year nonprotested and the four-year protested time frames.

**Gordon DePaoli:**

That is correct. We approached the time for action to be two years if an application was not protested, four years if the application was protested. We left in place, with one addition, the reasons for postponing action that the State Engineer could rely on to go beyond those time frames.



**Assemblywoman Benitez-Thompson:**

With the two different amendments being at odds, we are talking about a time difference of three years under the TMWA process versus SNWA for protest of applications. Is that correct?

**Gordon DePaoli:**

I am not sure there would be a difference. The bill, as drafted, allows the State Engineer to postpone action on a protested application. The statute would say two years, but then the bill would allow the State Engineer to postpone that action if it was protested. The approach we took was to, if it is protested, have a four-year period to begin with, and then we left the postponement provisions the way they are currently.

**Chair Kirkpatrick:**

That was one of the problems within the Great Basin Water Network. That was one of the biggest addressed areas, what that one-year time period meant. Is that correct?

**Gordon DePaoli:**

Yes. It makes logical sense to recognize that, in all probability, protested applications will need more time for the State Engineer to take action. Rather than just putting in a two-year time period for everything, we wanted to recognize up front that if there is a protest there is potentially a need for more time.

**Assemblywoman Neal:**

I have been trying to put all of these pieces together. In the amendment from Mr. DePaoli ([Exhibit F](#)), if the original legislative intent was to prevent a significant lapse before a ruling, why would we want to extend that time period to four years? Who wants to wait four years for a decision on postponement or the possibility that it could occur.

**Gordon DePaoli:**

The one-year provision for action in the statute was an issue in the *Great Basin Network* case that was put into the statutes in 1947. In my experience, State Engineers have attempted to act in a timely fashion as best as they could given the resources they have. With the growth in the state since 1947 and the complications that are associated with protested applications, particularly the ones involving interbasin transfers of groundwater, it is very difficult for the State Engineer to act within the one-year time frame. The *Great Basin Network* case took the statute and said that it was a violation of the State Engineer's statutory duty if he goes beyond one year. It seems that we need to recognize that, with the growth in the state as well as the complications with some of

these applications, there needs to be more time for action than just the one-year period. Two years makes sense for an unprotested application, given the numbers and resources in the State Engineer's Office. It also seems reasonable to allow for more time for action where a matter is protested, with some adequate grounds to go beyond that for postponement if there are some of these other issues. At the end of the day, what we have proposed is that if there has not been action within the allotted times within a seven-year time frame, the matter gets republished, renoticed, and everyone who has come in since that time is allowed to protest as well.

**Chair Kirkpatrick:**

In this Committee we walked through the application process. What both of you are suggesting is that it is two years from the time the application is submitted. Is that correct?

**Gordon DePaoli:**

It is two years from the last date for protesting.

**Chair Kirkpatrick:**

Also, four years from the last date of protest. Is that correct?

**Gordon DePaoli:**

Yes.

**Assemblyman Goedhart:**

I understood it to be two years from the date of the last ability to protest in a nonprotested situation. If it was protested, it was actually four years from the date of the deadline for the protest. Is that correct?

**Gordon DePaoli:**

It is two years after the date for filing a protest, which would be the last date for filing one, and four years after the final date for filing a protest. I intend those to be the same time frames. The last day for filing a protest is 30 days after the last publication.

**Assemblyman Goedhart:**

I am confused now.

**Chair Kirkpatrick:**

How does that relate to the application date or the time stamp that you get for the application number? Assemblywoman Neal has a good comment; we understand that it takes a year to get through the application, notices for the

hearings, et cetera. You are saying two years from the protest period. It is now a couple of years into the process before that.

**Gordon DePaoli:**

Not necessarily. The State Engineer is better equipped to answer this question. When the application comes in, it is assigned a number. If it has everything that it needs, it gets in line to go to publication. It is published once a week for four consecutive weeks. The last date for filing a protest is 30 days after that last publication. There is a lapse of time between when it comes into the office and when the last date for publication takes place. There is not a large gap in that time frame these days. It is months, not years, at best.

**Assemblyman Goedhart:**

Looking at the TMWA amendment ([Exhibit F](#)) proposed on page 2, there it seems to differentiate between the two options. It says the State Engineer "shall approve or reject each application which is not protested within 2 years of the final date." In a situation where a protest is filed, then it is 4 years. Is that correct?

**Gordon DePaoli:**

Yes.

**Assemblyman Goedhart:**

In the Amargosa Valley Basin, for example, there are protests that have been filed on an application that have not been decided on by the State Engineer's Office in some cases for six or eight years. That is close to a decade. When you see the language in this bill, the only thing that is due is a notice of republication. It says that should be the sole and exclusive remedy. We have these time lines, but if they are not being adhered to, the only remedy is a republication. Basically it says you shall do it within a certain number of years, but if you do not, then all you have to do is renotice and republicize. Those are deadlines that can be ignored without any type of recrimination. Those years mean nothing in this statute.

**Gordon DePaoli:**

I would not say that those deadlines mean nothing. In my experience, the State Engineer's Office has taken those deadlines seriously. The issue of what should be the remedy was something the Supreme Court struggled with in the *Great Basin Network* case. The choices are either telling an applicant, who is not at fault for the time delay, that they have to completely start over and go to the back of the line or to say it is not the applicant's fault, the application will just be required to be republished and renoticed to allow people who have come up since the application was filed an opportunity to protest and participate in the

process. The other choices are that the application is denied or approved. Neither work very well in the context of the issues that come up in water proceedings.

**Assemblyman Goedhart:**

There have been intrabasin applications that have been sitting for six and eight years. These are not on new water rights; they are on existing, valid, and certificated water rights. In this statute, it says that the sole remedy will be a republication. In that case, the years are on paper, but as long as they are republished and renoticed they could go on forever. As long as the Committee knows that there is not really anything in this statute that is really the driver to get some of these matters expedited and processed in what would be considered a normal length of time.

**Chair Kirkpatrick:**

The legislative intent is to have the protested applications done within four years and the unprotested applications done within two years from the last protest period. We can address that in another piece of the bill. The legislative intent, from these two amendments, is two and four years.

**Andy Belanger:**

Our amendment ([Exhibit E](#)) does not reference the four years. Our amendment talks about the two-year period and the seven-year period on protested applications that have not been acted on. That is what A.B. 115 has introduced. Those are the time frames that are in that bill. Those are the ones that we are looking at.

**Chair Kirkpatrick:**

Are you amenable to the two-year and four-year provisions?

**Andy Belanger:**

We will have to look at it.

**Chair Kirkpatrick:**

We are going to get through these two amendments. We will hear the opposition and support as well. Next Monday at 5:30 p.m., we will have a subcommittee to discuss these in detail.

We are on section 3 through line 44. We are finished with page 4 of the bill. We are now on page 5. Mr. DePaoli, are there any other portions of your amendment ([Exhibit F](#)) for section 3 that we need to be concerned with? It looks as if the part we just talked about was the most important.

**Gordon DePaoli:**

On page 5, lines 7 through 15, my amendment leaves that part in the bill. The situation described in that section is a unique kind of situation. The only thing I have suggested is to change the six months to one year. That is a unique circumstance. It is in there for a specific purpose. That is why the time frame is a little bit shorter.

**Chair Kirkpatrick:**

That only refers to when court actions are pending. Is that correct?

**Gordon DePaoli:**

This refers to a situation where there is a change in point of diversion and the existing and purposed points of diversion are on the same property. My amendment leaves that section as it is, with the exception of adding adjudications to a reason for postponement.

**Chair Kirkpatrick:**

I am concerned with having different deadlines within the statute for the future. It is my goal to make NRS Chapters 533 and 534 less muddy than they are. What is your rationale for a year as opposed to six months on this type of appropriation?

**Gordon DePaoli:**

Given the situation in the State Engineer's Office currently, a little more time might be required for those. Six months is fine. It is a unique situation that should be left in the statute.

**Assemblyman Goedhart:**

Looking at the TMWA amendment ([Exhibit F](#)), if the water right was not acted on within seven years, all that had to be done was republish. It seems that you have crossed out that if it was not active within seven years it needed to be opened up to new protests. According to what I see, you have crossed that part out of it, allowing different people after that seven-year period to become party to that original protest.

**Gordon DePaoli:**

I did not intend that. It was my belief that, by being republished under NRS 533.360, it would automatically trigger the opportunity for additional protests. If that needs to be added back into the language, I am not opposed to that.

**Assemblyman Goedhart:**

I would like the record to reflect that we do not want to have that stricken from the opportunity. According to the TMWA amendment, it looks like it does not really specify that if it had not been enacted within seven years, then not only does it have to be republished and renoticed but the application has to be reopened to new protesters.

**Andy Belanger:**

On both of these amendments, the requirement to republish and renotify is, by definition, what opens a protest period back up. Any bill that speaks to republishing and renoticing also reopens the protest period. The language that is stricken in the TMWA amendment and the language that is stricken in the original bill are taken care of by the requirement to republish any application that exceeds two years for an untested application and seven years for a protested application.

**Assemblyman Goedhart:**

What if there is a water right within a basin that has not been acted on in four years in a protested situation? That means at the end of four years, that very act of renoticing and republishing opens up new protesters' ability to file a protest. Is that correct?

**Andy Belanger:**

Yes.

**Chair Kirkpatrick:**

What is the history behind the seven years?

**Andy Belanger:**

The seven years was part of the compromised amendment that came into place in 2007 as part of Senate Bill No. 274 of the 74th Session. It was originally a bill that Assemblywoman Leslie had introduced. It got rolled into S.B. No. 274 of the 74th Session in the last moments of the 2007 Legislative Session.

**Chair Kirkpatrick:**

I remember that. We did an amendment on the floor. Are there any more questions on section 3 as a whole?

**Andy Belanger:**

On subsection 3, we only have two other changes in paragraphs (f) and (g). Those are on page 5, lines 24 and 27. Rather than use the word "area" we are replacing that with "basin." It is a more specific term. "In basins in which adjudication of vested water rights is ongoing . . . On an application for a permit

to change a vested water right in a basin where vested water rights have not been adjudicated" as additional reasons for postponing action. It is just making that change from area to basin.

**Chair Kirkpatrick:**

What is the definition of "area" currently?

**Andy Belanger:**

I do not think there is one.

**Assemblyman Goedhart:**

Are "vested water rights" different from permitted or certificated water rights? Do vested water rights predate that?

**Gordon DePaoli:**

The term vested water rights is used in two different ways. The way it is used here is referring to a water right that was established prior to the enactment of the comprehensive water law. It is a water right that was established under the common law essentially prior to 1905 by diverting the water and putting it to beneficial use. It is a prestatutory water right.

**Assemblyman Goedhart:**

This is pre-1905 water rights.

**Gordon DePaoli:**

Yes, it is.

**Chair Kirkpatrick:**

Where does subsection 11 come back, Mr. Belanger? Are we to that point yet?

**Andy Belanger:**

We will be in two pages. Subsection 11 is the section that says the provisions of subsection 1 to 9 inclusive do not apply to an application for an environmental permit. That is just a reference to an existing statute. The numbering changed because we added a new section 10.

**Chair Kirkpatrick:**

What is this about following the republication on the Internet website? Are you saying that it can only be done on the website?

**Andy Belanger:**

Subsection 4 says, "If the State Engineer has not postponed action on an application pursuant to subsection 3 and does not act upon the application

within 2 years after the final date of filing a protest, the State Engineer shall cause notice of the application to be republished on the Internet website of the State Engineer for 30 days immediately following the expiration of the 2-year period." The clarification just states that the protest period begins following the republication on the Internet website. We are recognizing that the State Engineer has the obligation to post on the website after the two-year period is over. The protest period begins once the renote is up.

**Chair Kirkpatrick:**

When does the protest period end?

**Andy Belanger:**

The new protest period would occur after the two-year time frame is up. Assembly Bill 115, as introduced, allows for Internet republication. We are clarifying that the protest may be filed in accordance with NRS 533.365 following the republication.

**Chair Kirkpatrick:**

I am having a hard time reading both of your amendments. It says, "All applications remain valid and active until the application is either granted or denied by the State Engineer."

**Andy Belanger:**

Yes. This is in subsection 5. We are mirroring the language in subsection 4. Subsection 4 starts on line 32 in my amendment ([Exhibit E](#)). In that statement, all applications remain valid and active until the application is either granted or denied by the State Engineer is the existing practice. It should be clarified in statute. That was the statement in 2003 that we did not get right with the retroactivity. All of our amendments are prospective only. We are not looking at doing anything retroactively. This just states that all applications are valid until they are acted upon.

**Chair Kirkpatrick:**

Then, you go down to lines 13 and 16. I have never seen a junior application or a senior postponed application. Where does that come in?

**Andy Belanger:**

It is the way water law works. Prior appropriation is first in time, is first in right. Junior application is the phrase for applications that are after the most senior right. Rights are based on priority date. A junior application has a priority date below a senior application.



**Chair Kirkpatrick:**

Is it not easier to say "based on the priority date?" Junior and senior are two more words we are putting up for interpretation.

**Andy Belanger:**

We can work on that. The intent is that if the State Engineer takes an application out of order, the application that he took out of order that has a priority date after the first application is junior to that other application. That is the intent.

**Chair Kirkpatrick:**

The last part of your amendment for section 3 as a whole is the actual water user piece?

**Andy Belanger:**

Yes, this is a reference to subsection 7. The current language says, "A purveyor of water." We would like to broaden that to the "actual water user. . . If the applicant does not intend to place the water to beneficial use personally, whether a contractual or agency exists between the applicant and the actual water user." In some cases, it may be a purveyor of water, but it might be a business or some other entity as well. The applicant has a contractual relationship with these entities. That contractual relationship is what the original bill was trying to get to. We felt that "purveyor of water" seems to be too narrow a term.

**Chair Kirkpatrick:**

Why is it too narrow of a term?

**Andy Belanger:**

It is specific. That is the problem. It is specific only to municipal water providers. For instance, if a business needs water and hires someone to file the application and get the water to them, the State Engineer has to guarantee that the end user has an actual need. That is one of the requirements. The contractual relationship is a reference to the *Bacher v. State Engineer*, 122 Nev. 1110, 146 P.3d 793 (2006). The Supreme Court said there had to be a contractual relationship.

**Chair Kirkpatrick:**

Could you just get a limited liability company trust and have a contractual obligation?

**Andy Belanger:**

I am not sure. This is a question for the State Engineer on this language. The intent came out of the original bill. We are just clarifying that term.

**Chair Kirkpatrick:**

There must have been a reason when they put in the more narrow term. This is not the time to broaden anything.

**Assemblywoman Pierce:**

I have a question about lines 10 through 16. Can you tell me why you wanted to delete "as determined by the State Engineer?"

**Andy Belanger:**

It seems to be redundant language. The basins are already determined by the State Engineer. He has a map that shows all of the different hydrographic basins. If two or more applications are made to appropriate water from the same basin, "as determined by the State Engineer" is redundant. The basins are already determined.

**Assemblyman Anderson:**

In subsection 7, paragraph (e), the actual water user is a specific term as well. Is that not specifying that it has to be the person using the water at his home instead of a purveyor, who could be the SNWA, who is bringing in the water? Is that not also very specific?

**Andy Belanger:**

It is a specific term. I will have to get back to you on why we wanted to put that language in there.

**Chair Kirkpatrick:**

As we move through subsection 3, it appears that it has been renumbered in both of your amendments. Is that correct?

**Andy Belanger:**

Our next change is in subsection 10 ([Exhibit E](#)). This is the same language that Mr. DePaoli mentioned earlier.

**Chair Kirkpatrick:**

From my perspective, the subsections do not stand out.

**Andy Belanger:**

[Referred to [Exhibit E](#), page 6.] This is language that was stricken from the original bill. It deals with the applications that are on the same property moving

from one point of diversion to the other. This was Assemblyman Sherer's bill from the 2005 Session. It dealt with something specific in Amargosa Valley. It was taking too long to move change applications on the same property. We are changing the time line from six months to one year. It is that concept that was stricken from the original bill. Those are all of our changes to NRS 533.370.

**Chair Kirkpatrick:**

Those are all your changes to section 3?

**Andy Belanger:**

Yes, to section 3.

**Chair Kirkpatrick:**

Mr. DePaoli, did we clarify all of your changes to section 3?

**Gordon DePaoli:**

Yes.

**Steve Walker:**

We need to explain where we have adjudication changes. Go to the TMWA amendment ([Exhibit F](#)) to subsection 2, paragraph (c), on page 2.

**Chair Kirkpatrick:**

You renumbered your amendments. For us, it is subsection 3 on page 2. It is the bottom of the page. It is NRS 533.370, subsection 2, paragraph (c).

**Steve Walker:**

In the bill, it is on page 5, line 1. That is the place where this language is amending existing law. It says, "In areas where studies of water supplies have been determined to be necessary by the State Engineer pursuant to NRS 533.368." The amendment adds the word "adjudications." We are trying to clarify that where adjudications are occurring, we can still move forward with applications.

**Chair Kirkpatrick:**

You are also putting the language back in about when court actions are pending. Is that correct?

**Steve Walker:**

Yes, we are going into the deleted language. I just want to make it clear on the bill that this is the amendment we are proposing.

**Chair Kirkpatrick:**

What is the reason for that?

**Steve Walker:**

If there are applications for a basin and the State Engineer has an adjudication process, it makes it easier. An adjudication process typically deals with surface and vested water rights that have been filed with the court to prove up on them. Those processes take a long time. We want to move the process forward even though there are adjudications going on.

**Chair Kirkpatrick:**

Are we finished with section 3? We can move onto section 4. Do you have any changes to section 4, Mr. DePaoli?

**Gordon DePaoli:**

My proposed amendment ([Exhibit F](#)) would delete section 4 of the bill in its entirety. If section 4 remains in, the reference to paragraph (b) at line 21 on page 8 should be deleted.

**Chair Kirkpatrick:**

What is your reasoning for that?

**Gordon DePaoli:**

It is a reference to paragraph (b) on page 4 of the bill. It says, "There is unappropriated water in the proposed source of supply." When someone is dealing with an application to change an existing water right, that is not an issue. The water is already there.

**Andy Belanger:**

We have no changes to sections 4, 5, or 6.

**Gordon DePaoli:**

My amendment was going to leave these sections to whatever the State Engineer suggests. I am not proposing any changes.

**Chair Kirkpatrick:**

Do either of you have changes to section 7?

**Andy Belanger:**

We have changed the verbiage of the transitory language in subsection 7. We have not changed the intent, which is that the mandatory provisions in section 3 of this act, relating to NRS 533.370, do not apply to applications to

appropriate water or change applications filed before July 1, 2011. We are retaining the prospective only nature of all of these amendments.

**Chair Kirkpatrick:**

Is your section 7 similar, Mr. DePaoli?

**Gordon DePaoli:**

Yes, we are not proposing to change the prospective application of these changes at all.

**Chair Kirkpatrick:**

Why do we have to make that language clearer than it is?

**Andy Belanger:**

Our attorneys want to make doubly clear. We have had trouble with retroactive language and how that section has been written in the past. We want to make sure that it is prospective only. I will check to make sure; we may be able to leave that language out.

**Chair Kirkpatrick:**

It is already clear in section 7. If it is just so someone can say they had a hand in it, it is not necessary. Is there anything on section 8? [There was nothing.] We have been through two of the amendments. When people come to testify, you support it as the way the bill is written currently. You do the same thing if you are against. If you are adding an amendment or you support it but with all of the amendments, you need time to digest it; then you are neutral. Those who are in favor of A.B. 115 please testify now.

**Jason King, State Engineer, Division of Water Resources:**

*Nevada Revised Statutes* 533.370, which is what A.B. 115 addresses, is arguably the most important provision within Nevada water law. It tells us what we can do to consider approving or denying an application. It lays out all the criteria. It needs to be comprehensive and clear. The Public Lands Committee brought this bill forward and introduced it on our behalf. I appreciate that. We drafted much of the language. We clearly did a masterful job, given all of the amendments that were proposed. It is such an important provision. We look forward to meeting with the different opponents and proponents of this bill. We look forward to meeting in the subcommittee to see what we can salvage out of the bill.

**Chair Kirkpatrick:**

We have to do more than salvage. We have to make it clear. It needs to be for the benefit of future Nevada residents.

**Jason King:**

I wanted to add that NRS 533.370 was brought into law in 1913. It has been amended in 18 sessions since. There is a lot of piecemeal language in statute. When we got this bill draft, our goal was to try to make it flow better and bring in the *Great Basin Network* decision. We wanted to roll that into it. It does not appear that we did a very good job of that. Anything we can do to clear it up needs to be done.

**Chair Kirkpatrick:**

We have had a good day of testimony. We have gone over the intent of what some of the amendments are. However the bill ends up, it will be clear one way or another.

**Assemblywoman Neal:**

Would you agree that these amendments needed to be reorganized so that they are clearer and follow a logical pattern of what was put into the Public Lands Committee bill? I felt that those amendments presented to us were unorganized and hard to understand.

**Chair Kirkpatrick:**

That is typically how water law works.

**Assemblywoman Neal:**

I was speaking about the amendments, not the bill.

**Chair Kirkpatrick:**

That is typically how the amendments work. That is why we are in the predicament that we are in. That is one reason why we went through section by section. Now we can go back through and reorganize. I apologize to the Committee, but this is how it works with water law. I have never been in a water subcommittee where it was clear. The amendments are always unclear. There always seems to be a different intent. Different attorneys want to write it differently. That is the reality of water law as I know it.

**Jason King:**

That is true. It is especially true in NRS 533.370. It is a very complicated provision. It has been piecemealed for a long time.

**Chair Kirkpatrick:**

In the past, this Committee has put more information on the record than there ever was before. You can go back to the minutes in the past. It says that there was an amendment submitted and adopted. The amendment is nowhere to be found. We are fortunate to go forward and have clear intent from all the

entities. Our legal division has to be able to defend it and be part of it. They are going to write it based on what we have heard.

**Assemblyman Goedhart:**

With the proposed TMWA amendment, ([Exhibit F](#)) there was a two-year period and a four-year period depending on whether or not a water right was protested. In the *Great Basin Network* decision there is a seven-year period. How do those all relate to each other?

**Jason King:**

I need to investigate those year time frames more. This is stemming from that *Great Basin Network* decision, in terms of allowing due process when time has elapsed. We get a lot of applications out within the one-year time period. There are a number of reasons why we cannot get it out within one year. I understand why that was put in. I appreciate the support from TMWA and others that are trying to give our office more time. There are a lot of different time frames in there. We need to be very clear and agree on what they are trying to do. We also need to agree on whether or not they are just numbers on a piece of paper or if they actually do something.

**Assemblyman Goedhart:**

According to the TMWA amendment, it looks like you would have that republication opportunity after two years on a nonprotested water right and four years on a protested water right. At the same time, the bill says that in seven years it has to be renoticed. It would really be taken care of under the four-year statute.

**Jason King:**

There are instances where you could get to the seven years without the two and four years through postponement. There are some criteria that allow our office to postpone for a variety of reasons. Once someone gets out to seven years and has not done anything with the water, then, that is it. It still needs to be republished. That is the reason for the different incremental time frames. We need to look at it closer.

**Assemblywoman Benitez-Thompson:**

Let us say for instance, there is a contentious water issue and people have their best lawyers on it. With this language, it seems like the process is indefinite and looping. Am I correct on that assumption?

**Jason King:**

Yes. On these contentious matters the process is looping. It does not always have to be interbasin transfers. Assemblyman Goedhart has a good point; there

are intrabasin transfers that are litigated ad nauseum. They are continual. We try to move forward on those. Regardless of what is going on in the courts we try to render a decision. In many cases, those decisions can be stayed. There is a holding pattern.

**Assemblyman Anderson:**

Is there anything that we can do in NRS 533.370 to make it easier for you and to stop the endless litigation that you face?

**Jason King:**

My blunt answer is no when it comes to litigation. That is the way of water in the western United States. That is the way of water in Nevada. It is the driest state and the fastest growing state. Water is worth so much money that it is going to be litigated. There is nothing that we could put into this language that is going to change that.

**Chair Kirkpatrick:**

Our biggest contribution will be to make sure the record and the processes are both clear on what this legislative body's intent was. That is the most helpful thing.

**Assemblyman Ellison:**

It is very important that the Public Lands Committee be involved in the process when you have your meeting. They brought a lot of good ideas and worked with you quite a bit. It is important to remember that whiskey is for drinking and water is for fighting over. That is what it will come down to.

**Assemblyman Livermore:**

I am sensing how the flow of water and the litigation of water work. You take this time period of two or four years and make a ruling in that period of time. Is there more protest and litigation that comes out of that? Does it reinstitute the appeal process down the line? I am seeing some issues where it is taking 25 to 50 years to resolve. How do you address that?

**Jason King:**

Every final decision of our office is appealable. If we issue a permit, that is appealable. There is a time frame in which you have to file that appeal. After that, you should not have any standing. Every water right that we issue is appealable. You can take that appeal and run its course through the state and district courts. It can be filed in parallel in state and federal courts in some instances. It runs up the court system. It can also come back down. Those take a very long time.



**Assemblyman Livermore:**

Our willingness to help you and give you appropriate time to respond does not have a lot of merit to the final decision. It is just a calendar-setting date that people can track.

**Jason King:**

I would agree with that. We are not going to render a decision unless we feel comfortable with it. If we are running up against a deadline, we will not issue a decision that we are not comfortable with. We will postpone it for one of the reasons that is allowed for in statute.

**Chair Kirkpatrick:**

I will now call on those that are in opposition to A.B. 115, as written.

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

As written, we are in opposition. The bill does need to be passed in some form to clear up some of these issues. We have two areas of particular concern. I am looking at the bill itself. On page 5, section 3, at the top, this is the area where it discusses change applications and the six months that is currently in statute. I would note in the language on line 9 down through 15, we are talking about change applications where the change is for existing points of diversion and the existing and proposed points of diversion are on the same property. Further, it says, "is on real property that is proven to be owned by the applicant and is contiguous." We are talking about a change application by a person who has water and wants to change it on the piece of property that they are using. They are not moving it across the county or anything like that. I am concerned about increasing this to a year or two years. I understand that the State Engineer's Office is doing the best it can. They are doing a yeoman's job.

**Chair Kirkpatrick:**

They have actually deleted that whole piece.

**Mike Baughman:**

That is correct. I do not find it elsewhere in the bill. That is a concern, the amendments proposed to change it to one year. My concern is that oftentimes, for irrigated agriculture, for example, these change applications are being filed to provide for water use efficiency, energy conservation like using an updated irrigation system, operating cost reductions, and achievement of increased production by the operation. Six months is an important time frame. If you are confronting a problem, for example, if the depth of groundwater has gone down, pumping costs are going up, or switching irrigation systems, waiting a year to get a decision to change an application within the existing piece of property may cause someone to miss an entire growing or production season.

Unless there is a pressing reason why we cannot get these change applications done under these circumstances and within six months when it is on the same piece of property, I see no reason to change it.

On page 7 of the bill, on lines 24 through 26, we have removed a provision. This survives in all of the amendments. This provision requires the State Engineer "must end concurrently with that notification, be mailed to the board of county commissioners of the county of origin." This is for interbasin transfers. In all of this revision we have now stricken this language that was put in statute a few years ago to make sure that the county of origin knows and they have been notified that there is a proposal to move water out of their county to another place. We would be remiss to remove that provision. It seems to be lost in the shuffle.

**Assemblywoman Pierce:**

I am glad you brought this issue up. In this whole process are we just going to the Internet now? Are we not publishing these notices in newspapers?

**Assemblyman Goedhart:**

How do you understand the term contiguous? If you own a piece of land on both sides of a street but the street itself is county-owned, would that be considered contiguous? I know many of these farming operations might have a county road in between a lot of their different pivots.

**Mike Baughman:**

I do not know the answer to that. Although, if it is the same parcel of land that has a road going through it, then yes.

**Assemblyman Goedhart:**

Many farms will have different assessor's parcel numbers (APN) because they have been bought and sold over the years. There may be a farm that looks like it is contiguous but there is a county road that runs through part of it. Are you looking at addressing that issue?

**Mike Baughman:**

When the original application is filed, the property on which the water is going to be applied has to be identified. This is speaking to when the existing and proposed points of diversion are on the same property. When it says the same property, it is the property that was identified in the original map when the application was filed to put the water to beneficial use. I am speaking about when it is moved to a different parcel.

**Assemblyman Goedhart:**

Many times that water will be across the whole property itself. Sometimes it will be identified as different parcels within the overall property as different pivot circles. I still have some questions.

**Assemblyman Ellison:**

I had the same questions. Where they want to take that whole section out of page 5, line 3 under the exceptions, that is important that the State Engineer goes back and reviews that. You talked about the county commissioners in the county of origin on page 7, lines 24 through 26. Should you look at lines 21 through 26? Should that whole section have been left in there?

**Mike Baughman:**

I believe that the situation you are speaking of is the same as the one Mr. Belanger pointed out. When the State Engineer reopens the protest period, at that point, everyone has an opportunity to file. Our concern from the five counties, is that there is a specific requirement that the county commission be mailed notification. We do not want to have to look it up on the Internet. These are rural counties. We do not have a lot of staff. We are not able to watch these things like largely staffed counties. This provision was put in to make sure that the county commission was specifically mailed a notice so it did not go off the radar somehow. About the successors in interest, I am not positive. It would make sense to notify them as well so that they are not lost in the shuffle. The State Engineer might not know who exactly is involved. I do not know how they would get that information. It could be complicated.

**Assemblyman Livermore:**

I agree with my colleague. The county commission notification is essential. As a former city supervisor, it was of interest to me when water rights in Eagle Valley were in the process of being acquired. The point of diversion was someplace outside the basin. Not that the county commission wants to protest it, but the point is we need to know. It is very important that that part of the law be retained.

**Chair Kirkpatrick:**

Those that are neutral on A.B. 115?

**Stephen D. Hartman, representing Vidler Water Company:**

As written, we are opposed to the bill for many of the same reasons already discussed.

**Kyle Davis, Policy Director, Nevada Conservation League:**

As written, we are neutral on the bill. I would like to have a chance to review the amendments before giving our stance on them.

**Dean Baker, representing Baker Ranches, Inc.:**

We have the properties that have dealt with water when white men first came to the West. For instance, the Burbank Meadows is very much like it was then. Water laws have been put in the process with the pre-owners of Baker Ranch. In my 50 years, water has always been a limiting factor to developing the ranch. My experience is that the State Engineer has been very helpful. It is still a complicated process. I am better able to deal with water by picking up a shovel and digging a ditch. We have had to move our applications, like it has been previously mentioned, across roads and other things. When we move water it is to use it more efficiently. It is important that we are able to change the point of diversion. If we are forced to use the water as when there were only horses, we would not be as productive and efficient. It keeps changing. Our vested water rights on the water in the springs go back before the 1905 date. The tradition of excepting drawdowns on all kinds of water have made us face the drawdowns of springs. One of the major areas that is partly our ranch is the Burbank Meadows where 2,000 cows and their calves spend the summer. We are now having more groundwater pulled near those springs and it is affecting both the sub-irrigated part and the spring flows. A producer who is a speculator, in my opinion, bought old land that was not productive and pulled the water out to use it . . .

**Chair Kirkpatrick:**

The more that we talk about groundwater and surface water, the more confused the Committee gets. I do not want to do that.

**Dean Baker:**

I want you to do what is right. Those of us that have the history, the water, and are using it have been treated right by the State Engineer's Office and the laws. The majority of water owners are the agriculture people. We are not here with the knowledge and the crews to come affect the laws. I hope that you as a Committee do what is correct with the laws.

**Chair Kirkpatrick:**

We always try to do our best. Is there anyone else who would like to testify on this bill?

**Jason King:**

I felt compelled to tell you that NRS 533.363 is the provision that requires us to notify the county commissioners when water is being taken out of the county.

The provision that was discussed is specific to that republication on the Internet after seven years. We are still required, by law, to notify the county commissioners when we are doing interbasin transfers out of the county. That is still in there.

**Chair Kirkpatrick:**

We will now close the hearing on A.B. 115. On Monday, we will have a subcommittee on the amendments. We need to give our legal staff the proper amount of time to go back and make any changes to clarify the law. We are going to take a five minute recess.

[Committee recessed at 10:11 a.m.]

[Committee called to order at 10:20 a.m.]

**Chair Kirkpatrick:**

We will now open the hearing on Assembly Bill 73.

**Assembly Bill 73:** Revises provisions governing the appropriation of water for a beneficial use. (BDR 48-467)

**Jason King, State Engineer, Division of Water Resources:**

Assembly Bill 73 is a bill that our office introduced. The purpose of the bill was to clean up the language in our water law. I will go through the bill section by section.

**Chair Kirkpatrick:**

It looks like you have an amendment ([Exhibit G](#)) as well. Can you go through the amendment as well?

**Jason King:**

Section 1 adds to the *Nevada Revised Statutes* (NRS) Chapter 533, which is our surface water chapter, language that is almost identical to NRS Chapter 534, which is our groundwater chapter. The language provides that personnel from our office have the right to enter the premises where any use of surface water is being made at any reasonable hour of the day for the purpose of investigating and carrying out the duties of our office. The addition of this language will make it clear that our office has the same access to the property, in the case of a surface water right, that it does with the groundwater rights we now have. In terms of our amendment ([Exhibit G](#)), there are two components. One of the components is to add the similar language in our surface water section but also in NRS Chapter 535 which is our dam safety chapter. The whole purpose of this language is to add personnel from our office to enter lands where there are

surface water rights and where there are dams. Right now that is not in either NRS chapter.

**Assemblyman Stewart:**

Would you notify the owners of the property that someone from your office is coming to inspect? Is that your procedure?

**Jason King:**

We try to notify as best we can. That is not always the case. There are instances when people from my office are out in the middle of Nevada and there is no one around. We go on property and measure the depth of water in their wells. We sometimes will do a crop inventory. We try to notify the owners in advance, but that is not always the case.

**Assemblyman Stewart:**

If there is a ranch house nearby would you go and let them know that you are there before you proceed with your investigation?

**Jason King:**

Yes we would.

**Assemblyman Livermore:**

How would you get access to a property that has locked gates on it? Would you cut locks? What legitimacy and force of action would you take?

**Jason King:**

We would not cut locks. We have run into locked gates before, and we then just get in touch with the ranch manager to meet us out there and unlock the gates.

**Assemblyman Goedhart:**

This predates your tenure as State Engineer, but there were times that people would come out of the Las Vegas field office to do well checks, look at meters, and so on. We have offices off the main road and they would insist on not calling or knocking on the door. In one instance, in one of our areas of operation we had a lot going on. A person was grading the road and one of the State Engineer's vehicles came around the corner and almost ran him over. In that case it was almost a deadly situation. If you could have your staff take that time to make an effort to notify the landowner, it would be a benefit to the safety of your employees in the field.

**Assemblyman Anderson:**

May I get a clear statement on the word "premises?" That is outside, correct? You would not be going into someone's dwellings.

**Jason King:**

There are some other amendments that have been proposed to clean that language up. It is funny. It has never been an issue with my office. We understand that we cannot go into someone's house. The amendment that is being proposed to change that to "lands" is probably appropriate. The one caveat is that sometimes we will be out on the person's property and there will be a well house. In that case we need to get in there. We might need to stick the well or look at the meter. Can that be included in the definition of "lands?" I agree there is probably a better word than "premises."

**Assemblyman Ellison:**

In my district, we used to have a trailer park in front of the ranch. We tried to keep the doors going into the pump house open until people started vandalizing. We locked them after that. I would not want anyone to enter onto property without authorization. I have a problem with this. Can you clean the language up? If there is a well out in the field, that is one thing. When you start entering into buildings and structures it makes me nervous. If you got hurt, who is liable? I would like to see you clean that language up.

**Chair Kirkpatrick:**

I think that will come with Mr. Walker's amendment. I was in a meeting where that was a big discussion. At the same time, we need to realize that the Office of the State Engineer needs access at certain times. The hope is that they will try to work with the certain landowners to get that access. If there is an emergency with the system, how would the field workers get in there? I think there is an amendment being proposed to clean that language up.

**Jason King:**

I will move on to section 2. Our amendment ([Exhibit G](#)) strikes section 2 in our original bill draft. Originally, it was in the bill because the language in statute says that when we send out a notice, within 30 days after the mailing of the notice, if someone fails to respond, we can go forth. There have been a couple of occasions where we do not know what the word "mailing" means. We do not know what date that is. When we drafted this bill, we wanted to make it 30 days from the date on the letter so that there would be no questions. The concern was brought up that if it leaves our office on this day and then goes to a state mailroom, it is then mailed out and a few days are lost. It was perhaps unfair to change it to 30 days from the date on the letter. We are striking this because what we have found is that there is a matter of law called the mailbox

rule. That rule provides an additional three days to noticing time frame for notices that are mailed. That has been upheld by the Nevada Supreme Court. We are just going to strike this section and it will become a policy to give 33 days from the time that notice is sent out.

In section 3, the amendment proposed in this section is to reflect the State Engineer's longstanding interpretation of this provision of the water law. We are not seeking to change the water law. We want to clarify the law. We specifically request that a reviser's note reflect that statement. In the Truckee Meadows Water Authority's (TMWA) amendment, Mr. DePaoli has done a good job of adding the reviser's note to what he has offered. The crux of this change is that our office has never applied the law of forfeiture to a permitted water right. That is what the statute says albeit it is ambiguous. There is a provision that already exists for cancelling permitted rights. There is a distinction there. If someone cancels permitted rights, then they forfeit certificated rights. We are trying to clear that matter up in section 3 with the reviser's note. That will make it clear that this is how our office has always handled this issue.

**Assemblywoman Neal:**

For this bill, the Legislative Counsel's Digest says, "Section 3 requires the State Engineer to declare a water right forfeited for nonuse if the State Engineer grants an extension of time to the owner of the water right and, before the expiration of that extension of time." Does this mean that someone is going to be able to forfeit even before you extend the time? It seems like it says two things. Does the "and, before the expiration of that extension of time" have two meanings?

**Jason King:**

Could you point me to the line numbers in the bill?

**Assemblywoman Neal:**

It is on lines 30 through 33 on page 4 of the bill.

**Jason King:**

That provision was put in during the 2007 Session. That provision means that if the State Engineer's Office has information on a certificated water right, that there has been four years of nonuse, then we must notify that water right holder that they have a year to put that water to beneficial use, or the water right will be forfeited. Five years of nonuse constitutes forfeiture. That is a notification provision.



**Chair Kirkpatrick:**

Could you give some legislative history? What happened was rights were getting forfeited and people did not realize that the five years had come and gone. Is that correct?

**Jason King:**

That is correct. Fifteen years ago, there was no notification whatsoever. If we had records that showed that there was five years of nonuse, then we would forfeit the water rights. There was a change to the law that, in basins where our office conduct inventories, if our records show four years of nonuse then we must send them a four-year nonuse letter to notify them that they have a year to put the water to beneficial use. It was an attempt by the Legislature to require our office to notify these people before water rights are forfeited. At one time there was no notification. We then went to the four-year nonuse in basins where our office conducted inventories. This provision applies statewide whether we do an inventory in the basin or not. If we have information given to us, where there is four years of nonuse, we have to send a one-year notice.

**Assemblyman Livermore:**

In the event that a forfeiture takes place, is there a period of time where the individual or property owner who lost the rights has an opportunity to appeal?

**Jason King:**

Yes, there is a 30-day appeal period. They would appeal that to the state district court. Continuing on, in section 3, subsection 2, paragraph (e) the changes address what happens to a person who is granted an extension of time to avoid forfeiture. It states what happens to him if he does not file the required paperwork before the end of that one-year time frame.

We have had circumstances where someone has come into our office and requested an extension of time to prevent forfeiture. He has come to our office and said that he has not used his water in five years and he needs an extension of time. We have granted that extension of time. The one-year time frame has elapsed and the permit holder has not put his water back to beneficial use or filed an extension of time. Our office feels that we should be able to forfeit that water right then. He came to us and told us that it had been five years of nonuse. He applied for an extension, which we granted but then he did not do anything after that. We are trying to clear up that if he does not resume use or file an extension of time, then we can forfeit that water right.

**Chair Kirkpatrick:**

If the economy prevented him from putting his water to beneficial use or build his development and got the extension time, it is one thing. You told us that a

person could keep filing the extension of time, as long as he was showing some productivity.

**Jason King:**

That is correct. We do go forward and forfeit the water right. He can still appeal that forfeiture.

In section 4 of the bill, NRS 534.350 is proposed to be amended such that our office would not have to hold a public hearing on the merits of whether a water purveyor should develop a domestic well credit program in a certain area. On the surface, this provision may sound unreasonable. The proposed language requires our office to issue an order for a domestic well credit in advance of adopting such a program. We would still be putting a notice out there for the public to see. That order is appealable by anyone who feels aggrieved by it. Therefore the due process is maintained even if we do propose to get rid of the hearing. The change is being proposed because, as far as I am aware, there has never been a person speaking in opposition to the program. That does not mean that someone will not. I have a hard time coming up with any reason why someone would oppose this. In these days of reduced budgets and increased workload, we feel that this change is merited.

Additional language has been added after we submitted the bill draft that would require a water purveyor to notice all of its customers each time a single person applies for a credit. You will see that there are a couple of amendments being offered that would do away with that. It is because they believe it is too onerous.

**Chair Kirkpatrick:**

I will call up the two people that have amendments on this bill. We will go through it as we did with the last bill.

**Steve Walker, representing Truckee Meadows Water Authority, and Lyon and Douglas Counties and Carson City:**

I am going to speak specifically on section 4 of A.B. 73. The proposed amendment ([Exhibit H](#)) is on page 5: to strike paragraph (b) of subsection 1, so in section 4, lines 22 and 23 would be deleted. "For which the State Engineer has issued an order for granting a credit pursuant to this section" turns into paragraph (b). Subsection 2 would be completely deleted. The numbering would then be restarted as subsection 2. The intent is because domestic well credit has been around since 1993. It started in Washoe County. It has been a very successful program where there have been high-density wells and septic systems for converting the well without the person having to buy a water right. There were many stipulations put into the original law. As the law has been

used, the stipulations have become unnecessary. There is no need to notice someone whose well has gone dry. The stipulation for a municipal application being denied is stricken as well. I do not remember the original justification or reason for that, but it did not seem to make sense either. We are trying to simplify a process that we are going to be using from here on out. It is also related to a bill that you will be hearing in the near future.

**Assemblyman Goedhart:**

The concept is that if there is a well on a five-acre parcel, the presumption is that there are already two acre-feet. That is pertinent to that parcel. If someone hooks up to a municipality, he should not have to buy water rights because he has already given up his two acre-feet by hooking into the utility. Is that correct?

**Steve Walker:**

Yes that is correct. We have amended this section to make a domestic well credit law. It used to be that the purveyor would keep a record of the water from a domestic well and then an extension had to be filed on it each year. That became a very frustrating administrative thing. Now, if the parcel is hooked up to a municipal water supply, he gets a credit for that. He can pump two more acre-feet. It would not be followed with a water right. The water from that well goes back to the source. That has been clarified. That is an addition to the domestic well use onto the many water rights that can be pumped.

**Vahid Behmaram, Water Rights Manager, Washoe County:**

The Washoe County Department of Water Resources' comments are limited to section 4. As Mr. Walker indicated, Washoe County is the reason this law came into effect back in 1993. We have quite a bit of experience in this area. Simply put, we oppose the portion of section 4 on page 5, lines 26 through 41. That is subsection 2. We oppose adding that provision to the existing water law. As Mr. Walker indicated, it does not accomplish anything. It does not serve any purpose. I submitted an amendment ([Exhibit I](#)). I had an opportunity to review TMWA's amendment ([Exhibit H](#)). Their amendment is more comprehensive. It deals with other sections of the bill. It also includes what Washoe County is asking for. With that, I will simply defer to TMWA's amendment. They can cover the rest of the bill together with section 4.

**Chair Kirkpatrick:**

I am confused. Mr. Walker, I thought you said that in section 4 the only thing that you wanted to amend were lines 22 and 23, and 26 and 27. Is that not correct?

**Steve Walker:**

The amendment would delete lines 22 and 23 on page 5. It would renumber line 24, paragraph (b). It would delete lines 26 through 41 and number thereafter.

**Chair Kirkpatrick:**

You do not want a written confirmation from anyone?

**Steve Walker:**

We are trying to say that when the State Engineer does his ruling that the domestic well credit is applicable to this hydrographic basin, that the purveyor can just move forward and deal with the customer that needs to be hooked up at a purveyor level. As now written, every time someone is hooked up, the purveyor has to notify all the customers. We do not think that accomplishes anything. The notifications segment is gone because the business between the municipal water supplier and the person that is going to have their well shut down and hooked up to the system is a normal relationship. They are going to do that practice. The person whose well went dry will be applying for that program.

**Chair Kirkpatrick:**

On your amendment ([Exhibit H](#)) it says that in section 4 of the bill on page 5, lines 14 through 25 are stricken. Did we change that?

**Steve Walker:**

I will read from the amendment proposed. It says, "Amends section 4, page 5, by deleting lines 22 and 23."

**Chair Kirkpatrick:**

The statement of intent says, "Section 4 of the Bill at page 5, lines 14 through 25." Are you just restating what the bill already does? It is very hard for us to follow along.

**Steve Walker:**

I am going to bring the amendment with the typical mark outs and color changes to the subcommittee meeting.

**Gordon H. DePaoli, representing Truckee Meadows Water Authority:**

I apologize for the confusion caused by the way these amendments were presented to you. In section 1 of the bill, the State Engineer had some questions. We propose some revised language to section 1 on the second page of the TMWA amendment ([Exhibit H](#)). I have the language that it would be replaced with. It does relate to the questions that were posed about entering

the premises of the owner of a water right. It is revised to say, "The State Engineer or any assistant or authorized agent of the State Engineer may enter lands where any water subject to the provisions of this Chapter is being diverted or used at any reasonable hour of the day to investigate and carry out the duties of the State Engineer pursuant to this chapter." It is aimed at the "premises" issue.

**Chair Kirkpatrick:**

The State Engineer said he was fine with that.

**Gordon DePaoli:**

Section 3 is the language that the State Engineer spoke to about it being a clarification of the law, as opposed to a change. There is pending litigation involving an interpretation of that section. The TMWA is not a party to that but has filed an amicus brief with the Nevada Supreme Court on the question. The issue is whether a permit is subject to loss by forfeiture in addition to cancellation for failure to meet permit conditions. The district court in that case held that permits are only subject to cancellation for failure to meet conditions. They are not subject to loss by forfeiture. That is the issue before the Nevada Supreme Court. In preparing the amicus brief for the Nevada Supreme Court, I reviewed the evolution of the statute. I am convinced that the Nevada Legislature has never intended that permits be lost by forfeiture. They are only lost by cancellation. Once they are perfected, then they can be lost by forfeiture, but not until then. The concern that I have is that if you make this change without some appropriate transitory provisions, a court might construe the changes as the intention to change the existing law rather than to confirm it. It will then compound the problem. I have proposed a change to the transitory section which is in section 5 on page 2 of the amendment ([Exhibit H](#)). It is language essentially taken from a situation that happened a few years ago. It was in the late 1990s or the early 2000s. We want to include in this part of section 3, that "The Legislature declares that it has examined the past and present practice of the State Engineer with respect to forfeiture of water rights on and after March 15, 1947." That is when this particular provision was added to the statutes. It "finds that the provisions of Nevada law concerning forfeiture of water rights have been applied in a manner consistent with Section 3 of this act." The important provision that "the Legislature intends by this act to clarify rather than change the operation of NRS 534.090 (subsection 1) with respect to forfeiture of water rights and to thereby promote stability and consistency in the administration of Chapters 533 and 534, of the NRS." The act becomes effective upon passage and approval. Section 3 applies retroactively as well as prospectively. If you are not comfortable doing that, then we are better off if you do not do anything.

**Jason King:**

We support all of the amendments that Mr. DePaoli and his client have proposed.

**Chair Kirkpatrick:**

Section 5 seems different. On this paper there is a whole section 5. Instead of it just saying it is effective upon passage and approval, there is some other language in here.

**Gordon DePaoli:**

This section 5 in the amendment would replace all of section 5 in the bill.

**Chair Kirkpatrick:**

Section 5 in the bill only has one line. It says that the act becomes effective upon passage and approval. Is that correct?

**Gordon DePaoli:**

Yes.

**Chair Kirkpatrick:**

Is there anyone who is in opposition to the bill as written? [There was no one.]  
Is there anyone who is neutral on the bill as written?

**Cadence Matijevich, representing City of Reno:**

We support the bill. However we have concerns with the new section 1 and what would be the new section 2 by the State Engineer's amendment ([Exhibit G](#)) regarding liability for the State Engineer's employees when they access property. We do have concerns about liability issues.

**Chair Kirkpatrick:**

Is there something specific on liability that you would like addressed in this bill?

**Cadence Matijevich:**

The concern is negligence or damage caused during the inspection. We did contact the State Engineer's Office to inquire if there was another place in statute that would protect us. At this point, we have not been able to identify any.

**Chair Kirkpatrick:**

How does it work when other people use easements to come onto different properties? Do we have the same issue there?

**Cadence Matijevich:**

It would depend upon the provision of the easements. In this case, the concern is that they can come onto the property at any time without notice. Perhaps there were some conditions that the property owner would want them to be aware of. If something was damaged in the process, it would have to be covered. The State Engineer's Office would be responsible for any repairs that need to be made. The State Engineer indicated that he understood the concerns and would have those same concerns for his employees; if we, in fact, were not maintaining our facilities and the employees from the State Engineer's Office were injured. We support the bill, but feel there is some grey area.

**Kyle Davis, Policy Director, Nevada Conservation League:**

We are neutral on the bill as written. We would like the opportunity to review the amendments.

**Andy Belanger, Management Services Director, Southern Nevada Water Authority:**

We support the concept of the bill. We have some concern with the wording of section 3 as it relates to "perfected" versus "certificated" water rights. The term "perfected" is not currently defined in statute. It needs to be if we go with that language. We support sections 4 and 5 as amended by TMWA ([Exhibit H](#)).

**Chair Kirkpatrick:**

Would anyone like to testify as neutral on this bill? [There was no one.] Is there anyone who would like to testify in support of this bill? [There was no one.] We will now close the public hearing on A.B. 73. This bill will be taken up first during the upcoming subcommittee hearing. Is there any public comment? [There was none.]

Meeting is adjourned [at 10:58 a.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:** March 9, 2011

**Time of Meeting:** 8:04 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 114	C	Senator Dean Rhoads	Prepared Testimony
A.B. 115	D	Senator Dean Rhoads	Prepared Testimony
A.B. 115	E	Andy Belanger, Southern Nevada Water Authority	Amendment
A.B. 115	F	Gordon H. DePaoli, Truckee Meadows Water Authority	Amendment
A.B. 73	G	Jason King, Division of Water Resources	Amendment
A.B. 73	H	Gordon H. DePaoli, Truckee Meadows Water Authority	Amendment
A.B. 73	I	Vahid Behmaram, Washoe County Department of Water Resources	Amendment