

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

**Seventy-Sixth Session
March 30, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 7:30 a.m. on Wednesday, March 30, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman 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:

Assemblyman Marcus Conklin, Clark County Assembly District No. 37
Assemblyman Pete Goicoechea, Assembly District No. 35
Assemblyman James Ohrenschall, Clark County Assembly District No. 12

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Brenda Erdoes, Legislative Counsel
Cheryl Williams, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Jason King, State Engineer, Division of Water Resources, Nevada
Department of Conservation and Natural Resources
Andy Belanger, Manager, Management Services Division, Southern
Nevada Water Authority
Steve Walker, representing Truckee Meadows Water Authority
Dean Baker, representing Baker Ranches, Inc.
Dorothy Nysten, Private Citizen, Dayton, Nevada
Susan Lynn, representing Great Basin Water Network
Kim Wallin, Nevada State Controller
Carrol Abel, President, Hidden Valley Wild Horse Protection Fund
Sheila Schwadel, Private Citizen, Fish Springs, Nevada
Bonnie Matton, President, Wild Horse Preservation League,
Dayton, Nevada
Ron Cerri, President, Nevada Cattlemen's Association
J.J. Goicoechea, Private Citizen, Eureka, Nevada
Doug Busselman, Executive Vice President, Nevada Farm Bureau
Jake Tibbitts, Natural Resource Manager, Eureka County
Michael DeLee, DeLee and Associates, Amargosa Valley
Vahid Behmaram Water Rights Manager, Department of Water Resources,
Washoe County
Bjorn Selinder, representing Churchill, Eureka, and Elko Counties
Randy Robison, representing Virgin Valley Water District

Chair Kirkpatrick:

[Roll called.] Good morning. We are going to go a little bit out of order, Mr. Goicoechea, because I had people waiting outside my door at 6:30 a.m. I am going to let Mr. Goedhart go first. Then you can go second. Good morning, Mr. Goedhart.

Assembly Bill 410: Revises provisions relating to the filing by a governmental entity of a protest against the granting of certain applications relating to water rights. (BDR 48-360)

Assemblyman Ed A. Goedhart, Assembly District No. 36:

Thank you, Madam Chair and fellow members of this hardest working committee in the building. This morning we are going to talk about something exciting for most of you folks on the Committee—water. Firstly, I will tell you what Assembly Bill 410 is not. It is not a bill to go ahead and change a large degree of Nevada water law. We all know how complicated that can be. What this bill aims to do is narrow or put a slightly higher burden on government agencies that are filing protests and preventing people from utilizing the water that they own.

For historical perspective, this is the third time I have brought this bill forward, and I really appreciate the Chair for letting me keep doing this bill every session, kind of like *Groundhog Day*. I appreciate your giving me the time and opportunity to present this bill yet one more time. I have made a few changes and I am also open to amendments, as well. Maybe a comma here or a period there . . . I might be okay with that.

In Nevada, we have property rights, not only as it relates to land and buildings, but also to water. The water belongs to the people of the state of Nevada. Imagine, if you will, that you had bought a house in a neighborhood and gotten through the financing. In this case, you had the keys; you paid all your taxes and signed the mortgage. When you went to open the door of the house, a government person came up to you and said, “Well, I know you own the house, but now you have to apply for an occupancy permit. We are going to protest your moving into this house. You are going to have to go to court and get permission to move into this house.” That is, in effect, what is happening to water rights in certain areas of the state. Probably one of the areas where it happens the most is in Amargosa Valley. We have the National Park Service as it relates to Death Valley National Park, Ash Meadows National Wildlife Refuge, and there are a plethora of other federal agencies, as well.

What is happening is that you can actually buy a water right that is a preexisting, valid, certificated water right within Amargosa Valley and then you are going to have to go ahead and pay for it. You file an application, and out of the blue comes a protest from the National Park Service. It has a detrimental, if not devastating, impact upon the businesses and economic opportunity in rural Nevada. So I like to call this a jobs bill. It is a jobs bill that will not cost this august body any money. It is a jobs bill that will increase investment, economic opportunity, and tax revenue—without costing the

taxpayers a dime. What this bill strives to do is say that in Nevada you have an opportunity to protest a water right. Any person, individual, or government entity has a right to protest the movement or the change in a point of diversion, place of use, or manner of use—and that is fine. We are asking that, if a government entity decides to protest this water right, they actually have to go and have a peer review through the rank and file, brought up through the different levels within the organization, and signed off by their chief deputy or administrator. It is, in effect, an eminent domain taking, a de facto taking of a right that you own, that you are not able to now use because of a protest that has been launched by the Park Service.

Within my packet ([Exhibit C](#)), I can show you some of the impacts. We have a resolution within this packet which is from Nye County. It was signed off by all the commissioners. This one dates all the way back to 2004. The Nye County Board of Commissioners signed another one in 2006. It was a resolution that requested that the Nevada Division of Water Resources expeditiously dismiss the frivolous protests that had been issued by the Park Service. There is another one here by Lisle Lowe, who is a licensed water right surveyor within Nye County. He talked to this issue. There is another one from Horizon Academy, which was an interesting story.

Horizon Academy was an entity that took out a piece of property, a rundown strip mall, and decided to invest several million dollars and convert it into an academy for troubled teens. Today, it employs 60 people. As you read here in a letter dated April 2, 2007, I was helping this gentleman, Jade Robinson, bring jobs and bring economic investment to the Valley. He said, "Well, I have 15 acre-feet of water rights." I asked him, "How much are you going to use?" We converted it to gallons and all the rest, like how much grass did he want, how many kids was he going to have, et cetera. We figured out the different water flows for all the different fixtures within the anticipated Horizon Academy. He had 15 acre-feet of commercial water rights, and he bought another 20 acre-feet because I told him, "You might as well buy some extra water. You do not know how much you are going to use on an annual basis."

Halfway through the construction project, we had a gentleman from the Division of Water Resources come from southern Nevada. He is not there anymore, thank goodness; this has nothing to do with the current leadership. In the middle of this project, we had gotten maybe 60 or 80 people working on the ground, and this was one of the biggest construction projects in Amargosa Valley in the last several years. Not a lot happens out there. He came screaming up in his pickup truck and said, "Stop the project! Stop the project!" Mr. Robinson was looking at me like, "What is going on?" I told him,

"I do not know what is going on. Let us talk to him." The gentleman from the Division of Water Resources said, "I think you said you were going to use 30 acre-feet of water." I said, "Yeah. We have already got 15 acre-feet that are allocated to the property. Mr. Robinson bought 20 acre-feet. He is going to transfer the 20 acre-feet within six or nine months. By the time the whole thing has been redone, we are going to have the extra water rights necessary to go ahead and come into compliance." He said, "Well, I just know that Death Valley is going to protest these water rights, and you might as well all go home because Death Valley does not want to have anything to happen out in Amargosa Valley."

I thought the water belonged to the people of the state of Nevada. These are valid, certificated water rights. What was the problem? The problem was that Death Valley basically can take a template they have made and every time there is any water right moved within Amargosa Valley, they file this automatic protest using this template. It stops all economic development because, in certain cases, it can take two to six years before the protest is dismissed.

I can tell you another personal story. Everyone says I have a vested self-interest, and I probably do because this is one of the reasons why I ran for office a few years ago in the first place. I bought my first piece of property in Amargosa Valley several years ago. I was all excited about being a farmer. I did not realize at the time that how you make \$1 million farming is by starting out with \$2 million. The dirt out there is not all that good. But I am not playing the world's smallest violin. I wanted to go and do it. So I said to the wife, "Here is a piece of property. It looks like Sanford and Sons. We have to clean it all up. We are going to go ahead and put new irrigation systems in. We are going to go ahead and level the ground. We are going to get everything going perfectly. It is going to look great." Well, about two months into that next spring, the existing well on that property started to have problems. So we made an application to move the point of diversion. At first, it was 150 feet. But they said, "Well, you have three ranch houses and there are septic lines. There are new rules. You have to be so far from a septic line." So we ended up moving the point of diversion 1200 feet to the west. This was about eight or nine years ago, maybe ten years ago. And, all of a sudden, I got a call from the water rights surveyor and he said, "Well, your application to change your point of diversion has just been protested by the National Park Service." I said, "Well, it is on my own property. What is going on?" He said, "Well, that is what they do." At that point in time, I did not know much about water law. I was talking to people. I had to go ahead and drive by my fields and watch them literally dry up, turn brown, and blow away in the hot desert sun. I figured it cost me and the wife and the kids about \$60,000, because we lost

our whole season, we lost all the alfalfa seed; we lost all the work that went into preparing the ground.

I talked to the Nye County Board of Commissioners. I talked to all sorts of people. And finally, in September or October of that year, the Park Service said, "Oh. Is that all you wanted to do? We are sorry. That was a mistake. We are going to withdraw our protest. Go ahead. Now you can drill your well." But I had to pay for all the court costs. I had to pay for all of the consultants. And I lost a whole year's product. At that point in time, I asked the kids if they wanted their dad to continue around this mad march, this mad dream. Could we go ahead and rob their college accounts? And that is what we did. My wife was working three jobs. I was working one job and trying to start a business. I saw this happen time and time again in Amargosa Valley. And I said, "You know what? It is our opportunity to go ahead and correct a wrong." We do not want to change Nevada water law and say no one has a right to protest. But what this does say is that if you are a governmental entity and if someone has a preexisting or certified or permitted water right within the same hydrographic basin, if the government entity wants to launch a protest, that is fine. But they have to have it peer reviewed, gone up through the rank and file, and signed off by their chief deputy or administrator. That is all that this bill seeks to do. So I would open it up for questions now.

Chair Kirkpatrick:

Are there any questions? Is the part that you changed a little bit of the diversion piece on section 1, from last session?

Assemblyman Goedhart:

Some people, like the conspiracy folks, said that last session we were trying to make it easy for Las Vegas to steal the water from the rurals. That was not the intent of the bill. What this does is that it only applies to intrabasin transfers of water and not interbasin. It is only water rights that are moved within a preexisting basin. Also, I think that the Division of Water Resources has done a great job in terms of working with the Park Service, proactively, to really preclude their necessity for launching all of these frivolous protests. Because it is part of some of the adjudicated decisions or rulings that have come down that say you cannot move any water in Amargosa Valley south or east because if you go south or east from where most of the water is, you get closer to Devil's Hole. So, even within the Nevada Division of Water Resources, they have specific rulings and conditions and terms upon how you can move the water. We are fine with that. But even within that context the Park Service is still launching protests, in some cases, for water amounts that are as little as five-acre feet, which is enough to go ahead and irrigate a one-acre horse pasture. We had a lady retire from Clark County. She moved to

Amargosa Valley with her horse, got a double-wide, and bought 5 acre-feet. It took her almost six years to get the water rights transferred. By that point in time, her horse had already passed away from old age. She never had a chance to put her horse on a one-acre pasture. It gets a little bit ridiculous. Look at another letter here, dated February 20, 2007. It talks about Nevada Water Rights application 72239 ([Exhibit D](#)). If you go to the last page, you can see "Coming soon, 747 Mini-Mall." This was a very successful developer. Well, after being run around for several years, trying to get his couple of acre-feet of water rights just for water for a strip mall, he gave up. To this day, nothing has been built on that piece of ground. When you are talking about economic development, I think there are a lot of people who want to develop and there are a lot of people who want to invest. We just have to give them the opportunity so that they can do so.

Assemblyman Livermore:

Thank you, Madam Chair. Mr. Goedhart, I had a similar thing happen on the Carson River. I am a member of the Carson Tahoe Hospital Board of Governors. We were attempting to build a small hospital in Dayton. We bought a 10-acre parcel of ground. We had to acquire water rights with that. No sooner did we acquire the water rights than it became protested downstream from Churchill County and the Indian tribe at Pyramid Lake. So I know exactly what you are referring to, and I am very supportive of your bill.

Assemblyman Goedhart:

Thank you, very much. As I said, we are not trying to diminish their ability to protest. I think we have excellent water law in the state of Nevada. I would just like to have an additional level placed upon them to have it peer reviewed and gone up through the rank and file and signed off by their chief deputy administrator or chief.

Assemblywoman Benitez-Thompson:

Thank you, Madam Chair. Mr. Goedhart, I read the bill and I hear you referencing the peer review and I see the need for signatures by the head of the departments in section 1 and in section 2, at the back of the bill. To me, getting a signature does not necessarily dictate a peer review process. Is that what you are looking for? Are you looking for internal discussions?

Assemblyman Goedhart:

I think if you are going to have the person at the top sign, you are going to have to have discussions. I am not mandating the peer review within this bill. Usually, I have found out that when you work with agencies and you hold that person accountable with his own signature on the paperwork that he has, basically, dictated policy to make that way, he is going to have some

discussions. I will give you an example. On the dairy farm that I manage, we have what is called a comprehensive nutrient management plan and we also have an effluent management plan. Well, in that case, they do not allow any one of those employees on the dairy farm to sign those annual reports. They want me, as the manager, to sign those reports. What they do not want to have happen is to have me hire a brand new person off the street, sign a report, and then a few years later the reports do not jive. I can say, "I did not sign those reports. Employee X, Y, or Z signed those reports." They can deny culpability. What this bill will do is that when their signature has to go on those water right protests, it is going to hold them accountable, those folks who basically dictate the policy. They are going to be the ones. I think it is a de facto way of having those peer-reviewed discussions or going up through the rank and file.

Assemblywoman Benitez-Thompson:

Can you tell me how many of these situations has the federal government been the only entity protesting or if there have been other protests?

Assemblyman Goedhart:

Since I have been there, about 14 years, I know personally there have been probably 20 times or better where the only person protesting has been the National Park Service. To give credit to our folks, in almost every single case those protests have eventually been overruled. There are a few cases where they just gave up and went away. They did not have enough money. They did not know the system. They did not know the attorney to hire and did not have enough money to fight it. A lot of dreams have been killed because of these frivolous protests.

Assemblywoman Flores:

Thank you, Madam Chair. So, you are basically saying that some of these agencies are almost filing these protests as a matter of default, and then you would require that an agency head review it instead, and that would bypass this whole rubberstamping them out.

Assemblyman Goedhart:

Yes. I think what would happen is that if the head of the agency that was filing a protest had to put his or her signature on there, he or she would say, "Hmm. I am going to have to have culpability for my actions." That might go ahead and reduce a few of the protests, which is kind of funny. In Amargosa Valley, if you look at the aerial picture on one of the handouts ([Exhibit D](#)), I do not know if you have seen this, with the little green dots on a brown background. If you look at that, on the west side of the valley, there are some areas within the state of California. So, to show you how odd this is, if I decide to go

ahead, within the same valley and access a piece of private property, and it happens to be on the California side of the line, I can call up a well driller, immediately drill wells, and start utilizing water. I like our system better in the state of Nevada. We have a limited amount of water. We have to have these processes to protect a limited resource. But I think what happens is, when you have folks like the Park Service, who I do not believe are playing fair, it basically puts us at a big disadvantage because the state of Nevada's being, basically, outmuscled, by the federal government with all the frivolous protests. The doctrine of water law in Nevada is that Nevada has sovereignty over the waters of the state of Nevada.

Chair Kirkpatrick:

Are there any other questions? Okay. Mr. Goedhart, was there anyone else you wanted to testify for you? I have a lot of folks signed in; they just do not want to speak. It is too early, I think. So, I will do this. If there is anyone here who would like to testify in support of A.B. 410, please come forward now. Is there anyone in support? If there is anyone who is neutral on A.B. 410, please come forward. Good morning, Mr. King.

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

Yes. That is my testimony, that we are neutral on this bill.

Chair Kirkpatrick:

Thank you. Is there anyone else who would like to testify as neutral on this bill?

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

We are neutral on A.B. 410 this year. I think we have been neutral the last two sessions, as well. I would note that our standard practice has been, as a governmental agency, that if we protest applications, those are ratified by our board of directors. So, in that sense, we are already complying with the provisions of this bill that require that the government take action to file a protest. This bill says the general manager can do it, in our case. I just wanted to put that on the record that we are complying with the spirit of A.B. 410 even though, potentially, it is not binding on us, as of yet.

Chair Kirkpatrick:

Yet. That is a good choice of words.

Steve Walker, representing Truckee Meadows Water Authority:

I will somewhat echo what Andy said. At the top of page 5 of the bill, under subparagraph (1), that provides us an exception for going to the board. A director can file protests because we are a separate government entity. We are not part of another one. With that, we are neutral on the bill. Thank you.

Chair Kirkpatrick:

Thank you, Mr. Walker. Do you guys also do the same thing? Does your board of directors sign off on those?

Steve Walker:

To tell you the truth, Madam Chair, I think sometimes we do and sometimes we do not. It depends on the expediency that we need.

Chair Kirkpatrick:

Does anyone else have other questions? Okay. Thank you. Does anyone else wish to testify as neutral? Mr. Baker.

Dean Baker, representing Baker Ranches, Inc.:

We have had to deal with different government agencies protesting water rights. For instance, in the recent past we filed on springs that had never been filed on or that had been used historically, a long time. We probably should have filed maybe fewer rights. Maybe we did not file them perfectly, but both the Bureau of Land Management (BLM) and the Southern Nevada Water Authority filed protests against those. I am glad to hear that their board of directors did it, but I do not know why they did it. But this kind of bill has some reality because government agencies do that kind of thing. Thank you.

Chair Kirkpatrick:

Thank you. Does anyone have any questions? Is there anyone in opposition of A.B. 410? Please come forward.

Dorothy Nylen, Private Citizen, Dayton, Nevada:

I do not think I understood, exactly, the language of this bill. So, in part, I have a question. When you are requiring the signature it sounded like, in the case of the BLM, it would have to be Ken Salazar that would have to sign, in this case. It just seems to me that Nevada water law is already extremely complex. I think this would just add to the confusion and not help with relations with the different federal agencies that interact with people in the state. It seems like it would be better for citizens to interact with local offices of different agencies. So, I do have a question. Are you saying that you want Ken Salazar to sign?

Chair Kirkpatrick:

Mr. Goedhart, go ahead.

Assemblyman Goedhart:

Thank you, Madam Chair. If you look on page 2, it says the Secretary of Agriculture if the protest is filed by the United States Forest Service; and the Secretary of the Interior if the protest is filed by the BLM or the United States Fish and Wildlife Service. It is exactly right that it would be the Secretary of the Interior, Mr. Ken Salazar. And I believe that if we have the unusual cases where people are taking property that is already privately owned—private, real personal property rights—it is even worse than eminent domain because at least in eminent domain, when they seize your property or they say, “You have to get off your property,” at least they pay you fair market value. In this case, these actions are taking away private, personal property rights with no compensation.

For example, in Amargosa Valley, the amount of money that has been spent by the federal government exceeds the value of the water rights. Had they gone up to all the landowners and said, “You know what. You have 500 acre-feet of water rights. I will pay you \$1,000 an acre-foot.” Had they taken half the money they have spent trying to seize the property through court actions, they would have already had willing and voluntary people selling their water rights to the federal government. So what they are doing is spending all the money on attorneys, seizing the property rights, the water, and not paying the landowners anything. I have seen folks that are approaching their retirement years, in their 80s, and all they have in the world is a piece of land and some water rights. In one case, we joined a class action suit and we actually funded it. It went to the Nevada State Supreme Court. But now we are having people who are literally having their life savings taken away from them by the government. I think, in that case, there could be a compelling case. But at least let us have the decision maker at the top, who is executing that policy, be accountable for that policy.

Assemblywoman Neal:

Thank you, Madam Chair. I just want to clarify something. And this is to Mr. Goedhart. Are you equating the protest to a taking under the Fifth Amendment? Is that what you are saying?

Assemblyman Goedhart:

I would say that it is because, in my case, I wanted to move a point of diversion on my property. If all of a sudden there is a protest, I cannot use the water or the land that I have because of that protest. It is basically a de facto taking. It is uncompensated. And you can go to court. In my case, they said,

"We were mistaken." It costs you all sorts of money. You do not even get an apology. You have to fight for the right to be able to utilize your property. I think that is plain wrong. I believe it is an injustice.

Chair Kirkpatrick:

Ms. Nylen, did you have anything else?

Dorothy Nylen:

Yes, Madam Chair. I just think, after hearing this, that I, again, am in opposition to this bill.

Chair Kirkpatrick:

Thank you, again. Does anyone have any questions for her? Ms. Lynn.

Susan Lynn, representing Great Basin Water Network:

Now, let me say to Mr. Goedhart, I completely empathize with his situation, because I know those things do happen. And I am very glad to see that he has shifted it from interbasin to intrabasin situations to make it more palatable. However, I still think it is extremely onerous to require the secretaries of the federal agencies to sign the bills. First of all, getting it in front of them within the 58 day required time: 28 days for publication and 30 days for public notice. We are responding to the public notice requirement. It seems to me like the regional directors, state directors, and forest supervisors ought to be the ones who sign it. I know Mr. Goedhart wants to go higher up because of public policy, and I totally understand that. But it seems to me, to fit within Nevada's state laws with the 58 days, it is asking way too much for federal agencies to go all the way to the top and get permission and a signature. I am not saying they are right. I guess I am speaking on their behalf, though they may not know it, that they do have the right to protest because they have federal laws that they need to uphold that are beneficial on the ground, to national parks, to state parks, and to counties. My sense is, whether it is the Forest Service or the Department of Agriculture, you have regional directors at the Forest Service, you have forest supervisors that oversee almost all the forests in the state. It is sufficient to have them take care of it. Thank you.

Assemblyman Goedhart:

Thank you, Madam Chair. To that point, there, if we have language from the opposition that would like to go ahead and bring that down a notch or two on the levels, I am more than willing to work with those folks on coming up with some acceptable language. I think that would be a big improvement where, today, you could literally have an employee one week on the job signing those protests at the order of someone else within the agency. I am just looking for

a little bit more accountability and a little bit higher level than is happening now. I realize that legislatively we have to move in tiny baby steps, sometimes.

Chair Kirkpatrick:

We do. Thank you. And maybe Ms. Lynn can get together with you and you guys can work on that. Is there anything else? Mr. Ellison.

Assemblyman Ellison:

Thank you, Madam Chair. Mr. Goedhart, I do not know. I think this is about the only way you can go. You said that last session you had the same bill in. You made some modifications in here. What was the reaction? Did it come out of Committee last time and then go to the floor?

Assemblyman Goedhart:

Last session, it was heard before the Committee but it was not brought up for a vote. I do not know if it had the support to get all the votes which it needed. But I am kind of a stubborn guy, so . . .

Chair Kirkpatrick:

I was the Committee person, Mr. Ellison.

Assemblyman Goedhart:

And the Chair has been kind enough to let me go ahead and re-present the bill this session, once again. And for that, I am very grateful.

Chair Kirkpatrick:

Mr. Ellison, I think we could use Mr. Segerblom as an example. He brought a bill back several times, since he has been here, on underground utilities. He had a piece in there regarding historical issues and it was all intertwined. Last session he got that historical piece approved. Sometimes when you make some changes after you hear the issues . . . at the end of the day, you have to have enough votes to get your bill out of committee.

Assemblyman Goedhart:

I would like to go forward on this. When I showed concrete examples, using Horizon Academy, which was almost put out of business before it was able to go and open its doors, or the lady with the horse and a lot of these other different cases, you might say, "Well that is only six jobs here or sixty jobs there or ten jobs there. It is not that big of a deal." What is happening now, though, in Amargosa Valley, is that there are actually a lot of solar companies which are looking at developing there. Even if they utilize what is called "the best water conservation technologies available," which is, basically, instead of being air cooled it is mechanically cooled; in some cases, they use 300 to

400 acre-feet of water. Well, what is happening now is that the Park Service is in negotiations with these folks from the solar companies and saying, "We do not care if you are buying preexisting valid, certificated water rights. Unless you buy three water rights and give us two and take one for yourself, we will launch a protest." So, just the very thought or the threat of this protest is gumming up the works. In all the years we have been trying to get solar projects into Amargosa Valley, to this day there has not been one that has been able to turn over a shovel full of dirt and start construction. I know the Solar Millennium Project alone is a \$3 billion project, with 1200 full-time construction jobs at prevailing wages and 100 full-time jobs once it is open, and \$15 million a year in tax revenue to the county. So these are big issues and we are not requesting that the whole system be changed; we are asking that it go up to a little bit higher level that puts accountability to the person within that agency who is making those policy decisions.

Assemblyman Ellison:

I agree. Thank you, Madam Chair.

Chair Kirkpatrick:

Assemblywoman Pierce.

Assemblywoman Pierce:

I have some sympathy for your frustration, but I do have to say that you seem to be arguing both sides of this at various moments here. On the one hand you say that water belongs to the people of Nevada, but if someone gets in the way of you using water then it is a taking. So that is sort of two sides to this. And the other thing I would say is that I am a big fan of solar and all that kind of stuff, but we have been telling natural gas power plants, for many years, in Nevada, that they had to be air cooled. They all say, "Oh, it is not as efficient." Well, you know, this is a desert. There is some loss in efficiency when things are air cooled as opposed to water cooled, but it is a desert. And so you have to air cool it, and we have been telling natural gas plants for years that they had to air cool when they wanted to water cool, instead. So, I just wanted to say a little bit about that.

Assemblyman Goedhart:

I appreciate those points, Madam Chair. Of the projects that have been planned in Amargosa Valley, one of the projects which has been approved has actually gone towards air cooling. It is about 90 percent water efficiency savings. Instead of 4,000 acre-feet, they are only going to be using 400 acre-feet. But even in these cases, just the threat of a protest can halt an entire project, even if you are using the best available water conservation technology. You are right, the water belongs to the people of the state of Nevada, but, ultimately,

that water, once it has been signed over to a person, it becomes a real property right, just like a piece of land or a house. Once you own those water rights, it is just like a piece of property. So we have both real property, personal property, and we have water rights.

Chair Kirkpatrick:

How about you two take this conversation offline so we can get going.

Assemblyman Goedhart:

I am sorry for taking so much of your time.

Chair Kirkpatrick:

This is Ms. Pierce's last comment. Go ahead, Ms. Pierce. But then I would like you two to take it outside.

Assemblywoman Pierce:

I think it is important to remember that in the wacky world of America, you know, corporations are people. So it all sounds very sort of warm and fuzzy when we are talking about water rights with a guy we like, like Mr. Goedhart, but the fact is Vidler Water Company, Inc. is a person.

Assemblyman Goedhart:

Thank you for that comment.

Chair Kirkpatrick:

We are going to close the hearing on A.B. 410.

Assemblyman Goedhart:

Once again, Madam Chair, thank you for allowing me the opportunity.

Chair Kirkpatrick:

Thank you. We are now going to open the hearing on A.B. 276. Mr. Conklin, please.

Assembly Bill 276: Requires the State Controller to make data concerning certain accounts available for public inspection on an Internet website established and maintained by the State Controller. (BDR 18-371)

Assemblyman Marcus Conklin, Clark County Assembly District No. 37:

Good morning, Madam Chair. You have before you Assembly Bill 276. Hopefully, last night, Ms. Scholley received a copy of the final amendment draft from Mr. Ziegler. Is that correct?

Chair Kirkpatrick:

I believe it is on the Nevada Electronic Legislative Information System (NELIS) for the Committee members ([Exhibit E](#)).

Assemblyman Conklin:

I think it is pretty straightforward; it is one page, which would be the bill in totality. Rather than go through the amendment, I think what I would like to do is give you my thoughts on why I brought this bill forward. Basically, this bill creates a website in the Office of the State Controller that allows for the presentation, and, over time, the expansion of available financial data from the state, in a format that is easy for the public to access and also easier for research and academic purposes.

For those of you who sat on the Assembly Committee on Taxation presentation and listened to Matt Murray from the University of Tennessee—he also gave that presentation to the Interim Finance Committee (IFC) a couple of months ago—one of the critical comments which he had about Nevada was that information is not readily available. It is very hard to find. As some of you know, in my private capacity I do some economic research from time to time. I have written some material on Nevada tax sources and whatnot. I can tell you from personal experience that finding good, usable, consumable data is very, very difficult. There are two reasons, really, why I brought this bill forward. One is that the public has a right to know. I think the Controller is here and can speak a little bit to this, but working through the Controller's Office allows real-time access to data. The data can be uploaded daily, weekly, or monthly, straight from cash flows. It is very simple and very easy to understand and up to the moment. From a consumer standpoint, people who have questions can go right to the website and not only see, in a visual format of graphing, but search, which is something that is not available, as far as I can tell, through any other website unless you want to go to some aggregated debt websites like the Census Bureau or the United States Bureau of Economic Analysis (BEA). But if you go there, what you are searching is the last recorded data which they have, which is usually one to four quarters prior, so it is not up to date.

The other side of this is that we are a growing state. Even though we have been around for a long time, we are still relatively young in terms of how we look at ourselves and how we analyze what we have. It would be my hope that in making data more available, you will get more Matt Murrays of the world, hopefully more students from UNR and UNLV who are getting their bachelor's and master's degrees, or whatever, in economics or government or public administration, who will be able to take that data and use good, sound empirical research. They would not only be advancing their degrees but also enriching our understanding of our own revenue structures and expenditure structures.

So, Madam Chair, that is really the nexus of this bill and why I brought it forward. I hope you can give it some consideration.

Chair Kirkpatrick:

Thank you, Mr. Conklin. Does anyone have any questions? I will start with Mrs. Benitez-Thompson and then Mr. Stewart.

Assemblywoman Benitez-Thompson:

Thank you, Madam Chair. I am reading over the amendment. I had read the bill earlier. Am I right, then, when you are talking about real-time data here? In this amendment you are looking for their ledgers to be uploaded at the end of each month for the previous month? Is that what you are talking about? Or are you talking about daily transactions?

Assemblyman Conklin:

I will leave that up to the State Controller. I think the language is drafted in such a way as to allow flexibility. Times are tough right now. We all recognize that. Budgets are tight. I specifically have been working with the Controller's Office to draft this amendment in such a way that it requires no resources. They can actually, as their technology advances, advance the website and consumer access along with it, but not by forcing them to do it a moment before that technology and ability comes to them. It is written in a broad sense. I certainly do not want to speak for her, but I think the Controller would indicate to you that some parts are going to be easier than others. Putting up revenue numbers is going to be very quick. Putting up expenditures takes a little bit longer because we do not have that many major revenue sources. We have a lot of different buckets of expenditures. It takes a little bit longer to get it organized and in a consumable fashion that is meaningfully to the public. This allows for that.

You will notice that the effective date is July 1, 2012. We have allowed for a full calendar year from passage for the Controller to manage the process and bring things online. I would imagine it is not something that happens all at once. Each time they get a chance to add some components to it, they will do so. From a functionality standpoint, and more directly to your question, they have the capacity because all their data is entered real time. It is cash accounting, right? Money comes in and gets accounted for. Money goes out and gets accounted for. It is just a matter of how often they want to upload that to their site or maybe they have the technology already to make it a direct link so anytime anyone searches it goes into their database, grabs the information, and pulls it up and it is just always available. But I would leave that to her to give you a definitive answer.

Chair Kirkpatrick:

Okay. Thank you. Does anyone else have any questions? Mr. Stewart's question was answered. I just have one question. It is like putting the state's checkbook on the website. Correct?

Assemblyman Conklin:

In essence, it is. From a budgetary standpoint we have hundreds and hundreds, if not thousands, of individual accounts. What we would do is aggregate some of those so that, instead of saying exactly how much money you spend on each individual item, you would roll that up into budget accounts that are consumable, with some definition, much like you see on a lot of search sites that do not have real-time data. The Census Bureau is one that comes to mind. All the information that is at the Census Bureau came from the Controller's Office. It is just a year behind. It is not really worth looking at, today, because what you are looking at is a year and half old. What this bill does is that it allows us to look at current numbers. We just need to put the data in a format that is meaningful. When you compare it to other data, it is relative. You may not be comparing apples to apples, but at least you are still comparing fruit instead of fruits and meats.

Chair Kirkpatrick:

That works. In section 3 and 4, of the amendment, you used the dollar figure of \$100 million. Why was that particular dollar figure used?

Assemblyman Conklin:

Once you get down under \$100 million, you are talking relative to the size of the budget of the state. You are talking about revenues that are not often looked at. They are revenues that do not bring in as much money relative to the total budget. You have to understand that over the biennium, our major revenue sources are bringing in anywhere between \$300 million and \$800 million. In order to keep the number of revenue sources from just expanding to the ridiculously small, because we do have some that probably are under \$100,000, we would like to keep the number to the major sources that people traditionally want to look at, such as gaming and sales taxes and things like property taxes, if that is something which is included here, fees from the Office of the Secretary of State. Things like that. All these are the things that we talk about that are over \$100 million. The stuff that is under \$100 million is probably things that, for the most part, many of us do not know exist.

Chair Kirkpatrick:

Does anyone else have any questions? Ms. Flores.

Assemblywoman Flores:

Thank you, Madam Chair. This is a great bill. I see the purpose in trying to achieve accountability and transparency, and I share your frustration in trying to get information from different state agencies. My question is a little bit different, though. Yesterday, there was a comment made by Ms. Vilardo from the Nevada Taxpayers Association in terms of the different platforms that different agencies are using within the state. Your bill just says that "the State Controller shall, on an Internet website" It does not necessarily specify what type of website. Is there any thought about potentially creating something that everyone in the state can use, as far as the agencies go? I guess my thought process in this is thinking into the future, and my frustration has also been with the data sharing which is not necessarily a component of your bill, either. Florida, for example, has been doing amazing work in the realm of data sharing and data sharing has then created efficiencies and it has created ways in which agencies can be more accountable, obviously, and more transparent, but then they know the efficacy of the dollars they are actually spending on their programs. It makes things more fluid and makes things work better. Obviously, for Nevada, I would hope that we can start thinking in those terms and in terms of making everything more fluid and also more efficient within government agencies and states. As far as the website is concerned, have there been any thoughts to that in terms of making everyone be on the same page?

Assemblyman Conklin:

I am not sure there is a nexus with the website, itself, because the website is for public consumption. The reason the Controller's Office was chosen was because the Controller has the sole responsibility to account for all the money. For certain there is no doubt that we probably have some data sharing problems, but the fact of the matter is all the money had a single-source stop. That is at the Controller's Office. That is why I chose it there because there is not a data issue between the Controller's Office and the website. They have sole responsibility for accounting for the cash for those things for which they are responsible.

Let me be perfectly clear, there are some things that the state gets that the Controller does not have control over. Moving forward, if that is something you want to pick up as technology becomes available, I think we should do that. The problem we have, more specific to the whole data sharing idea, is that we recognize that not every department is on the same platform as every other department. We wished it were not so. As the state has grown and technology has grown, we have added new technologies with new departments but have not picked up the old ones. However, the cost to do that is more than we can bear right now, clearly, given our economic crisis. Part of the reason

the amendment is drafted the way it is, is so that we allow the Controller to put up what she can as it becomes available. As time goes on and as more technology becomes available, some of that data sharing you are talking about will become available. Sooner or later, we are going to have to get there. Then the richness of what they are able to put up will increase with it. If I put those specifics in there now, all that would happen is that I would add a fiscal note and it will be substantial. I sit on the Assembly Committee on Ways and Means and I have to tell you, it will probably die.

Chair Kirkpatrick:

Thank you, Ms. Flores. Ms. Pierce.

Assemblywoman Pierce:

I think this is good. Certainly, this session we are trying to move in the direction of transparency. I think that in the future we should look at making that \$100 million a smaller amount because I think that is going to create some frustration. I think that a lot of folks who look at this kind of stuff all the time are really looking for the \$10,000 we spent studying the love life of fish. They are looking for that kind of thing and not these sorts of big numbers. I think this is a good way to go.

Assemblyman Conklin:

If I may, Madam Chair, on that point, the \$100 million is for revenue amounts, not necessarily for expenditures. It is over the biennium, so on average you are talking about \$50 million per biennium. And just so that you understand, our total General Fund expenditure for this biennium is roughly \$5.1 to \$5.9 billion. We are talking a relatively small percentage of what we are looking at overall, relative to the budget.

Chair Kirkpatrick:

Thank you. I think that at some point we have all discussed that we have to start investing in long-term ways to make our process better for everyone. I think you have to invest a little bit.

Assemblyman Conklin:

You know as well as I do that, while we would like to do it all at once, it rarely ever happens that way. Maybe if we could take a good step forward this session and leave a platform for others to build on, I would be . . .

Chair Kirkpatrick:

I would just say, Mr. Majority Leader, that last session we had Assembly Bill No. 193 of the 75th Session, which gave us a little bit of a reporting mechanism. People tried to stick fiscal notes on there like there was

no tomorrow. At the end of the day, though, it gave us a very good idea per year the revenues that we were bringing in and when our strong quarters were. We just did it on the top seven. As much as everyone wanted to put a fiscal note on it, it ended up helping us make some better decisions going forward. Once they figured it out the first time, it was very easy to maintain after that. I think some of these reports do bring value to the taxpayers as well as tools for our staff and for ourselves to use.

Do you have anyone that you wish to call up specifically?

Assemblyman Conklin:

Madam Chair, if Controller Wallin wants to come up. I am not sure if there will be anyone else.

Chair Kirkpatrick:

We are taking a break from water, so it is all good. Ms. Wallin.

Kim Wallin, Nevada State Controller:

I want to tell you that the Controller's Office supports this bill. We have been working very closely with Assemblyman Conklin in going over this. We sat down and they said, "Well, we want you to do all this." We were hesitant. We would have had a huge fiscal note. We sat down and talked about what we could do with the resources that we had in our office, without having to go out and hire an outside consultant to help us. We can do all of this internally, which is a good thing.

For the revenue side, we actually have already started, in a sense. The Nevada Economic Forum came to us several years ago and said, "We cannot tell what revenues we have collected so far in the state, budget to actual, because we have to go to the gaming site, the taxation site, et cetera." We have actually put that on our website—the revenues. When we talk about the \$100 million, if you go to my website, right now, it gets down into the nitty gritty, even down in the Motor Pool Division, which is only about \$3 million in revenues a year. The only thing we need to do with that is add graphs, which is what we are going to do. Right now, it is just numbers. Now we are going to have graphs so you can have trends and see what we have collected in the last fiscal year and the current year, and then we are going to be able to start building on that. We will have three fiscal years at a time on there. Then we can build on it and we will keep adding to the data so people can come there and look to see what we did back in 2009, for example. If they are in 2015, they can go back and compare. It will give them information. It will paint a picture and be a checkbook online. If you look at your checkbook, it is just a bunch of numbers. Now you, personally, know what you wrote that check

for, but if you do not have that internal knowledge, it does not mean anything. If we could start showing the trends of our expenditures, I think that paints a better picture. For the expenditure side, that is going to take a little longer getting that started. With our limited resources, my Comprehensive Annual Financial Report (CAFR) accountants will be putting that together. They have to do that after CAFR season, which is at the end of December.

We should have the revenues up this summer, which is a great thing, I think. Assemblywoman Flores, you were asking about the platform and what have you. The state has a statewide accounting system. It is the Integrated Financial System (IFS). All of the agencies are on that statewide accounting system already. The ones that are not on that statewide accounting system are Higher Education; they are separate. They are a separate component unit in reporting to us as well. That is what we are talking about, maybe in the future, having a platform where they can submit the information to us, as well. I plan to enter into a dialogue with them after we get our site up and ask them, "Would you be interested in doing this?" Maybe they would send it to us on a quarterly basis or something like that.

I think that is it for my comments. Are there any questions?

Chair Kirkpatrick:

Does anyone have any comments? Mr. Stewart.

Assemblyman Stewart:

Thank you, Madam Chair. I have a comment, not a question. I applaud the intent of this bill, and I think the Controller's Office is a great place to put this. I know Ms. Wallin has a great track record in being innovative and providing individuals and legislators with all kinds of great information. Thank you.

Chair Kirkpatrick:

Thank you. Mr. Ellison.

Assemblyman Ellison:

Thank you, Madam Chair. The only thing I need to ask is about the software they are using. Apparently, it is pretty adequate for what you are doing right now. But what about in the near future? Is the software that you are using for all this data going to be comparable? You are going to be getting a lot of data and putting a lot of information in there. I do not know what kind of software you are using. Are you going to have to upgrade, eventually?

Kim Wallin:

Assemblyman Ellison, what we are using right now are spreadsheets. Excel is going to be around for a long time. That is it. Microsoft Office 2007 does some pretty amazing graphs and charts and all kinds of stuff. They are actually putting add-ons and macros underneath it so we can do even more stuff.

Chair Kirkpatrick:

Thank you. Is there anything else from the Committee? Mr. Conklin you might just want to hang out there. Thank you, Ms. Wallin, for coming. Is there anyone who would like to testify in support of A.B. 276? Is there anyone in opposition of A.B. 276? Is there anyone who is neutral on A.B. 276? [There was no response.] Mr. Conklin, do you have any final words? No? Okay, with that, we are going to close the hearing on A.B. 276.

While the Majority Leader is here, I will tell the Committee what our plans are for next week. We will be having a night meeting. We will meet next Thursday from 6 p.m. to 9 p.m., in Government Affairs. We were lucky enough to get 119 bills before this Committee, not counting the Senate bills. It is easy to say that they must be killed, but I look at this Committee and wonder which one of yours you want killed. If you do not want to hear your own bills, that is one thing. I have done that to many of my own, at this point. In order for us to keep on pace, we do need to start at 7:30 a.m. We do need to start on time. We do need to have a couple of night meetings. I promised you we would not be here at 9 p.m. on the Friday of the deadline because that is a very uncomfortable place to be, so you will feel relieved on Friday the 15th. We will work very hard until then. I appreciate the Committee. I have a good Committee, so I am fortunate. In order to make sure your colleagues' bills get heard, we have to work a little harder. Now that the leadership team knows we will be working that night, maybe they will give us a little bit of a reprieve on late floor sessions. With that, we are now going to open the hearing on Assembly Bill 329 and welcome up Mr. Goicoechea. I did that right because both leadership teams were here, so everyone knows now. Right?

Assembly Bill 329: Defines the term "wildlife" for certain provisions of law relating to water. (BDR 48-312)

Assemblyman Pete Goicoechea, Assembly District No. 35:

Thank you, Madam Chair and members of the Committee. This bill is only about policy, and I apologize. It is a very short bill but it is a complex question. I am not going to get into genus and species and whether wild horses are truly this or that or whether they are domesticated ferals. The real issue I have today is that the state of Nevada has primacy over both wildlife and water in this state. The Nevada Department of Wildlife (NDOW) clearly does not manage

wild horses and burros in this state. With the passage of the Wild Horse and Burro Act of 1971, clearly the jurisdiction over wild horses and burros went to the federal government. Over the last few years we have seen an increase in the number of filings by federal agencies. And they are filing those on behalf of wildlife and wild horses. Clearly, that is an erosion of Nevada's water law.

In the state of Nevada, as my colleague from Amargosa said, the waters in this state belong to the state of Nevada. Now, the next question you are going to have is, "If this is a federal issue, where do the wild horses and burros get their water?" Under the Federal Reserve Act, the federal government is entitled to the water they need, the difference being that it is an adjudicated right, very similar to a vested right in this state. They have to be adjudicated. So I am reinforcing the state of Nevada's primacy and confirming it by definition, that wild horses and burros are not to be considered wildlife for the application, permitting, and certification of water rights in the state of Nevada. Again, it is a very short bill, a complex issue. The bottom line is I think it meets all the needs. Firstly, it says that NDOW is not responsible for the management of wild horses and burros in this state. Clearly, it is held under the jurisdiction of the federal government with the passage of the Wild Horse and Burro Act. The second point that I want to clarify is that the state of Nevada needs to maintain its primacy over those water rights and those applications. At the point it is adjudicated, and it will be adjudicated in the court, it will only pertain to specific basins as the adjudication process is brought forward. I believe in water, and Nevada's water law, as my colleague from Amargosa said, is probably the best water law in the nation. I want to ensure that we maintain it. This would be very similar to my colleague, Mr. Livermore, using my cows to make a water application and filing for a water right. Clearly, it is not legal and it is not right. With that definition, I would stand for any questions.

Chair Kirkpatrick:
Mr. Anderson.

Assemblyman Anderson:

Thank you, Madam Chair, and thank you, Mr. Goicoechea. I just had a question regarding line 6 on page 1 of the bill text, specifically, "whether indigenous to Nevada or not." I have this question because I am sure, as many are aware, that some of the provisions of this title of NRS require some protection of wildlife. Under this definition of wildlife, I am concerned the clause "indigenous to Nevada or not" may put the NDOW or the State Engineer in the position of having to defend invasive species. *Nevada Revised Statutes* (NRS) 533.367, for example, has a requirement to ensure access for wildlife to water, that it customarily uses. We have heard things in the Assembly Committee on Natural Resources, Agriculture, and Mining about aquatic invasive species and

of the California-Nevada Interstate Compact which is in NRS Chapter 538, Article XIII, which recognizes wildlife as inseparable from the public interest. I was wondering if you could comment on that and see whether you would be willing to make it clear that aquatic invasive species would not be a part of that.

Assemblyman Goicoechea:

Clearly, this has no reflection on the duties of the Department of Wildlife. Now, again, when you are talking about indigenous species, we are talking about those species that may, ultimately, be introduced into the state of Nevada by NDOW. And, again, we do not believe that the Department of Wildlife is going to bring quagga mussels, which we already have in place, or any other invasive species. Clearly, when we are talking about invasive species, you are talking about a species that may or may not be indigenous to this state and they may be in some waters of this state. It does not mean we like them or we want them, but we have them. But again, this is existing language, for the most part. The only change in statute is "this term does not include any wild horses or burros." That is the only line that changes from existing law.

Chair Kirkpatrick:

Mr. Goedhart, and then Ms. Pierce.

Assemblyman Goedhart:

Thank you, Madam Chair. This is directed towards the gentleman presenting this bill. I definitely agree with the thought behind the bill. You said the only language that would be changed is the term "does not include any wild horses or burros." That is the only thing that has been changed?

Assemblyman Goicoechea:

That is correct. We are just trying to clarify by definition that you cannot use a wild horse or burro to establish beneficial use.

Assemblyman Goedhart:

I was going to ask about line 6 and line 7. Why did they put in "whether raised in captivity or not"? I am trying to figure that one out.

Assemblyman Goicoechea:

Clearly, there are species of wildlife that have been raised in captivity, such as chukars or probably some Himalayan snowcocks that were raised in captivity and then introduced into the state.

Chair Kirkpatrick:

Thank you, Mr. Goedhart. Mr. Goicoechea, I think NRS 501.097 is where wildlife is defined specifically and then there is this language in the bill.

It appears new to the Committee because it is not within this piece of current statute. It is identified in NRS Chapter 501.

Assemblyman Goicoechea:

Again, we went to NRS Chapter 532 just because that is the section used for definitions. It was my understanding this is the definition that was in place.

Chair Kirkpatrick:

Right. But as far as for some of the folks on this Committee, the language is italicized, so it looks like it is new language but it is currently already defined in NRS Chapter 501.

Assemblyman Goicoechea:

Yes. And I apologize for that. We probably should have only had the one line. Thank you.

Chair Kirkpatrick:

It is all good. Ms. Pierce.

Assemblywoman Pierce:

Thank you, Madam Chair. I am not exactly understanding the intersection between wildlife and water. Can you explain that?

Assemblyman Goicoechea:

Under existing law, there is a reservation for wildlife. Anytime you make an application or a certificated water right, there is a reservation that you have to leave enough water in place for wildlife.

Assemblywoman Pierce:

Okay. Thank you very much.

Chair Kirkpatrick:

Does anyone else have any questions? Mr. Munford.

Assemblyman Munford:

Thank you, Madam Chair. Just to follow up on the question by Assemblywoman Pierce. The water rights that you have, you have a well or water set aside for the other wildlife, but horses and burros are restricted. You do not want them to have access to that water for drinking? Is that what we are dealing with here?

Assemblyman Goicoechea:

No. It is clearly not an access issue as much as the ability, right now, for the federal agencies to file for a water right permit certificate, under Nevada water law. We are saying a federal agency does not have the right to use wild horses and burros. They have to use their federal reserve, which they have in law.

Assemblyman Munford:

Is that available?

Assemblyman Goicoechea:

Yes. Yes, it is. But the only thing is, that right is then established by adjudication, rather than the permit process. Our fear is we have a number of filings occurring all across the state of Nevada. There are lots of them in place. It is clearly an erosion of Nevada's water law when we, in fact, allow federal agencies to come and apply for water, as a person, which is how it is defined in statute. Rather, they need to be using their federal reserve right and adjudicating that to water those wild horses and burros. The change came with the passage of the Wild Horse and Burro Act 1971. That placed those horses under the jurisdiction of the federal government. And therefore, they have to use their federal reserve right.

Assemblyman Munford:

And that, basically, is the premise of this bill?

Assemblyman Goicoechea:

That is what this bill is all about. We want to make sure that we can clarify and that the State Engineer does not have that gray area there that says, "Okay, do I have to give them a permit or not?" Clearly, with this, they are not to be considered wildlife, therefore, they cannot, in fact, be issued a permit on the basis that they are wildlife.

Chair Kirkpatrick:

Thank you. Are there any other questions? Mr. Goicoechea, I am actually going to start with the opposition first and let me tell you why. I received well over 97 emails. Fifty of them asked to be entered into the record and we will determine whether they are put into the minutes, each and every one of these, or if we put them on NELIS. We have to see, physically, what our system can handle. I just want to let them know that they will be part of the record, one way or another. We will either do it the old school or new school way. But I do have 47 emails, as of last night, and an additional three emails this morning. I am sure the Committee has received lots of emails. So, don't worry, we are going to put them in the record.

Assemblyman Goicoechea:

And I thank you, Madam Chair, and I apologize for the workload it placed on you with this bill. Clearly, I think most of that argument is whether they are, in fact, looking for a definition of wild and free roaming and are they, in fact, wildlife, and that is not the intent of the bill. We are only talking about policy and state water law. Thank you.

Chair Kirkpatrick:

So, with that, I am going to start with the opposition and invite you up this morning. Ms. Nylen, did you want to come up and testify? Anyone else? Good morning. Just fill up the seats, as long as you state your name for the record before you speak. Those that are in opposition, just as one person leaves, we will ask some questions, then you can come back up. Okay. We will start with you, though, Ms. Nylen.

Dorothy Nylen, Private Citizen, Dayton, Nevada:

Thank you, Madam Chair. I am going to read my letter, if that is all right.

Chair Kirkpatrick:

Ms. Nylen, is it one that we have already received, by chance?

Dorothy Nylen:

Yes, it is.

Chair Kirkpatrick:

Would it be this one, which is a couple of pages long?

Dorothy Nylen:

It runs slightly over one page in length.

Chair Kirkpatrick:

What I would ask you, because we do have a copy of your letter, as opposed to reading it, word for word, summarize your thoughts on it because if we read all 50 of these into the record, we would not be out of here by 12:30 p.m. But we will put them in the record because they are important. If you want to handle it that way, it would be helpful.

Dorothy Nylen:

Okay, certainly. To me, this bill seeks to remove the water rights of wild horses and their very right to exist. Whereas I see and acknowledge from what Mr. Goicoechea said, that I do not even think this is about wild horses but the fact is that they have been singled out. I have been following this issue for a while and gone to meetings of the Feral Horse Committee, which developed

this. It really is something that they hope will be used to remove wild horses from the state of Nevada.

I think this is a very inhumane approach to a water issue. Assemblyman Goicoechea said he is not focusing on whether or not wild horses are wildlife, but they have been defined, by special status, by the Wild Horse and Burro Act of 1971, as such by the federal government. A lot of lawsuits have tried to challenge that and they have lost. Whatever status Nevada wants to use to define wild horses as having, these are living creatures and I think it is a very poor way to approach dealing with water law. Nevada water law is already complex. It is certainly the most difficult of all the western states, as I have been told by water experts with the Bureau of Land Management (BLM). I think the motivation, though, is ultimately not good. I would ask that A.B. 329 be tabled.

Chair Kirkpatrick:

Okay. Does anyone have any questions? I guess my only question and my concern is that most of these emails were different from what the intent of the bill was and you kind of reiterated that. That is my impression. I have heard about wild horses ever since I have been here in the Legislative Building. It is always an issue, every session. In Natural Resources, it always comes up. I guess I am having a hard time understanding what our other options are as far as the federal government giving up some of their water rights to help with the process. They are a natural beauty within our state, so what is the federal government's responsibility to help with some of the waters that are already very scarce?

Dorothy Nylen:

I guess I am trying to understand exactly what it is you just said. Certainly, Nevada does have scarce water resources and by Nevada state law, I think that Nevadans are claiming all or most of those water resources.

Chair Kirkpatrick:

I am trying to understand what your concern is. It is my understanding, based on the federal act that was passed, that the federal government sets aside water for the wild horses. We are just clarifying that so that they give us those water resources. I am trying to understand. I do not think they ever are going to leave our state because they are very beautiful animals that run wild. I believe that by doing this it puts more pressure on the federal government to give us additional water for those particular animals. Is that not your understanding?

Dorothy Nylen:

No. That is not my understanding.

Chair Kirkpatrick:

Okay. Maybe you could start over then, because I am way confused. Explain it to us because if I am not getting what the act does, and this definition, then I am sure the rest of my Committee is in the same boat.

Dorothy Nylen:

When I attended the various meetings of the Feral Horse Committee, the intent that those members had was in having wild horses removed. They were using this water language toward that end. At the first meeting, in Fallon, they would not share their information with us, and they were found guilty of breaking the public meeting law as a result. This language has been somewhat cleaned up, but the intent, to me, is clear.

Chair Kirkpatrick:

Ms. Nylen, it might be best if you did go ahead and read your letter, specifically. It is only about three paragraphs long. Maybe the Committee could get the gist of it.

Dorothy Nylen:

Okay.

Honorable committee members, as a wild horse advocate and a Nevada citizen for a rural county, I want to voice my opposition to A.B. 329. This bill seeks to remove the water rights of wild horses and their very right to exist. It appears that the actual intent is to bring forward an issue of conflict between states' rights and federal rights regarding water. Wild horses and the ugly vision of inhumane treatment and suffering seems but a pawn in a larger game. The bill is ill conceived and should be tabled. A.B. 329 is not about horses, it is about a struggle for water in the West and no state in the West has wielded more power over water, on public lands, than Nevada. As such, the only purpose served would be to embroil an already economically struggling state in a lengthy and costly legal battle with the federal government.

In 1971, the United States Congress mandated that wild horses have special status and protection. Today, public interest in wild horses is again very high. Recently, the House of Representatives voted to withhold funding to the Bureau of Land Management for continued roundups until the concerns of the American people and

the scientific community are addressed. More wild horses are in holding than in the wild, at great cost to taxpayers. Properly managing them here would not only be far more effective but would bring more jobs and money to Nevada.

Twice it has been proposed in the State Legislature to make wild horses the co-state animal of Nevada along with the bighorn sheep—in 1971 and most recently in 2001, when the bill passed the Nevada Assembly almost unanimously. The year 2006 saw the minting of the Nevada state quarter, which featured, by a vote of the citizens of the state, wild horses. The Nevada quarter received international awards and was voted the second best coin design of all the states and territories—a ranking that Nevadans can actually be proud of.

Regarding the proposal for a wild horse sanctuary in Elko County by Madeleine Pickens, who has purchased ranches there, I cannot understand the Wildlife Commission's continuing stance against it. Western independence and ingenuity? What happened to those values? While her original proposal lacked proper detail, I believe she has learned her lesson. If she can play by the same rules as other ranchers in Nevada, the project should be welcomed.

Chair Kirkpatrick:

Okay. Thank you. Mr. Anderson, you had a question.

Assemblyman Anderson:

Thank you, Madam Chair. I am glad you referenced the 1971 wild horse law. I think there is so much federal legislation out there on multiple use requirements, beneficial use requirements, including wildlife, that I do not see how, by us doing this, that wild horses would be affected. Would not the federal government have to use the water that it has appropriated? Would they not have to use that water for the horses, whether this change goes through?

Dorothy Nylen:

Because I did attend those meetings and heard the discussions by the Feral Horse Committee, I know that they made comments like, "the horses have to go." I asked questions, especially in that first meeting in Fallon . . .

Chair Kirkpatrick:

Can I just bring us back to where we are, though? None of us were at those meetings and it is "he said, she said." Can we get back to the merits of the bill? If it is me, the hard part that I have in understanding is that the federal

government owns 75 percent of our land. They have some water rights. I am confused. If you could maybe elaborate on that as opposed to going back through those particular meetings, that might be helpful.

Dorothy Nylen:

It was my impression that the federal government had no water rights in the state of Nevada because of Nevada water law.

Chair Kirkpatrick:

Okay. Does anyone else have any other questions? Mrs. Benitez-Thompson.

Assemblywoman Benitez-Thompson:

Thank you, Madam Chair. I do not know if my question is specific to Ms. Nylen, but it would help me just for clarification. When we talk about the federal water reserves, is that all the water on the federal land in the state? I need some background there.

Chair Kirkpatrick:

Why do we not do this? What I feel is happening here is that we are not getting our point across. So maybe we can hear from the other two ladies and see if that helps the Committee a little bit better. Here is what I am going to tell you. We are already working next Thursday night from 6 p.m. to 9 p.m. We can go from 6 p.m. to midnight. I have no problem with that. But if we do not get through these bills, we are going to be here for as long as it takes. I am not sure, Ms. Nylen, that we are getting specifically the points. What I did not want to point out is that out of all the emails we got, there are two separate form letters. Somebody copied and pasted and signed different names. I really would like to try and get to the points of the specifics. The deal in this Committee is that nothing moves the same day so that you have an opportunity to get with Committee members as we go forward. So if the other ladies would like to testify, that would be helpful.

Carrol Abel, President, Hidden Valley Wild Horse Protection Fund:

I also had a letter ([Exhibit F](#)) that I emailed in yesterday and I brought copies today. You may or may not have them. I do not know. I will go over my letter but prior to doing that, I would like to take a stab at answering some of the questions you were asking. In regards to the water that is available for the wild horses, the wild horses are kept in what is called herd management areas (HMAs). Virtually all of the lands on which these HMAs sit are on grazing allotments that are put out there for livestock production. These grazing allotments have the water rights, in most cases. I am no expert on water law, by any means. I am reviewing my understanding of the situation. In order to have water, in most cases, for the wild horses, the BLM needs to have the

water right. They need to get permission from the State Engineer to have water rights for them. I believe they currently have, as of yesterday, 28 water rights in which they actually have wild horses listed as the purpose for these water rights. At some point, they need to renew the water rights or reprove the beneficial use of this water for the wild horses that are listed. It is extremely important that the wild horses be allowed the water within the state. The federal government does not have blanket ownership of water rights within our state. Just because it is on federal land does not mean they have the water rights for that land.

I hope that answered some of the questions. Again, I am not a water expert, but you have had some questions that I am definitely going to find the answers to. In regards to my comments that I had prepared, I will review it rather than reading verbatim. My point that I was making is that we call the mustangs feral, wild, or free roaming. Those are the words that we use. Unfortunately, the laws that we have in this state pertinent to the wild horses are almost as varied as that. *Nevada Revised Statutes* Chapter 569 defines the wild horses as feral livestock. *Nevada Revised Statutes* Chapter 501 defines them as wildlife. Under that definition, they are "part of the natural resources belonging to the people of the state of Nevada." Yet, when you go back to NRS Chapter 569, the statute says that they are owned by the State Department of Agriculture. Our laws are a mess. They are a total mess when it comes to the wild horses.

To further confuse the matter, the wild horses which are on federal lands are not specifically livestock or wildlife. Now, someone looking to throw another inconsistency into the Nevada laws, if we add A.B. 329 to the statutes, then we are saying that wild horses can indeed be wildlife unless they want to drink water. Wild horses and burros need to be managed but how are we going to manage them if we cannot even decide what they are? We have so many inconsistencies in the law.

It seems to me that the details of all the bills that we have heard, need to have a very clear and succinct purpose. I propose to this Committee that A.B. 329 is nothing more than a magician's sleight of hand. It is incremental legislation furthering the agenda of a very select segment of our population—that segment being the holders of the numerous grazing allotments on public lands. Its purpose is to provide that fraction of Nevada's population the means with which to bring legal action against the federal government for those water rights. I would like to quote from a document entitled, "Nevada Water Rights Fact Sheet," published in 2001, by the Bureau of Land Management. It says, briefly, that the relationship between the BLM and the state of Nevada can be characterized as strained. And that was from 2001. That statement is relevant

today, as we speak. It most definitely is relevant. If we choose to allow our Attorney General's Office to wage a private war against the federal government, it could very well tie up that office for four or five years. And that is what could happen if litigation occurs. If this bill is passed, there will most definitely be litigation. I would bet my left arm on it. And there will be a lot of it because it basically means that the wild horses will have to be removed. I think what Ms. Nylen was trying to refer to when she was talking was the letter that came out at the beginning of this year by the Feral Horse Committee, which was speaking of the water rights also.

Chair Kirkpatrick:

That would be helpful if we, maybe, had a copy of that letter.

Carrol Abel:

I made a note on that. I will get a copy of that to everyone. It states very specifically, in regards to those water rights, that because of the fact that the wild horses are not classified as wildlife that the federal government needs to remove all the wild horses off of federal lands within the state of Nevada.

Chair Kirkpatrick:

Thank you. Does anyone have any questions? Mr. Munford.

Assemblyman Munford:

Thank you, Madam Chair. I must say that I feel you ladies are strong advocates and have a great deal of compassion for horses and maybe the wild horses, also. I agree with you on that score. I have compassion for them, also. You are talking about the federal government, the Department of Agriculture, and then the water rights for the individual, and making the water available for the horses. Is it possible for them to equally coexist? Is there something that can be worked out? Who is the good guy and who is the bad guy, sometimes? Is the federal government the good guy in this or is it the bad guy? The water rights guy who wants to protect his water, is he the good guy? I know it is hard to distinguish because they both seem to have a pretty good argument, to some degree. I do not know. I get confused a little bit on that. What do you think?

Carrol Abel:

In regards to the good guy, bad guy, I think all of the stakeholders involved in wild horses do agree on one thing and that is that the wild horses have been mismanaged horribly for a long time. In regards to the water rights issue, I do not know if there is a good guy or bad guy. I believe that everyone has a right to protect their livelihood, and I believe that this is what this is about. But when you are protecting your livelihood to the detriment of others, then that

is a point at which I believe it has to stop. I believe that some sort of compromise needs to be reached, and I also believe that this is not the method.

Assemblyman Munford:

You should be able to equally exist?

Carrol Abel:

I agree with you.

Chair Kirkpatrick:

Okay. What I want to do is keep this on the same page because the one thing I have learned in this state is that folks will fight over water all day long and agree to disagree. We have some offline time. We are going to take a 10-minute break once this bill is done, so I am more than happy for you to speak to Committee members. Mrs. Bustamante Adams.

Assemblywoman Bustamante Adams:

Yes. Thank you, Madam Chair. Can you repeat the NRS that you quoted on the definition for the horses and where you found the inconsistencies? You said it was Chapter 569.

Carrol Abel:

Nevada Revised Statutes Chapter 569 defines the horses as feral livestock. Within the state of Nevada, horses that are not on public lands are managed by the Department of Agriculture. The laws that govern that management are in NRS Chapter 569 and in that chapter they are considered livestock.

Assemblywoman Bustamante Adams:

I am looking at NRS 569.008 and it reads that the term does not include horses or burros that are subject to the jurisdiction of the federal government pursuant to the Wild Free-Roaming Horses and Burros Act of 1971. I got kind of confused when you said that because, to me, it defines that the jurisdiction for these horses, wild horses, are for the federal government. This is all new to me and so I am having a hard time understanding the bill. I am just trying to wrap my arms around it. To me, the way that the statute reads, it is very clear that horses and burros are not included. But that is just my understanding.

Carrol Abel:

I am not quite sure if you are asking a question.

Chair Kirkpatrick:

I am going to have my Policy Analyst do it. I think she will have an answer.

Susan Scholley, Committee Policy Analyst:

I think that perhaps the confusion here is because there are actually two classes of wild horses in Nevada. There are wild horses which are on federal land and there is a herd called estrays, which is managed by the State Department of Agriculture. Those are primarily around Virginia City, in Storey County. That, I think, is where the confusion is coming in terms of who is managing which herd. The Department of Agriculture, for the state, manages the estrays. The federal government is responsible for wild horses and burros on federal land, which, of course, is the vast majority.

Chair Kirkpatrick:

Thank you, Ms. Abel. We appreciate it. Would you like to go ahead?

Sheila Schwadel, Private Citizen, Fish Springs, Nevada:

I would like to mention that I am a real estate broker and I have been involved in sales of properties with water rights, and I fully respect and somewhat understand them, as they are quite complicated. I just wanted to mention that last month I happened to attend the Douglas County Wildlife Advisory Board Committee meeting, of which Mr. Michael Turnipseed, the former State Engineer, is a member. I brought to their attention a copy of the original Senate Joint Resolution 5 which was a precursor to this bill regarding . . .

Chair Kirkpatrick:

We have not seen that on this side yet. I honestly could not tell you what is even in it.

Sheila Schwadel:

Okay. Well, in a nutshell, it came down to the definition of wild horses and water rights and is very, very similar to what this proposed bill is (read from [Exhibit G](#)). Mr. Turnipseed actually stood up and said that the Wildlife Division really had very little business rewriting any type of definitions into the state water laws, and he thought it was purely a matter for the State Engineer's Office to take up if they so warranted it. He asked that the Douglas County Advisory Board put on record a letter opposing it. He felt that this was not an issue that should be brought by any type of wildlife commission, which was, originally, where this bill stemmed from.

We had a community meeting out in Fish Springs, which borders an HMA. I did explain that this was a matter of legalese between the federal government and water rights in the state of Nevada. Most people, the public, are seeing this as an attack on wild horses, rather than an issue between adjudicating water rights between the state and federal government. Maybe it would behoove the state to pick and choose their battles on this because this is going out nationally.

You are talking about 13,000 horses. That is not a lot of water. Let us pick and choose our battles and use them wisely. I think that is what Mr. Turnipseed was getting at. Thank you.

Chair Kirkpatrick:

Thank you. Could you have Mr. Turnipseed . . . is he here today? Can he testify to that fact?

Sheila Schwadel:

No. But I could probably get you a copy of their minutes, if you would like. I will submit those.

Chair Kirkpatrick:

If he could submit a letter based on what you said, that would be more helpful.

Sheila Schwadel:

Absolutely. I will ask him.

Chair Kirkpatrick:

I have more minutes than I need at this point. I do not need any more. Does anyone have any questions? Thank you, ladies, very much. We appreciate your coming forward. Is there anyone who would like to testify in opposition to A.B. 329?

Bonnie Matton, President, Wild Horse Preservation League, Dayton, Nevada:

I am going to have a show and tell to give you a little different feeling and aspect of this issue ([Exhibit H](#)). I have been asked about this from many people and they ask, "What will happen if this occurs?" I tell them, "You know, to not let wild horses or burros in Nevada's waters would mean that the opposition would have to fence out all the water, all rivers, all the streams, all the lakes from the wild horses." At the same time, they would be doing it for livestock. This is such a ludicrous bill. These horses mean so much to all of us. I know they are saying that the BLM has all that land, 85 percent. They do not have control over the water.

I just want to show how much these horses mean to people in the state and to other states and in the world. I am going to quote from Mr. Christian Passink, who is a rural programs manager for the Nevada Commission on Tourism, where we have gotten grants to publish our brochure, which you have. He said that the *Nevada Magazine* issue featuring the wild horses of Nevada had the highest sell-through rate of any *Nevada Magazine* issue. That issue had a record sell-through rate of 85.4 percent. Most magazines of this type usually see a sell-through rate of 25 to 30 percent. The magazine also received a top

placement on sales display shelves, something you cannot pay extra for, even if you wanted to. Out of 11,000 copies printed, they sold over 8,800. This is the most issues sold of any one magazine in 32 years.

The Nevada quarter, which I am sure you all know, was voted on by the citizens of Nevada to have the wild mustangs represent our state. At the same time a medallion was issued about the wild horse. Now, equine tourism is being used so much in other states.

Chair Kirkpatrick:

Ms. Matton? I love your accessories you brought but I do not think, and I do not want to speak on behalf of the Committee, but I do not think anyone is opposed to wild horses. I guess I am trying to understand. Using my own family, when we drive to Nye County, we specifically know where they are at when we are going to the fair they have for Harvest Day. I do not think anyone is opposed to wild horses.

Bonnie Matton:

Let me try to clarify. Basically, what I am saying is that there is no way to keep the wild horses and burros of this state from watering without removing them. That is the only thing that this bill will accomplish. They cannot fence off the wild horses from water because they would be fencing off livestock and wildlife. The only way to do it would be to remove all the wild horses and burros. What I am stating and showing with my examples is that these horses are extremely important to the welfare of the state of Nevada. Equine tourism is very strong in the world today. I get calls, emails, and letters from all over the world asking, "Where can we see the wild horses?"

This magazine is from Wyoming. They are showing how people can see the wild horses. Other states, such as South Dakota, are doing the same thing. Nevada is the only state—the Nevada Commission on Tourism is the only one—that has come through regarding this. We put out these brochures and we have gotten grants because they firmly believe that this can help the state of Nevada. With the passage of this bill, there will be no wild horses in the state of Nevada for us all to enjoy and where we could get income coming in from them.

Chair Kirkpatrick:

Mr. Goedhart.

Assemblyman Goedhart:

Thank you, Madam Chair. I think I would reiterate and kind of continue on along your path. I do not see how this bill is going to prevent wild horses from access to water. It just says they have to have an adjudicated right for that

purpose. I think if we talked to the bill's sponsor, he would also weigh in on that subject. This bill does not outlaw water for wild horses.

Chair Kirkpatrick:

Are there any other comments? Mr. Ellison.

Assemblyman Ellison:

I agree with my colleague. That is not what this bill is about. This bill is about the ranchers and everybody else having to stand by the letter of the law. So should the federal government. I think that is what this is all about. I think if you had a few minutes and sat down with the sponsor of the bill you would find out that all they want to do is bring everyone to the table. You might want to look at this. They are not trying to make horses die out there on the range. That is not what this is about.

Bonnie Matton:

I am sorry. But I do not agree because I think, in the long run, this is about water.

Chair Kirkpatrick:

That is why we have a legislative process, so folks can agree to disagree. Thank you, Ms. Matton. Is there anything else from the Committee? Okay. Is there anyone else who would like to testify in opposition? Mr. King, you probably will not be my friend anymore after I do this to you, however, can you come up, being that we heard from a former State Engineer? I would love to see that letter from him. Can you give me a perspective from the current position that the State Engineer's Office has? I get that it is a complicated issue, but I am having a hard time understanding when over 80 percent of our lands belong to the federal government why we would not want them to participate in making sure that these horses are taken care of, as well as keep our state going forward. If you could help me out a little bit, it would be most appreciated.

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

I will try. As you said, it is very complicated. First, to address the issue with Mr. Turnipseed, who I have the utmost respect for—I can see Mr. Turnipseed saying what he did simply because he does not believe the Department of Wildlife should be telling the Division of Water Resources what to do. So, in that context, I can understand him saying that. Having said that, much of the discussion is what water rights does the federal government have? And that is the complicated issue. I will tell you this. When the federal government sets aside public land—and as we have already discussed,

80 to 85 percent of the land in Nevada is public land—they also can and have, probably over 1,000 times, filed what is called a federal reserved right. Those are claims of water use. The idea is to establish that water right that they file on, and eventually it has to go to adjudication. Eventually, it has to get to a court. The short answer to much of this discussion is, it is an unanswered question. It still has to be resolved by the court. But, there are probably over 1,000 federal water reserved rights on public land and they can assert that the purpose of reserving that land, all those acres, can be for multiple uses. Now, I do not know if they will win in adjudication, saying that they have reserved all that land for support of wildlife. If they do, and they have the water, the surface water—because we are not talking about groundwater, we are talking about springs, creeks, and rivers—then they would have the ability to say that the wild horses are allowed to legally drink all that water, under this reserved right. That was kind of a complicated way of saying they have filed reserved rights and we know about them; until we adjudicate them and a court gives us a decision, we do not have a final answer on whether or not those wild horses are entitled to that surface water, under those reserved rights, until they are adjudicated they exist as a right, in our office. Practically speaking, we are not going to do anything about it. They are out there drinking the surface water rights and there is a claim by the federal government to do so and we are not going to do anything about that.

Chair Kirkpatrick:

Thank you, Mr. King. Are there any questions? Mr. Anderson.

Assemblyman Anderson:

Thank you, Madam Chair. Thank you, Mr. King. To be clear, if the federal government does have a water right, and we will say that everything is kosher and everything is legally fine, there is a requirement from the federal government's perspective, because of federal law, to take that into account for their decisions when they are managing the range. Correct?

Jason King:

If I followed your question, the answer is yes, that is true. Again, there has been some discussion here. Certainly the BLM has a large responsibility for the management of these horses. We are talking about the watering of horses, which, obviously, you have to have. But there are also other components to the wild horses. There are people in this audience who are much more versed in this topic than I am. But, I understand what the issues are. There is a set amount of water to support a set amount of horses and then, if all of a sudden, there are more wild horses, then perhaps water is not so much the issue but the management of that. I am trying to distance myself from that whole scenario,

but I am just telling you that there is X amount of water. It is incumbent on the federal agency overseeing those horses, which they do not over use the water.

Chair Kirkpatrick:

Are there any other questions? Mr. Stewart.

Assemblyman Stewart:

Thank you, Madam Chair. There would be no way that the state could keep wild horses from streams or rivers or watering holes at any time. Is that correct? It would be impractical to fence off access to free flowing water. Is that right?

Jason King:

Yes, Mr. Stewart, that is true. It would be impractical for us to do that.

Chair Kirkpatrick:

Are there any other questions? Mr. Goedhart.

Assemblyman Goedhart:

I have just a follow-up question to my colleague from District 22. The only time I have ever seen the government actually fence out horses or burros from watering areas has been in the Beatty area, where they were trying to go ahead and protect the habitat for the Amargosa toad. In that case they had seen that the wild horses and burros were actually disrupting that native environment for that protected species. That is the only time I have ever seen the government folks fence out the burros or horses.

Chair Kirkpatrick:

Thank you, Mr. Goedhart. Mr. Livermore.

Assemblyman Livermore:

Thank you, Madam Chair. Does not the Department of Wildlife manage springs and these . . . I cannot remember what they call it when they make these water and stock areas for wildlife. There is a common slang for what it is. In some cases, I have seen where they fence springs to protect them but do not fence it off to the extent that you cannot drink the water from the spring. I think there are efforts to make sure that wildlife, including horses, has access to water. I think that is something the Department of Wildlife is doing, which is not in your department. I have seen that before, myself, though. Can you respond to that?

Jason King:

I need to be clear. Certainly, springs have been fenced off, only for the purpose of preventing the animals from coming in and just tearing up that spring source right there. However, they will fence it off, but they will actually transport the water, whether it's in a pipe or a flume or whatever. They will transport it outside that fenced area, in order for the animals to get to the water. But, yes, they will fence it off just to protect the spring itself.

Chair Kirkpatrick:

Thank you. Does anyone else have any questions? Mr. Ellison.

Assemblyman Ellison:

Do you see anything in this bill that is damaging? I am looking at this and think it is a good bill. You have not said if you were neutral, for, or against. Do you see anything in this bill as damaging?

Jason King:

Thank you for the question, Mr. Ellison. My testimony is that we are neutral on this bill. I was further going to testify that it is my understanding that if it were to go forward, it would be prospective and it would not affect any of the 33 water rights that we have already issued to BLM for wild horses. And we offered one minor amendment.

That is just a tough question, Mr. Ellison. Both sides are so passionate about it. I really have to remain neutral.

Chair Kirkpatrick:

Is there anyone else who would like to testify as neutral on this bill? Is there anyone who is in favor of this bill and would like to come forward? Please come forward.

Ron Cerri, President, Nevada Cattlemen's Association:

I want to make it clear that the Nevada Cattlemen's Association believes and understands that wild horses do have a right out on our federal lands. The 1971 Wild Horse and Burro Act gave them that right. As far as access goes, since 1971, with wild horses, there has not been an issue or a problem. We support this bill. Specifically, just to give the State Engineer clarity on what wildlife is, I would say that, by the BLM's actions themselves, the BLM treats wild horses differently from wildlife. At the BLM office, we have a livestock specialist. We have wildlife specialists. We have wild horse specialists. Also, when the BLM is allocating an allotment, particularly if it is an HMA, in those HMAs there is a determination of the amount of forage for livestock, there is

a determination for the amount of forage for wildlife, and there is a determination for wild horses. They treat them in a special category.

Presently, when horses are kept within the appropriate numbers or appropriate management levels (AMLs) the water issue has not been an issue. As long as there is sufficient forage and there is sufficient water, there has not been an argument. With that, I will keep my comments short. Thank you, Madam Chair.

Chair Kirkpatrick:

Does anyone have any questions? Thank you. Good morning.

J.J. Goicoechea, Private Citizen, Eureka, Nevada:

Good morning. I want to just go back and remind the Committee of what I believe the intent of this bill is. The way I interpret this is that it is to prevent the further erosion of Nevada water law. They do have a reserve water right, as Mr. King alluded to. I would like to expand on his stating that it is impractical to fence off water. It is not only impractical; it is not what is being sought after. For the last 40 years, the horses have done fine. They have multiplied. They have had the water. In fact, of the water rights that Mr. King alluded to, only one of those water rights has a priority date prior to 1992. So, for 20-plus years, they have had access to water and everything was fine.

I would like to testify in favor of this bill. I encourage the Committee to vote in favor. Thank you.

Chair Kirkpatrick:

Does anyone have any questions? Mr. Busselman.

Doug Busselman, Executive Vice President, Nevada Farm Bureau:

We are here today to speak in favor of this bill. While I understand that the consequences alluded to are very complicated, in our mind, the bill itself is very simple. The bill says that water, for beneficial use, should apply to the beneficial use. What you are talking about here is granting the federal government a property right to water for a purpose other than what they have the beneficial use for, to use. It is that simple. This bill clarifies that wild horses are not wildlife and therefore are not eligible for the ability to grant that water right to the federal government for that purpose. It does not say anything about not watering horses. There are horses today that are drinking water without water rights. They have been and they do and they will continue to do so. This is about whether the federal government should be granted a water right for something they have not classified as wildlife. Thank you.

Chair Kirkpatrick:

Thank you. Are there any questions or comments? Thank you, gentlemen. Is there anyone else who would like to testify in support, please come forward. Good morning.

Jake Tibbitts, Natural Resource Manager, Eureka County:

Thank you, Madam Chair. Eureka County is in support of this bill. I do not want to belabor the issues that the others in support have brought up, but I would like to point out just the sheer fact that wild horses have had their number set for appropriate management levels by the BLM. The state of Nevada recognized that there is a water resource available to those horses. The BLM determined—through public vetting, through need for processes, through resource management plans, through multiple use decisions—that there is an amount of forage and water available to these horses. So that fact alone shows that the horses have access to those areas or they would not be there.

Our experience in Eureka County has been that the BLM's applications for water rights, whether it is for wild horses or livestock or whatever it is, is not a wild horse issue, it is about protecting the primacy of the state's authority over the water resources in Nevada. That is our position. Also, it should be pointed out, from my experience in Eureka County, that I am very aware of all the horse management areas in our county and adjacent to our county. I am very aware of the primary water sources where these horses water. It should be pointed out that the areas that these horses are using are water sources that have been improved and developed because of other multiple uses, primarily livestock grazing. So the waters that these horses are able to access and use currently are available in the quantities they are and have been developed the way they are because of these other multiple uses.

There was some discussion about the strained relationship between the state of Nevada and the BLM, as far as water rights. I think that is very healthy. It is part of our democratic process. We have a dual-party system in this country. We have the opportunity for both sides to give their opinion—for all sides to give their opinion. That often causes strained relationships, but I believe it keeps everyone honest. I think we need to step forth and protect the state's authority over water rights by not eroding it any further by granting the federal government more.

Chair Kirkpatrick:

Thank you. Does anyone have any questions? Thank you. Andy?

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

In the interest of time, we would just put on the record that we support this bill as well.

Chair Kirkpatrick:

Thank you. With that, is there anyone else who wants to testify in support? Mr. Goicoechea, do you have any final words?

Assemblyman Goicoechea:

Thank you, Madam Chair. I will keep this very brief. I would like to go back and reflect on the letter from former State Engineer Mike Turnipseed. I think he was talking about just what this bill does. Let us separate wild horses and wildlife.

Chair Kirkpatrick:

And we are going to receive a copy of that. I will make sure you get a copy, as well. With that, we are going to close the hearing on A.B. 329.

[Several letters in opposition to A.B. 329 were submitted but not discussed ([Exhibit I](#)).]

We are going to take a 15-minute break. I am telling you that if you do not come back on time, it is not going to be friendly. If everyone would be back by 9:50 a.m., we will start on time. We still have three bills. I will see you then.

[Committee recessed at 9:37 a.m.]

Chair Kirkpatrick:

I will call the Committee back to order [at 9:57 a.m.]. We are waiting for Mr. Ohrenschall. I do want to clarify for the Committee that we are meeting next Thursday and we are going to work from 6 p.m. to 9 p.m., if we are on time and start. Hopefully, we can get quite a few bills knocked out of the way.

Mr. Ohrenschall, thank you for coming back.

Assembly Bill 387: Revises provisions relating to certain domestic wells.
(BDR 48-347)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:

Thank you, today, for hearing Assembly Bill 387. It is good to be here for my second time this week before the Assembly Committee on Government Affairs. Assembly Bill 387 is about promoting ecologically and environmentally

responsible development in our state while attempting to also recharge groundwater basins. The idea for this legislation came from Amargosa Valley attorney and realtor Michael DeLee, who has a long history in the development of land and water rights. Assembly Bill 387 did not come out of drafting exactly as it was supposed to, and for that reason you should have before you a copy of an amendment ([Exhibit J](#)) proposed by Mr. DeLee. He and I have worked with the Division of Water Resources on this amendment. Mr. DeLee is at the Grant Sawyer State Office Building in Las Vegas and is here to present the bill. I thank everyone for their time and encourage your support. I would be happy to work to resolve any concerns that may come before you today.

Chair Kirkpatrick:

Mr. Ohrenschall, you did give us the amendment ahead of time. I have a hard copy but I believe, for the Committee, it is on NELIS. Are you going to turn it over to Mr. DeLee in Las Vegas and let him explain the bill, with the amendment?

Assemblyman Ohrenschall:

That is my wish, Madam Chair.

Chair Kirkpatrick:

Good morning. There is about a 10-second delay. Go ahead and get started.

Michael DeLee, DeLee and Associates, Amargosa Valley:

Thank you, Madam Chair. This bill was actually the product of several discussions with the Division of Water Resources. We first began talking to them last session. They made it clear that last session was not a good time to discuss this so we deferred to this session. I want to thank the members of the Committee for your patience in reviewing this and also the amendments. This was a difficult concept. We are the first state to be trying something like this.

We have several water basins in the state of Nevada that are overappropriated and there are a lot of concerns about additional domestic wells in those basins. Let me start by saying that this bill does not change anything about existing domestic wells. They can continue to be drilled, just as they have been in the past. This bill does provide a new category, called a conservation domestic well, so that developers can opt in for this as an alternative when they are planning their subdivisions or parceling in the future. The 2007 Session provided, under Senate Bill No. 274 of the 74th Session, that the state Division of Water Resources should approve parcel maps as well as subdivisions so that we have a heightened level of scrutiny as it applies to water resources and, particularly, domestic wells.

Section 1 of this bill recognizes that the actual use of a domestic well, on average, is about half an acre-foot. And that is why we chose half an acre-foot for the limitation for the conservation domestic well. In order to achieve that, though, we are going to require the developer to purchase one acre-foot of water and then credit the difference, one half to the well and one half to the basin. You will see that reflected in the amendment proposed to you ([Exhibit K](#)). The original version of the bill mistakenly attributed that as a credit to the developer. That excess half acre-foot goes to the basin water budget to try and bring that water basin back into equilibrium. Additionally, there will be a metering requirement. When we visited the issue of domestic wells in the 2007 Session, we adopted the accessory requirement for ancillary building for a domestic well. Under those circumstances, it would have to be metered. This simply extends that so that conservation domestic wells will all be metered and that will encourage an awareness of conservation of water in the rural areas and some segments of the urbanized areas that still use domestic wells, which could take advantage of this because they are not within a zone of the public water system.

This bill also provides in section 1 a reporting requirement. The State Engineer's Office is very progressive and is working towards an online reporting system so that people, instead of sending in paperwork, can go online. They are still working on that. We want to provide for that, in this bill, so that they can work that into their plans, as they already have it. Unfortunately, that drew a fiscal note for us and, as you will see presented to you, it is not a big fiscal note. We hope we can work through that. As you can see from the amendments, we are trying to take that out of a need for regulation and put that under the existing powers of the State Engineer's Office so that they can come up with the fees that are needed to offset the cost. Again, the incentives are for the subdivision and parceling so that as each new lot is created for developers and homeowners who want to divide their property, they can opt into a much more economical well. It takes a lot of power to pump water. Because these wells are going to be limited to renewable resources only and not line power, it is going to encourage development of our renewable resources in the state of Nevada as it concerns pumping water.

I realize we have a time frame and have a lot of bills to do, so I would like to stop there and take any questions.

Chair Kirkpatrick:

Are there any questions? I have a couple of questions on the amendment that you suggested. First, you said that people use about 500 gallons of water per day, on the average.

Michael DeLee:

It is approximately 500 gallons per day for a family of four, so that works out to about half an acre-foot per year, which is the average for a state of Nevada domestic well.

Chair Kirkpatrick:

So let me ask this because I have a situation within my district where they are currently allotted 500 gallons a day and they are struggling to do that; where in the state would that number have come from?

Michael DeLee:

I remember a study done regarding the Sandy Valley water appropriation. I think the study was actually done in the Carson City area, but it was used in a case involving Sandy Valley and some water being moved to the Primm area, *Bacher v. State Engineer*. The Division of Water Resources might be able to provide you with more details but the question was: What is the average for domestic well use in the state of Nevada? I think, both in that study, and again, in the Spring Valley hearings, it has come up to be about half an acre-foot. We want to reiterate that we are not proposing to change the existing domestic well laws which provide for two acre-feet of water. Those will still be there and if developers want to have a regular domestic well, they can go out and buy two acre-feet for every new lot. This just provides an alternative to that so that they can get one acre-foot, help the basin, and help themselves.

Chair Kirkpatrick:

In your amendment, on No. 2, it says, "Is designed for a water flow of less than five (5) gallons per minute." I thought the code read that it was six gallons per minute. Where did that number come from? I only ask because my husband is a plumber, and I have heard that six gallons per minute for the last seven years, so I have never heard him talk about five gallons.

Michael DeLee:

The number we initially set was at one gallon per minute. I should describe a little bit how this system typically works. Most domestic wells pump directly into a pressure tank to serve the dwelling. The domestic wells which would be envisioned here operate, like some domestic wells do now, in that they pump into a cistern. It typically holds several thousand gallons or can be a large 2,500-gallon holding tank. A separate pressure pump pumps from that cistern. So the actual well pump has very low flow and takes water at a very low rate during the time that power is available. If it is solar, then power is available when the sun is shining or if it is wind-powered, when the wind is blowing. From that, a pressure pump would provide water at whatever rate is required in the system, which in some cases would likely exceed five gallons a minute.

We initially started with one gallon per minute, but there were some questions from people we were working with in northern Nevada who thought that was too low, because the sun does not shine all that much or the winds could be variable. I hope that answers your question.

Chair Kirkpatrick:

Do the Committee members have any other questions? Let me ask this question. This says, "A pump is installed." What happens in a current scenario where someone already has a domestic well and they have to replace the pump? Are they going to be required to follow these new guidelines? I know it says "may" in here, but it appears that we are trying to change the code. I am curious.

Michael DeLee:

I want to reiterate that this does not disturb or change any rules regarding domestic wells under NRS 534.180. It adds an entirely new category called a conservation domestic well for new wells. It envisions this applying to developers or homeowners who are dividing their properties to sell off their lots and then putting in new domestic wells. They can choose this if they want to. Some of them will not. Many of them will opt for the existing domestic well requirements which, in many cases now, because of S.B. No. 274 of the 74th Session, require two acre-feet or, in some cases, more in certain counties, to be purchased and then relinquished to the basin. This just provides an alternative to that. It does not disturb the existing domestic well regime at all.

Chair Kirkpatrick:

Let me go a little bit further because we are still on the first page of the amendment which you are talking about. The incentive for the developer is what, to do this?

Michael DeLee:

Right now, developers, as they split lots, either through a subdivision or a parcel map process, have to acquire water rights and dedicate them to the basin for each new lot which is developed. For example, if a parcel map is proposed to take one parcel of 10 acres and make two or four 2.5-acre lots, that would mean there are three additional parcels. Under the existing requirements, in most cases they would provide a total of 6 acre-feet of water in order to get those three new parcels. This would provide an alternative where they would be able to acquire 3 acre-feet of water for a conservation domestic well. Each well would only be allocated half an acre-foot, so 1.5 acre-feet total for the wells. And then the balance, 1.5 acre-feet, would go directly to the basin water budget to help bring the budget back into equilibrium in our overappropriated basins. The incentive for developers, to answer to your question, is that you

are getting those three extra lots for 3 acre-feet, not 6 acre-feet. For the same money that you would go out and buy water rights, you can do twice as much and hopefully put that money towards the equipment in the wells.

Chair Kirkpatrick:

So basically we are allowing for less water rights in order to get their project developed. Is that correct?

Michael DeLee:

That is correct. Less water, more land, but everyone wins.

Chair Kirkpatrick:

Okay. I do not want to monopolize the microphone for the Committee, so if anyone has any questions, just ask. Ms. Pierce and then Mr. Goedhart.

Assemblywoman Pierce:

I am a little confused, so let me see if I understand this. You have a basin that is overallocated. A developer wants to develop. What he is saying is that a conservation well gets created and gives back half the water to the basin and then what the developer develops, each house, uses less water. Do I have that right?

Chair Kirkpatrick:

Mr. DeLee, did you want to elaborate on that?

Michael DeLee:

Yes. That is exactly correct. We would be providing that, on an equal measure for each new well, under the conservation domestic well program, half the water goes to the basin and half goes to the well. So the more wells we get, and the more people that choose to opt into this, the better it is going to be for the water basin itself. It requires people to know in advance that they are going to have very low water use. They are going to be average. But they are going to have to commit to that and they are going to have to report to that. There will be people who do not want that. And we realize that. But there are probably a lot of people who are comfortable with that and we would like to have that as an option.

Chair Kirkpatrick:

Okay. Mr. Goedhart.

Assemblyman Goedhart:

To the bill's sponsor, Mr. DeLee. I appreciate what you are doing here but to also fall underneath that definition of conservation well, does it also have to be strictly only powered by renewable energy?

Michael DeLee:

The intent of the bill is to encourage use of renewable energy. One of the ways of doing that was to limit the power source for the well and the pumps in the well. Also, because of the sizing requirements and the expense for installing, for example the solar power system, it would not make sense for someone to install a pump that they knew was going to exceed half an acre-foot or be larger than 5 gallons per minute, at the very beginning. Whereas, if it were line powered, it would be easy for someone to just leave the power on and pump too much water. So we were hoping to get a double benefit. First of all, make it very difficult to exceed the half acre-foot because of the additional expense that would be required for a renewable energy system and, secondly, to encourage the use of renewable energy to pump water in Nevada.

Assemblyman Goedhart:

So, in other words, you are saying that, yes, to qualify as a conservation well, it has to derive its power solely from a renewable energy source. Is that correct?

Michael DeLee:

Yes. That is correct.

Chair Kirkpatrick:

Mr. DeLee, I have only ever seen one study and it was not from this state, and it said you could easily survive on 500 gallons a day; but within that study it said no lawns. You have to conserve a lot of different things. Where in other parts of the country do they do this?

Michael DeLee:

I did not look to other parts of the country for coming up with the half an acre-foot standard. That was a number which I used from the State Engineer's own rulings in both the Sandy Valley decision—that eventually became the Supreme Court *Bacher v. State Engineer* case—and the ruling in Spring Valley, which you may remember from the special session, that addressed some of those issues after the Supreme Court made a ruling. In both cases, the State Engineer had assigned an actual number of half an acre-foot for what domestic wells actually used in Nevada. As far as what happens with water rates in other states, certain states, such as Utah, require a water right for all wells, including domestic wells. In a sense, we are a little bit more forgiving than Utah. We can look and see what they have for their actual usage

requirements. This just builds upon that. To answer your question, the numbers actually come from Nevada, and I did not pull from other states.

Chair Kirkpatrick:

My other question would be, because most of our energy efficient water appliances are to the six-gallon standard, is it going to make a difference having the pump be at five gallons in order to get that water through someone's home?

Michael DeLee:

The pump would be pumping at a low rate, it could be five gallons. We certainly could change it to six. The number is not that important as long as it is a fairly low number and not the 20 or 30 gallons a minute that might be associated with the typical domestic well pump. The idea is that we want this to be a low flow pump and pump into a holding tank of some sort. Then a separate pump, which itself would be much more efficient for the purpose of providing pressure to the home, would pump at a higher rate just for that purpose. The two pumps would each have their maximum efficiencies, one for providing pressure to the home and one for lifting water out of the ground, instead of one pump that has to draw a middle ground to do both—the water lifting and the pressuring—and not achieving as much efficiency. We are going for maximum efficiency, as well as being renewable, on the well side only.

Chair Kirkpatrick:

If I am to induce here, I apologize, but I am just trying to understand. Remember, I am married to a plumber, so that is our topic at the dinner table, whether we want to hear it or not. But, what I do not want to happen is to have a pump that is set at one flow and then, as the homeowner uses the appliances within his house—which I think the current code is six gallons per minute and I will use a toilet as an example, of six gallons for the flush—that he does not have enough water pressure to actually utilize that. I just have never seen or heard the five gallons per minute. I can tell you that when Leadership in Energy and Environmental Design (LEED) was a big piece of discussion for this state and they went to the waterless toilets, they did not necessarily work. It sounded good. But it did not necessarily work for the people who were actually using them. I am just trying to clarify on some of these numbers because, in the past, we have picked numbers out of the sky and they did not necessarily work, and yet folks were then stuck into a situation. I just am trying to clarify some of that.

Michael DeLee:

Madam Chair, a six-gallon limit would be fine.

Chair Kirkpatrick:
Mr. Goedhart.

Assemblyman Goedhart:

Mr. DeLee, say you were a hypothetical developer and you have a 40-acre parcel, I do not think you are required to retire water rights to the state with a parcel map, unless it is under 4.5 acres. Is that correct?

Michael DeLee:

The requirements differ. The county has adopted certain requirements; the state has an overarching requirement for S.B. No. 274 of the 74th Session. Nye County, for example, has the 4.5 acre requirement that you are referring to, but that is different in other parts of the state. This bill proposes to allow a one acre-foot requirement for certain circumstances, and it would apply in the situations where you are required to retire water rights. If there are circumstances where you are not required to retire water rights, then, naturally, people would not go through that expense.

Assemblyman Goedhart:

I think that also. To get to the Chair's question about matching the output of the well to the flow rates of the different appliances, I think, in your case, what you are talking about is actually having that well pump into a large cistern and then from that cistern, which could be 1,000 or 2,000 gallons, you have your pressure pump there. Theoretically, you could have a well that only puts out 3 gallons a minute but you could be using 20 or 30 gallons a minute from your cistern. The output to the house could be different from the output of the well to the cistern. Is that correct?

Michael DeLee:

Yes. Thank you for the clarification. That is correct.

Chair Kirkpatrick:

Okay. Did you want to go through the rest of your amendments ([Exhibit J](#))?

Michael DeLee:

I think we are on amendment No. 4. We did not want to saddle the Division of Water Resources with any additional work. We appreciate that they are already overstressed as it is. We wanted to allow them to set these fees, if and when they choose to. That also ties into amendment No. 5. We do not think we should be requiring them to do it through the regulatory process. They have some existing statutory authority under NRS 533.435, subsection 2, which allows them to recover costs that are not elsewhere specified in the statute. We thought that would be an easier and friendlier way to allow them to do this,

possibly minimizing the fiscal note, which you will probably hear about in the future. In amendment No. 6, we wanted to make sure the well credit programs are not disturbed as they relate to providing water rights credits for people that go off of a domestic well and into a public water system. That is a carefully balanced regulatory scheme that has taken a lot of work to figure out, and we did not want to put ourselves into that mix and wanted to just stand alone for the time being. Finally, on amendment No. 7, we wanted to clarify that this does not impact the Nevada Administrative Procedure Act because, in section 5 of the bill, we are not going to require regulations and we can say for another day whether we should be doing anything with the Administrative Procedure Act. We did not want to use it as part of this bill.

Chair Kirkpatrick:

Are there any questions from the Committee? Mr. Ellison.

Assemblyman Ellison:

I have a couple of small questions. Firstly, the added cost. Do you have a feel for how much this will run, to put in the domestic wells and the pumping and the energy saving pumps? Do you have any idea what this is going to run?

Michael DeLee:

I do not have any hard figures on that. I was hoping to have for you today an individual from Reno who actually has that information. He could talk about the specifics of that, but he was not available for us today.

Assemblyman Ellison:

The other thing was about fire protection. You might fill the bladder of the tank, but once that bladder is out, there is no way this pump can keep up with fire protection for a house or structural fire in a small area that might be on a 40-acre parcel. You want to address that?

Michael DeLee:

My understanding from talking with volunteer firemen is that the first thing they do when they approach a property that has a fire engaged is that they disconnect the electric power. This actually might work to benefit such residences because then there is a 2,500 gallon cistern there that they could pump from instead of taking 20 to 30 gallons a minute from a domestic well that might be disconnected from power. When it comes to fire protection, we think this is actually a benefit.

Assemblyman Ellison:

All rural areas are supposed to have a fire protection circuit breaker that goes on the opposite side of the meter that gives power. If you turn off the main power, you still have power going to the pump. That is part of the fire code.

Michael DeLee:

That is good thinking.

Chair Kirkpatrick:

Does anyone else have any questions? I have two more questions. I apologize, but I am the question queen today. Let me ask you this. I get that there are overappropriated basins. What happens if you put those water rights back into that basin? What is to guarantee that they will not get reallocated? My other concern is what happens if each homeowner is allocated 500 gallons a day and originally the homeowner moved intentionally into this neighborhood knowing that it is energy free and water efficient. I think you would have to have all those things in there in order for it to work, personally. What happens if they overuse the 500 gallons a day? How does the State Engineer enforce that, and is there a potential problem if someone else moves into it?

We can all admit that we do not read our deed restrictions very tightly. What happens in the future if you deteriorate the 500 gallons? What is the problem with that? I can see big problems. I am wondering how we enforce it and what happens if everyone uses more than that. On another note, I would tell you that at different times of the year, people use different amounts of water within their home. For instance, if I have all my kids home for spring break from college, I am going to use a lot more water than if it is just me and my husband. Is this an average for the day or is this an average for the year? How does that work?

Michael DeLee:

There are three questions and I will try to answer all of them. First of all, taking the last one first, back in 2007, the state clarified the difference between 1,800 gallons per day, for the domestic wells, that we have and still have and clarified that as two acre-feet per year, for exactly the reason you mention because it does vary with times of the year as to how much you are going to use. The draft is now annualized over two acre-feet a year. The same would apply here. It is half an acre-foot per year. The daily amount is not something that we would have in the statute.

The question about enforcement, as with any water right or anything relating to water resources, the State Engineer has the primary enforcement powers for that, and their powers were enhanced a few years ago when they adopted

some regulations to handle that. They are typically pretty gentle in reminding people that they need to follow the rules, but they do have the powers to get less than gentle, if they need to. This would be no different than anybody with a domestic well that would be exceeding the draft for domestic wells that exists now throughout the fee year or using water without a permit or any other matters relating to wells and water. It is the State Engineer's authority to handle that, and that is contemplated in a section of the bill towards the end.

Your first question was on the reallocation of water. I would point out that half an acre-foot per well is not going to do a lot for some of our water basins, but it might help and it will certainly move it in the right direction as that water is returned to the basin and the water budget is corrected. If we ever do reach equilibrium where additional water rights could be appropriated, they would be appropriated as they would under any other situation on a first come, first serve basis. It would not be tied to any particular water right which is relinquished; it just goes back to the basin to be managed with all other water in the basin.

Chair Kirkpatrick:

Okay. Let me ask one more question. I get that the State Engineer's Office does have that ability; we did that last session. We increased the fines for people that are overpumping. However, people are still overpumping. It is a process that we put into place that gave due process to the homeowner or the property right person, at the same time. It does not happen very quickly. It takes a couple of years. We also made sure that within the law that we could work with folks so that they would not be fined right away. They had to make strides to move forward to make these amendments. I just am having a hard time on the 500 gallons. Is that going to be within some covenants, conditions, and restrictions (CC&Rs), which we cannot really dictate? I am wondering. I will use my family as an example because they are a pretty good candidate for what I like to talk about. I have teenage daughters that think you have to wash your hair four times a day or the boys will not get close to them. That is a lot of water. It is the truth. I have a princess. So, as the demographics change within a neighborhood and it is no longer a young family neighborhood, which would tend to use a lot more water and the neighborhood gets older, how do you go back and enforce some of that? I do not understand how the residents know what they are getting into and how the State Engineer is supposed to go back.

I have a portion of constituents within my district, and back in the early 1980s they were under one assumption and the local government kept approving things and now they are under another assumption. They are overpumping, trying to make things right. Some of those people never had a chance to be in an ideal situation, but at the same time, they now have a chance to be fined

\$10,000 for not doing the right thing. I am just not getting how we are going to enforce this for the long term. I believe that we have to be efficient with our water and use it right, but what I do not want to see is any unintended consequences where folks are just trying to live in their own home and be comfortable. If they go over this limit, does it really set us further back than where we are trying to get to today? We do not need any water cops.

Michael DeLee:

The system is actually designed to be self-policing. That is why we have provided for an online entry system, by the homeowner, to actually read his meters and put it in so the monthly readings already go in. The homeowner will be very much aware of what water is being used. We would envision examples—maybe not the household of seven with teenage daughters that use a lot of water—that they would opt into a system like this. There are a lot of people that come to Nevada for only certain times of the year. For example, there are snowbirds or retired people, and there is no landscaping in the yard and they are pretty happy with xeriscaping. Those are very low water impact families and having a standard domestic well with two acre-feet is, quite frankly, a waste. This pairs up with a number of people within the community now and, hopefully, an increasing number of people in the future. As they are aware of additional resource management, they can take it upon themselves to control water use. The monthly reporting requirements will certainly make them very well aware of what their water use is. I hope that clarifies.

Chair Kirkpatrick:

I will just get back to my point, though. Currently, with a lot of our codes, within appliances, we are already being forced to conserve, so this really does nothing more than say that the developer does not have to come up with more acre-feet. I just want to get to the crux of what the bill does. If that is the case, we should talk about the development portion of it. That is basically what I got out of the bill, but if it's something different, let me know. I think that, in itself, will create a firestorm. You will get higher density based on this, with less water. You will get some different things. But I could be way off base, so I am just wondering if I am close or . . .

Michael DeLee:

Madam Chair, if I may interpret the question, the concern is about the density of development. I think that the best answer to that is that it is actually a win-win. It is a lower cost for the same development. Water rights are typically not cheap, but do vary with market prices. Less water would be required for the same development that allows the developer to actually put that water that would ordinarily be required to purchase the water into what we are requiring, which is that the pump be installed at the time the well is drilled and

not just left as an open domestic hole. We are actually putting more improvements into the ground, bringing more development and taxable improvement to the property at the time of development, and just shifting that forward.

Assemblyman Anderson:

I think, in general, this is a good concept. I did have a few concerns dovetailing on what the Chair said. What happens if a developer comes in and he institutes a covenant between future homeowners to require these? Could you see an issue dovetailing with the concerns that not every family is going to be the same, et cetera?

Michael DeLee:

At the time of the subdivision or the parceling, it would have to be approved for a conservation domestic well. At the time it is put in, it would have to go in as a domestic well with a pump. Certainly, anyone buying a lot in that would be very much aware of it. If they wanted to improve the amount of water flow, they could always acquire water rights, as they could now with a domestic well and pump as much water as their water right allowed them to pump. More likely, they would simply buy a different lot somewhere else that did not have this. It would probably be less costly. It is a question of marketing. If the developers feel they can attract a particular market segment and save themselves cost, then they will opt for this. If they do not, they will take a different route. We do not expect that people are going to change over to a higher demand well by adding water rights in the future, but that certainly could happen.

Chair Kirkpatrick:

Are there any other questions? Is this only a problem in a couple of different basins within our state, or do you see this as a fix for all of the basins?

Michael DeLee:

It would be an option statewide. It would be most attractive where there is an acute shortage of water and the water rights prices are fairly high because it would allow someone to develop and save money on water rights and everyone would conserve water. Where water rights prices are low and there is plenty of water to go around, it is probably not something that people are going to opt into, but at least it is there.

Chair Kirkpatrick:

Does anyone else have any questions? Okay. Mr. Ohrenschall, are you ready to bring up those who might be in favor at this time?

Assemblyman Ohrenschall:

Yes, Madam Chair. Thank you. I believe I do have Kyle Davis and Joe Johnson, who said they were going to testify in favor. They had some other hearings, however.

Chair Kirkpatrick:

Let me do this. All those that are in favor of this bill, that would like to testify, please come forward.

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

Good morning, Madam Chair and members of the Committee. Thank you for the opportunity to provide testimony on A.B. 387. Our office is in support of the concept of having conservation domestic wells, and we applaud what Mr. Ohrenschall and Mr. DeLee are trying to do with the bill in terms of using green energy to power the pump and also requiring retirement of water rights for the domestic well subdivisions to benefit the basin.

As the bill was originally submitted, we had some concerns with some of the provisions and requirements in the bill. I received their amendment late yesterday, and I have looked through it quickly but have not really digested all of it. It certainly looks like it addresses some of the concerns that I had with the original language.

I would also like to point out, as Mr. DeLee said earlier, that we did attach a fiscal note. When we looked at the original bill, it talked about adopting regulations. You will see in our fiscal note that we have estimated \$42,500 in the first year to adopt regulations and take care of some computer programming which would be necessary to allow people to go online and report their pumpage on a monthly basis. Every year thereafter, we were estimating a \$20,000 annual fee for maintaining the license for the software that we would be using. However, depending on what amendments are taken into this bill and the fact that our office may be able to assess fees to the water users in the basin that it is used, there may be no fiscal impact to the General Fund. With that, I would be happy to answer any questions.

Chair Kirkpatrick:

Are there any questions from the Committee? Mr. King, can you talk about the third amendment, which is on our sheet ([Exhibit J](#)). Can you go over that for me? I am hearing some confusion, probably on my part. They still have to have a water right; they still have to be in good standing. Is that not something that can already be done through the State Engineer's Office, as far as letting them having less allocation? I am curious.

Jason King:

That is an excellent question. There is a provision, NRS 534.120, which has not been tested. Our office feels like we would be able to go into a basin that needs to be further regulated and issue an order saying, from this day forward or even retroactively, that because the basin is fully appropriated and that we have declining water tables, we can limit the withdrawal of water from a domestic well. That has not been tested. I know there are some people who do not believe we can do that.

What Mr. DeLee and Mr. Ohrenschall have done for those basins, and again, I always bring up Pahrump Valley, is that it would be an incentive to a developer who wants to do a domestic well subdivision. By the way, our office signs off on every subdivision in the state. There would be incentive to, instead of going out and having to purchase 200 acre-feet for a 100 lot subdivision, only having to purchase 100 acre-feet. I certainly see the incentive to do that. I see what Mr. Ohrenschall is trying to do. It is a good thing. I do question whether or not we can already do that under NRS 534.120. Obviously, it has nothing to do with using green energy to power the pump or anything like that. We may be able to do that already.

Assemblyman Ellison:

What about existing subdivisions that are out there? They have the water rights. They have the lots. But they have never been developed. I know a lot of these subdivisions are out there. How are you going to address that?

Jason King:

We would not. If they were created as a domestic well subdivision, especially in a fully appropriated basin, it was approved based on the fact that there would be a domestic well that would withdraw two acre-feet. This bill would not affect those at all. They would still be entitled to that withdrawal amount.

Chair Kirkpatrick:

Are there any other questions? Let me ask you this, Mr. King. Development is very slow right now. There is no doubt that this would not really help someone start developing tomorrow. But what will happen when development does come back and what happens to the people who had the existing water rights for their subdivisions approved? They would fall where within this? They could go for larger density and they could have multiple subdivisions with the water rights they had already purchased. I am just wondering if it is going to be equal and if the reason this has to apply to renewable energy is so that the folks who have already invested in the water rights . . . I can tell you that I am sure people bought them when they were \$90,000 an acre-foot, as opposed to now, at \$14,000. What is the equal footing for their subdivision maps?

Jason King:

I do not think there would be any effect. I think they would remain status quo. You do raise an interesting question, and I do not know how much further we want to pursue this. There could be a domestic well subdivision out there that was created based on two acre-feet per acre, and the lots could be ten acres in size. If, for some reason, no one built on them and they wanted to further break those down into five-acre sized lots, if they wanted to go with a conservation domestic well and marketed it as such, they may have a case for the fact that they have already committed two acre-feet for the ten acre lot. Can we now have no dedication requirement for the five-acre lots based on the fact that they are having to dedicate half as much. Frankly, I do not know how likely of a scenario that is, but it is a possibility. But again, none of that is a downside.

Chair Kirkpatrick:

I just want to make sure that we explore all options because I am thorough that way when it comes to water. Any other questions? Thank you. Is there anyone else who would like to testify in support of A.B. 387? Is there anyone who is in opposition of A.B. 387? Is there anyone who is neutral on A.B. 387?

Steve Walker, representing Truckee Meadows Water Authority:

The Truckee Meadows Water Authority is neutral on the bill, as amended. I, as a water planner, would like to make some comments. The standard assignment for domestic wells when you do water planning in northern Nevada is 1,000 gallons per day. The only time I have ever heard of it being 500 is when you consider that a portion of the water is indoor use, goes out into your septic system, into your leach line, and then is considered secondary recharge to the aquifer. Then you would say you had a consumptive use of 500 gallons. If that is the case, then there might be an unintended consequence with this bill. You heard of that consequence last Wednesday in A.B. 237, where government money has to be spent because one-acre parcels with individual septic tanks and wells have polluted the groundwater. When you are talking about this as a mechanism to increase densities because you are decreasing water use in one-acre parcels, then that is an unintended consequence. You are back creating one-acre parcels with individual wells, individual septic tanks, which is government approval of groundwater pollution. So I would say be aware of that and make sure that if it moves forward, I would definitely put an acre requirement, if you can, to make sure that you do not have those densities that cause groundwater pollution. That is my statement as a water planner.

Chair Kirkpatrick:

Thank you, Mr. Walker. Does anyone have any questions? Andy?

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

Generally, we are supportive of the bill. We understand the need and why the bill was introduced, but I have just a couple of quick comments. I am not sure that I can see this provision being used in Clark County, particularly in the urban areas, for the reasons that Steve just mentioned. Firstly, you have to have an acre parcel to have a domestic well that is on a septic, based on health code regulations in Clark County. If you are on a sewer, the health code allows you to go to a half acre. A half acre's worth of land, with 500 gallons a day, is not going to have any landscaping. I can tell you, just based upon the history I have experienced in the 14 years I have been with the Water Authority; I have always been involved with the groundwater management program that was created the year I started. Since we have had that program, we have dealt with the 1955 Nevada law that allowed for the temporary permits in the Las Vegas Valley to allow for continued growth. No one who has bought a well or a home with a well on it understands whether they have a revocable right or whether they have an irrevocable right. That has created a very difficult situation in Clark County where we have to deal with people who do not have a permanent water right who thought that they did.

I am just cautioning the Legislature. I think if this bill moves forward, we need to make it explicit that this water right that we will be granting or this exemption for a conservation domestic well at half an acre-foot, will be different from what everyone else has, and at some point in the future we may have to deal with equity issues, people that just did not know what they got themselves into when they bought a property that has a conservation domestic well. That being said, we support the concept of the bill, but I would just have you consider those things as you consider processing it.

Chair Kirkpatrick:

Is there anyone else who is neutral? Good morning.

Vahid Behmaram, Water Rights Manager, Department of Water Resources, Washoe County:

Good morning. I have had the chance to look at some of the amendments. The fact that this proposed bill allows local government to apply more stringent requirements is a positive. That is why I am here as neutral. If it was not for that language, I would be against the proposed bill. I have a couple of points. If the objective is to help a basin in distress, an overallocated basin, and if you accept the data that domestic wells use between half an acre-foot and or an acre-foot, the current provision requiring two acre-feet and accepting that the consumption is one acre-foot benefits the basin more. You are, in fact, retiring one acre-foot per domestic well. The benefits are greater to the hydrographic

basin. The second point I would like to make is that I have worked for a water utility for nearly 20 years. Water meters fail. Water meters read inaccurate data. One of the reasons utilities can detect those is because the resident calls and says their water bill is through the roof. We go test it and we find out that, in fact, yes, there is a problem with the water meter. Or if it is the reverse, if the meter is reading low, we can look at the total production and balance it against total consumption based on individual meters. If there is a drastic imbalance, we know there are some faulty meters. What I am trying to say is that there is a system of checks and balances within municipal systems that can detect faulty meters. I do not see that here. If the meter is reading faulty readings, how is that going to be detected?

The other issue is an issue of implementation. If the resident is using more than a half acre-foot of water, there is an issue of fees and penalties. The State Engineer is not going to issue a cease and desist order. That equates to revoking someone's certificate of occupancy (CO). That is not going to work. That is going to be extremely difficult. My last point is that I noticed that the proposed bill makes these classes of domestic wells ineligible for the domestic well credit. We have a lot of experience with domestic well credits. Where they come into play is in areas that the domestic wells have failed or are failing and there are municipal water systems nearby or closely available to these homeowners. At a cost to the homeowner, they abandon their well and connect to the water system. This bill creates an environment for the utility to have to say, "No, sorry, you are not eligible for this. You have to go out and, in addition to the cost of plugging your well, you have to pay connection fees. You have to buy additional water rights if you want to connect to our water system." The way the amendment is written, this class of domestic well is not eligible for the domestic well credit. That will create a difficult environment where one resident is eligible, the other resident is not. I can answer any questions if you have them.

Chair Kirkpatrick:

Does anyone have any questions? Okay. Thank you very much. Is there anyone else who is neutral on A.B. 387? Mr. Ohrenschall, do you have any final words?

Assemblyman Ohrenschall:

I do, Madam Chair, but I wonder if Mr. DeLee might be able to address a couple of those concerns, with your indulgence.

Michael DeLee:

Thank you. I will try to answer the last question first. Regarding the requirements for keeping this off the domestic well credits system, we changed

that because we did not want to disturb something and essentially open up a new can of worms where there may be other unanticipated consequences. That is not something I am too concerned about if the parties feel that they could be part of it. That is fine. I did not want to start something that we could not finish within the confines of this legislative session and maybe leave that for the future, if we wanted to add that. As far as the implementation goes, this would be, I think, relatively easily implemented. As with other water rights and other meter readings, the errors between the readings should be relatively easy to detect. If they are way out of bounds, we will know because these are being reported by the homeowner. Absolutely, water meters fail, and we realize that there are problems and we can address that just as any other requirement would be, but that is not a reason to not do this. We can take a look at each one of those things. As far as the two acre-feet, one acre-foot mentioned earlier, that is not a requirement. That might be what is actually happening out there, in some cases, where there are two acre-feet allocated for a domestic well, but less than that is being pumped, or, in some cases, more than that is being pumped. What we are trying to do is actually put it on paper so that you cannot pump more than a half acre-foot. That way it can be attributed directly to the basin water budget.

Backing up to the Southern Nevada Water Authority's comments, I appreciate the support of the concept. There may be areas in Clark County that are not landscaped. I realize there has been a lot of effort to take out lawns and so forth, so certainly something like this would not have any lawns associated with it and you would see the more popular, nowadays, rock gardens and half-acre lots. Yes, those are rare, in most instances in the Las Vegas area, but I think they are still pretty popular in areas further out, such as Sandy Valley, where water resources are certainly at a premium. Backing up to Mr. Walker's comments, he mentioned A.B. 237. While I haven't reviewed the text of that bill, it sounds like that bill addresses using public money for an overdraft situation. This is actually using private money to do essentially the same thing. In other words, the developers are the ones that are funding this by buying one acre-foot when, previously, they need two, but donating half of what they buy to the basin. As this moves forward, we are actually anticipating using private money to accomplish what I understood, briefly, A.B. 237 to be doing.

Regarding density, this does not address the issue of density. That we feel is properly a matter for the Nevada Division of Environmental Protection. Whether you have a conservation domestic well or a regular domestic well, a water right, a public water system, water contamination, and water quality and density requirements, I think it would not be appropriate to put that into the Division of Water Resources and Chapter 534 of NRS. That is something that either goes through local planning, under NRS Chapter 278, and individual counties or

cities, or under the Nevada Division of Environmental Protection as it relates to individual septic systems, but not in this bill, though it certainly is a concern that the Legislature should be aware of. I do not think it is appropriate here. Hopefully that answers all the questions.

Chair Kirkpatrick:

Okay. Mr. Ohrenschall.

Assemblyman Ohrenschall:

Thank you very much, Madam Chair, for your time. I appreciate all the attention you have given to this bill. I think with A.B. 387, as Mr. DeLee stated, we have a bill that provides that every one wins. Developers will be able to develop land more affordably; water rights will be retired and overappropriated basins will be recharged. Water-smart xeriscape landscaping will be encouraged, and the use of renewable energy will increase through the use of these pumps to pump out the water that are powered by solar and wind. I am happy to work with all the parties concerned to try to resolve any concerns, but I think we have a very good concept here, and I hope that in the future we will have conservation domestic wells in this state.

Chair Kirkpatrick:

Thank you. Mr. Ohrenschall, is there a project that is waiting for this type of legislation that someone is interested in? Is there a pilot project? How big is the subdivision?

Assemblyman Ohrenschall:

That is a good question. I do not know. I could defer to Mr. DeLee down in Las Vegas. Perhaps he knows.

Michael DeLee:

Madam Chair, the issue came forward, actually, from 2007, when the Legislature weighed in on requiring the dedication of water rights for parcel maps in addition to subdivisions as part of S.B. No. 274 of the 74th Legislative Session. There were discussions at that time about not really needing two acre-feet per lot; no one was using that much. Was there some middle ground? We had some discussions, briefly, with the Division of Water Resources at the opening of the 2009 Session about this exact bill concept. In deference to the climate of that session, we just held off. There are no pending projects in mind; this was just a response on how to move things forward and getting a multi-win—encouraging renewable resources to be used, encouraging a lower water requirement, encouraging some sensitivity to water used for domestic wells under the two acre-foot requirements that we

have, and making that all happen as part of development at such time as development starts again in Nevada, which could be some years off.

Chair Kirkpatrick:

Okay. Thank you. I want to move on, but I was part of that subcommittee of S.B. No. 274 of the 74th Session, with Senator Amodei, along with Mr. Goicoechea. We amended A.B. No. 285 of the 74th Session in its entirety into the whole thing, so I am pretty familiar with it. I do not ever remember hearing, on the record, the concern of the two acre-feet. I remember that you could not use more than that, but I do not ever remember anyone complaining that they could not use less. I am just curious. I am sure Mr. Ohrenschall and I will have some working time on this. I just will go back and look at the record, but I never remember hearing that conservation. I just remember it being that they would like two acre-feet and the 1,800 gallons part of the discussion. I do not remember anyone ever saying they could live on 500 gallons.

Assemblyman Ohrenschall:

To the best of my recollection, I recall Mr. DeLee and some others bringing up these concerns to the Natural Resources Committee. I do not believe you sat on that back in 2007.

Chair Kirkpatrick:

Okay. I will look at the minutes. With that, we are going to close the hearing on A.B. 387 and open the hearing on Assembly Bill 419. Mr. Goicoechea, you just miss us in Government Affairs and want to spend the whole day with us.

Assembly Bill 419: Revises provisions relating to groundwater basins.
(BDR 48-299)

Assemblyman Pete Goicoechea, Assembly District No. 35:

I am bringing you A.B. 419. It is a lengthier bill and not nearly as complex as the first one I brought this morning. It does deal, predominantly, with the same issues you heard with the last bill, overappropriated groundwater basins. We have a number of groundwater basins in this state that are overappropriated and I think that number is growing, probably quicker than we would like to see. The State Engineer does not want to be heavy-handed and have to go into these basins and regulate by priority, which means junior permits, where the pumping is curtailed or suspended. Ultimately, you bring that basin back into balance, with only the senior water rights being held.

Assembly Bill 419 does two things. It allows the State Engineer to designate a critical management area in a basin that has shown significant water declines. What that does it would start a ten-year clock at that point. The appropriators

in this critical management area would have to work forward and develop a water conservation plan that actually brings that water basin back into some compliance. I am not saying they would ever get it completely back there. They surely would not get there in ten years, but as long as it was on its way to recovery, I think the State Engineer would feel comfortable with that. With the Chair's permission, we did offer an amendment ([Exhibit K](#)). I think most of you have that handout—if we can just deal with that rather than the original version of the bill. We did have a meeting for a couple of hours with most of the people who were involved, trying to work through the language. This is what we have come up with. We think that is going to need some wordsmithing but it should be somewhat acceptable. I hope the Committee does have that handout.

Chair Kirkpatrick:

Let me make sure everyone has it.

Assemblyman Goicoechea:

I apologize for not getting it on the Nevada Electronic Legislative Information System (NELIS). Anyway, we can walk through it. I will quickly continue on. It also allows for 40 percent of the appropriators in the basin to petition the State Engineer to make the area a critical management area as well as file a conservation plan or water management plan. That plan must come forward in a public hearing. He would have to notice it for two weeks and bring it forward. At the end of the ten-year period, whether it was petitioned or brought forward by the State Engineer, you have a ten-year window to address the issues in an overappropriated basin, started on its way to recovery, or he would be required to regulate by priority.

So, with that, I will just quickly walk through the bill and take any questions. Hopefully we will not take too long with this. Again, we are amending Chapter 534 of NRS to include a basin that has been designated as a critical management area. It can be petitioned, and it says here must be signed by a majority of the appropriators of record. Again, we are talking about one certificate, which is one vote in a petition. That is the intent of the bill at this time. That might be something that needs to be in the flux. Also, I want to point out that it has to look at the relationship in a groundwater basin, that relationship between service and groundwater. Typically, that is a problem we are seeing out there with overappropriated basins. We are seeing declining surface water resources available. That gets back to my first bill, Assembly Bill 329, but we will not go there.

The State Engineer must hold a hearing on the management plan which is brought forward under NRS Chapter 534 and approve that groundwater management plan for a critical management area. Again, I am just walking

through this very rapidly. I think there is another point and it is on page 5, line 37 of the bill. I think it does something to reinforce what we heard in the last bill and that is that the State Engineer may order that withdrawal, including, without limitations, withdrawals from domestic wells. Technically, within NRS Chapter 534, and I want to make sure the Committee understands, when he moves into a groundwater basin, he is required to regulate by priority. We do have priority numbers assigned to domestic wells. They also will be regulated with the language in this bill. I want to make sure everyone understands that. I know that will be a big issue in some areas.

Again, the State Engineer shall designate any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin. We did not define perennial yield in this bill. It was amended out of it. I do know, though, that you have another bill coming forward, Assembly Bill 466, that I think is going to address environmental soundness and perennial yield and that is why we felt comfortable deleting this out. We did not want to get too heavy in this particular bill. Perennial yield, typically, is the amount of usable water from a groundwater aquifer that can be economically withdrawn and consumed each year for an indefinite period of time without impacting the water table in that basin. That is perennial yield. That is what we are striving for in all the groundwater basins. Unfortunately, in many of them, we have exceeded that amount and we have declining water tables, which ultimately will impact both surface and groundwater levels. Unfortunately, typically it ends up being what you can economically withdraw, therefore it starts impacting the state and the economy, whether you are agricultural or development. It becomes an issue. I know it is very quick, but I know you are tired and at some point it gets hard to absorb this stuff. I would stand for any questions.

Assemblywoman Benitez-Thompson:

Mr. Goicoechea, with the amendment, where you are talking about the petition on page 2 and it being signed off by the majority of the appropriators, is that just to get a consensus on what that management agreement plan is or just to make sure that they are noticed as to that plan?

Assemblyman Goicoechea:

The way the bill is drafted, it is kind of confusing because if you get clear back to page 5 and lines 38 through 46, that talks about the State Engineer having the ability to look at a groundwater basin himself. It says he "may" designate that groundwater basin. In the event that you have the majority of the appropriators from a basin petitioning him to create a critical management area, then it becomes "shall." It becomes a case of the appropriators of the water in that basin, if they are concerned about the levels of decline in that groundwater basin, and as long as you can get the majority of them to agree, then they

would bring that forward as a critical management area. The State Engineer would have to move forward and adopt a water management plan and start that ten-year clock. Again, you have ten years to accomplish your road to recovery. The problem is where we are today, again the State Engineer, and I am not throwing any rocks at the Division of Water Resources, but the bottom line is we just are not getting it done. We continue to see these groundwater basins decline. I hope that answers your question. One is "may." One is "shall." At the point you are petitioned, it becomes shall. The State Engineer has to address it.

Chair Kirkpatrick:

Mr. Goedhart, then Mr. Ellison, and then Ms. Pierce.

Assemblyman Goedhart:

At one point in time, you said 40 percent of the appropriators, but it is actually a majority. So I am thinking 50 percent plus one.

Assemblyman Goicoechea:

I apologize. It is in the bill. We did catch that. If you look at page 2, lines 3 and 4, it says a majority. If you go back to page 5, it reflects pursuant to NRS 534.030. In NRS Chapter 534, in existing statute, it requires 40 percent. Again, I am flexible on this. We have talked about it. They are clearly two different sections. It would be good if we could get them together. So, I would prefer on page 2, lines 3 and 4, that we talk about the 40 percent, which is in existing statute.

Assemblyman Goedhart:

I was going to ask you one more question, in terms of priority. Say you are in a valley with 1,000 different parcels, and every parcel comes at it with a right for appropriation of up to two acre-feet, for example. The date of appropriation does not go back to the date of the property reparceling; it goes back to when the well was actually drilled. Is that correct?

Assemblyman Goicoechea:

That is correct. For those of you who do not understand regulation by priority, you have a priority date affixed to your certificate which is in place. That is when you made your proof of beneficial use. Just because you have owned the property since the late 1800s, does not mean you have a water priority from the 1800s.

Assemblyman Goedhart:

What it brings to mind, though, say you have a piece of property, a 10-acre parcel and the developer wanted to reparcel it into ten one-acre parcels. In that

case, he would have to buy water rights for each additional well. The permit he bought was from a certificate that was 100 years in priority, from 100 years ago. Then, even though he just drilled that well, because it ties back to the original water certificate, that is where his priority is, even though he just drilled the well in the last year. Is that correct?

Assemblyman Goicoechea:

Well, I would probably defer that to the State Engineer. It is my understanding that if you make a change in the place and manner of use, he could require you to change your priority date. Typically, yes, it would be when you made a transfer of an older priority date and brought it forward. Again, in that case, I am assuming you are dealing with maybe an agricultural water right that you brought forward and converted into . . .

Assemblyman Goedhart:

And that is my question. Where does that then put the priority date? The time in which you made that change and application from agricultural to residential, or does it still feed back to the original water right?

Assemblyman Goicoechea:

I will defer back to you. I think it depends on if it was protested or not. There well could be a ruling on it. But I will defer that to the State Engineer.

Assemblyman Ellison:

Mr. Goicoechea, the way I looked at this, what would you do if you were in a basin that was closed by the State Engineer? You have all these water rights out there or subdivisions that are still out there that have not come online. We have had all the studies that the municipalities that this is not adequate. I mean not right; let me go back and say that. That has created a problem in the past, getting studies done and then getting them accepted. Maybe you can hit on that.

Assemblyman Goicoechea:

Clearly, this deals with closed water basins. Almost every basin that is overappropriated has been closed. Some of them have been designated. Again, this is just one more level to that, with the critical management area. That is the problem. We have paper water rights and we have wet water rights in all these basins. Some of them are strictly a water right that is being held and really does not have any proof of beneficial use attached to it. It is just out there. We have other people who have appropriations that are, maybe, exceeding what they have appropriated. Again, at the point you raised the level of that groundwater basin to a critical management area, it requires the appropriators in that basin to bring forward, to the State Engineer or those

appropriators, this water management plan that will clearly have to require some people to surrender those paper water rights. There will probably be a curtailment in other places as they try and move forward and bring the basin into balance. It is not going to be good, but it is something we have to address.

Assemblyman Ellison:

Hypothetically, you have studies out there that go back years and years, to the 1960s, done by the state or whomever. I mean, the state has not stepped up to the plate to actually do any current studies in some of these basins. The municipalities or the counties are going out and spending hundreds of thousands of dollars in looking at these basins and the numbers do not match.

Assemblyman Goicoechea:

Yes. And I agree. Typically, any time a basin is closed, and clearly when it is designated, there is a full-blown monitoring plan in place by the Division of Water Resources. They are out there annually, spring and fall, checking those water levels in those basins, and, in many cases, recording the flows on streams and surface water. I agree that we missed the mark in a number of these groundwater basins over the years, and whether it be a basin that is serving a municipality or an agricultural sector, the bottom line is that we missed the perennial yield of what that basin was. It is going to place a hardship on all of this to bring those basins back into compliance. We clearly have to. It cannot be a race to the bottom, and whoever has the deepest pockets pumps the most water. We cannot allow that to go forward.

Assemblywoman Pierce:

There is right now, no definition of perennial yield in NRS?

Assemblyman Goicoechea:

Well, I believe there is probably a definition somewhere. I haven't found it. We were going to incorporate it into the bill, but again, just looking at it, we decided to leave that for A.B. 466, which is also a bill that has been introduced and is coming to this Committee. It also has another issue with environmental soundness and some of those things. Rather than trying to debate it in this bill, which is kind of separate, we . . .

Assemblywoman Pierce:

And that is A.B. 466?

Assemblyman Goicoechea:

Yes. And I believe it has been assigned to this Committee.

Assemblywoman Pierce:

And you like that definition of perennial yield, which is in that bill?

Assemblyman Goicoechea:

Yes. Well, I do not know what is in that bill. I have not studied it. But I assume it is probably very similar to what we had because that is pretty much the accepted hallmark for perennial yield.

Chair Kirkpatrick:

Thank you. Does anyone else have any questions? Mr. Goicoechea, I just have one question. Hypothetically, what happens? You said that domestic wells would be regulated, too. What happens, and this has happened in Clark County, to a subdivision that has relinquished its water rights? Do we tell those people that they have to move out of their house? I think in southern Nevada they actually had to sign up to municipality water. But when they bought into it, they bought into it knowing it was their home and that it had water that was running. Ten years later they realize they had no water rights and they were in a sticky situation. It was very expensive for them. But if you are saying it was regulated, do we go back and take it back? I know it is not necessarily a taking because they were using water that they should have been, to begin with. Do they have a vested right? I just feel like that could be a Supreme Court ruling this Legislature might be dealing with in 2020.

Assemblyman Goicoechea:

Truly, everyone is aware that at the point you are issued a water right, it is a priority right. That is Nevada water law. It is first in time, first in right. If you have a junior right, I think this deals with Assemblyman Goedhart's question and exactly how those rights are brought forward. Where did you acquire the right? Typically though, with domestic wells in the state, if you have a parcel created, you have a right to drill a domestic well and I do not think anyone argues that. But at the point they have to start adjusting the perennial yield of that basin, this bill just says domestic wells have to be included in that. Yes, you probably could be caught up in that and have a junior water right that the State Engineer would consider suspending but, on the flip side, how is he going to suspend your domestic well permit if you do not have municipal water available to you or some other avenue? There is no doubt domestic is a higher priority use, than say, agricultural, so I think he would have to deal with the manner of use that was concerned. You cannot displace that homeowner and say, "Okay, all you domestics are gone but we are going to let Mr. Goedhart go ahead and pump his water to use for his cows or his dairy." It becomes an issue of the highest and best manner of use, which is another piece of it. Then it probably becomes a taking from Mr. Goedhart. And he would probably sue.

Chair Kirkpatrick:

I did not say that because I am not an attorney but I was just thinking that. Are there any other questions on A.B. 419? Okay. At this time, I am going to go ahead and call up those that are in favor of A.B. 419. Please come forward. Mr. King.

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

We are in support of this bill, as amended. And I agree with Mr. Goicoechea that I think it still probably needs just a little bit of wordsmithing, but we like the bill. We think it does good things. If you would like, I could try and answer some of the questions you had regarding the relinquishment of water rights for domestic wells and where those priorities lie. It is in statute that if someone came forward to develop a domestic well subdivision and had to relinquish an existing water right, the water rights which are now pertinent to those domestic wells, even though they are relinquished, would still have the priority of that right that was relinquished. The priority system works. We have cases throughout the state where domestic well subdivisions were built without requiring a relinquishing of water right. Those occur in basins that are not fully appropriated. The priority of those rights would be the date that the well was drilled.

Chair Kirkpatrick:

Thank you for clearing that up. Does anyone have any questions? Thank you, Mr. King. Ms. Lynn.

Susan Lynn, representing Great Basin Water Network:

We are here to support the revised version of A.B. 419 with the exception that we really would like to see perennial yields stay in the bill. We understand that there are many good things about this bill, and rather than get bogged down in the discussion of perennial yield, we are thinking that it is fine to move forward. We think this gives the State Engineer good tools but, at the same time, at some point we do need to have the discussion to define some of these common legal terms that we use, such as perennial yield or safe yield or whatever the case might be. When A.B. 466 comes out, we will talk more about that later. At this time, I say we do support A.B. 419. [Provided prepared testimony ([Exhibit L](#)).]

Chair Kirkpatrick:

Ms. Lynn, I can tell you that I have committed myself and Mr. Goicoechea—and I am sure we have freshman that are interested—during the interim to look at the water law chapters themselves and seeing if we can come up with some legislative thoughts before next session. We have made great strides this

session with some of the things we have already done, but I think it is time for us to clean a lot of that up so that our laws are very clear. We have made that commitment to meet on Saturdays, once a month. That commitment is out there, at least from me and Mr. Goicoechea.

Dean Baker, representing Baker Ranches, Inc.:

I am strongly in favor of this bill. I think it is necessary. I look at all the problems that are being created by the overuse of the water, often called the perennial yield. That is a critical part of the problem that goes forward. Perennial yields are committed and put forth by a variety of people. In my experiences in Snake Valley, where I can show it has been called 80,000 acre-feet and where it was used in negotiations between Utah and Nevada, but as 133,00 acre-feet. Those two different numbers were argued and probably there would have been an agreement between Utah and Nevada had not that 130,000 acre-feet been pushed forward and the demand that it remain.

Perennial yield is largely created by the plants that grow and the service water which is there. In Snake Valley, which is what I am familiar with, most of the water with the wells that have been drilled is in the first 150 feet, the vast majority of them. If you get to a deeper level, they have never found significant water that could be pumped. When you lower the water table any, which you do with pumping, which we at Baker Ranches have done, we have dried springs up around our ranch; we have caused impacts that we do not like on neighbors. We have tentatively agreed that we should not be putting any more drawdowns on rights that we both have and could do, but if we do want to keep the water, we sort of have to do it. It gets to be a real question.

Take, for instance, the south end of the Burbank Meadow, which is a big, natural meadow that is very much today as it was when the first white man saw it and all of the Indians were there gathering their food and whatnot. We have a building there that has newspapers that were put in the walls to seal it in 1892. I think there are four or five dates in the 1800s in the newspapers which were put in the walls. The graveyard there dates to 1880. But the area is reduced historically, sometimes in different ways. Through the last 20 or 30 years, it has been largely home for 2000 mother cows and their calves. In other words, it is very productive. It was productive to the Indians before the white man ever came, before there was a territory or a state, and the water flows across two states.

One of the developments that has been created in producing water is at the south end of the meadow, right between two of the major springs of the Burbank Meadows. But on the Nevada side, where there were old fields that

were not any good because the land was not good and they could not produce, it was sold. But it was bought by a person who readily admits that he bought it and put a dozen pivots or more in it to produce water that he can sell if a pipeline comes from either Utah or Nevada. He does not care which way they come. That is a well. When he did those in 2001, got that and started developing, the first year that he pumped, he dried up the Needlepoint Spring. When you talk about the water for wild horses, 17 wild horses were killed when they started pumping that in 2001. A major spring in the Burbank Meadows is the same water that is in the Needlepoint Spring that killed the 17 wild horses. I will not say absolutely, but our indication is that the cows are not surviving as well. Not just because the springs are not flowing as well, but because of the subirrigation that comes in the Meadow—there are springs all around the meadow. The location where the 1890s newspapers are, are springs that were part of the Clay place and were used by Depression-era people because it was a spring.

When you start the drawdowns of the water table and the perennial yield, there needs to be some kind of definition where this water in Snake Valley, which is near the surface . . . it is very clear that if that seven-foot pipeline is put into that area, or into White Pine County, or at least in Snake Valley, I am sure that there will be an environmental disaster that will have to be dealt with. Those existing rights, which are the majority of Baker Ranches' rights, are ones that predate the state's where we have bought land and whatnot. With the perennial yield, it should be realistic. The exception of interbasin transfers should be looked at very differently than building a farm on top of the aquifer or building a city on top of the aquifer because that it is a totally different environmental thing.

You will notice that the wild horses here can come in and drink the water out of the farmlands. Sorry to take too long.

Chair Kirkpatrick:

It is all good. We like hearing the history behind it. It is important for all the other folks on the Committee. Mr. Livermore.

Assemblyman Livermore:

Mr. Baker, before you leave, the perennial yield is a study of a period of years that take place. Can you tell me, in the instance that you are referencing in that meadow, what the last perennial yield study was? What is the data?

Dean Baker:

Both of those that I mentioned were United States Geological Surveys. The second one, with the more water, said that there were 40,000 acre-feet

coming from Spring Valley, the valley west of us and coming into Snake Valley. So they could raise it up so that they thought there ought to be more water available there, even though that water in Spring Valley had already been considered and partially allocated. The reality of perennial yield can only be created if you kill all the plants and draw the water table down to where it will stay at one level and not go deeper or not come back up. If you pump that much water out of it, you get the perennial yield, but you will also kill springs and other things, which has been the tradition that a drawdown is acceptable. It was a tradition created by creating the farm or the town on top of the water table.

Assemblyman Livermore:

Well, Mr. Baker, I understand that. My question was, when was the last time the appropriation or whatever the USGS did? What is the latest data that they have? What is the date of the data?

Chair Kirkpatrick:

Just the date.

Dean Baker:

I think it was about five years ago.

Chair Kirkpatrick:

No other questions? Thank you, Mr. Baker. Does anyone else want to testify in support of A.B. 419?

Bjorn Selinder, representing Churchill, Eureka, and Elko Counties:

I would just like to go on record as saying that we support any bill that gives the State Engineer more tools to manage water resources which are so scarce in this state. Obviously, there are some issues here, which we understand. We just want to indicate that we are willing to continue to work with the parties to resolve those issues to make A.B. 419 a workable document. With that, I would urge your support of A.B. 419, as amended. I would be happy to answer any questions if there are any.

[Assemblywoman Bustamante Adams assumed the Chair.]

Vice Chair Bustamante Adams:

Are there any questions from the Committee members? Okay. I do not know if you also want to testify.

Jake Tibbitts, Natural Resource Manager, Eureka County:

I will just concur with what Mr. Selinder has already said. Thank you.

Vice Chair Bustamante Adams:

Are there any other individuals in the audience in support of the bill? Okay. At this time we are going to transition into the opposition. Are there any individuals who would like to testify in opposition of the bill? Are there any in the neutral position?

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

We worked with the parties on the proposed amendment. However, we still have some terms that need further clarification, and as a result of that, we cannot offer support today. Therefore, we are in the neutral position. I just want to go on record and state that as we move forward with this bill, we are interested in clarifying what the term "majority of the appropriators" means. I think Mr. Goicoechea mentioned this briefly; that it has to do with the certificate holders in the basin. What we want to make sure is that in basins where you have water rights that are majority—where water rights are held by one party and there are other parties that hold water rights, as well—that we look at both the number of parties that hold water rights, but also the relative amount of water that they hold because those two things have very different constituencies and issues, and we want to make sure that that is considered as we discuss that term.

The other point I would like to make is in subsection 7, page 5. We have language in there that allows the State Engineer "may designate" or pursuant to NRS 534.030 "shall be designated." *Nevada Revised Statutes* 534.030 is the section of law that has to do with the designation of basins, and we are a little concerned that we are confusing the designation statute, which is a specific term in state water law and a designation as a critical groundwater critical management area. We just want to clarify if we understand the intent, which is 40 percent of the appropriators have to petition. But maybe we do not need to reference NRS 534.030 in order to do that. It would probably be clearer if we just said, "if 40 percent of the appropriators petition the State Engineer, the State Engineer shall designate." I just wanted to get those two points on the record, and I am here for any questions.

Vice Chair Bustamante Adams:

Thank you. Are there any questions? Mr. Goedhart.

Assemblyman Goedhart:

I was also considering that as far as bringing forth with 40 percent of the water right stakeholders, to bring to the State Engineer's Office. If you have, say, ten water right owners in one valley and eight of them own one acre-foot and

two of them own 2,000 acre-feet, do you give equal weight to that? That is the question. I would be interested to see how you folks work through that.

Andy Belanger:

That was a discussion when we met prior to the bill. We have not, I think, gotten our heads around it completely, but I think we need to.

Vice Chair Bustamante Adams:

Thank you very much. Go ahead.

Randy Robison, representing Virgin Valley Water District:

I talked to Mr. Goicoechea before the hearing and told him I would listen closely to what he had to say before I came to the table. We had some of the same concerns that were articulated by Mr. Belanger from the Southern Nevada Water Authority (SNWA). We had one concern that was unique to the Virgin Valley Water District. It is in section 1, subsection 3. This is after the State Engineer would have received a petition by a majority of the appropriators of record to request the critical management plan. It says, "The State Engineer shall hold a public hearing in the county where the basin lies." The Virgin Valley Water District is the senior water right holder in a basin that is entirely contained within Lincoln County. We would have some concern about a hearing that had to take place in Lincoln County about a basin in which we are the senior water right holder. Not that we cannot drive our car up there and participate. In talking with Mr. Goicoechea, hopefully there is a way where there might be some balance there that would allow us an appropriate, less defensive venue to talk about that critical management plan. I appreciate that.

Vice Chair Bustamante Adams:

Are there any questions from the Committee members? Okay. Thank you so much. Any others in the neutral position that would like to testify? One more person, Mr. Goicoechea. We are almost there.

Vahid Behmaram, Water Rights Manager, Department of Water Resources, Washoe County:

We generally support this bill. One slight hesitation was in some areas where there is known data of over appropriation, exceeding the perennial yield; we did not quite understand waiting another ten years to solve this issue. It is definitely a positive bill. We support it. Thank you.

Vice Chair Bustamante Adams:

Are there any more questions? Mr. Goicoechea.

Assemblyman Goicoechea:

I will be very brief in closing. Clearly, I think the reference to NRS 534.030 can be deleted. We are more than willing to incorporate whatever language we come up with as far as "a petition must be signed." Whether it's a majority, 40 percent, which is on page 2, we will work on that language between lines 3 and 5 and see if we can come together with that. And deleting the language on page 5, I am completely agreeable to and deleting any reference to NRS 534.030. With that, I think a couple of wordsmiths can clean this up and get the bill out. I want to state and make sure on the record that I believe that the State Engineer made a point, and as the gentleman from Washoe County said, bottom line, we cannot wait ten years until we start working on it. I think the State Engineer has the ability, with A.B. 419, to go ahead and declare a critical management area upon this bill becoming effective.

Assemblywoman Pierce:

Just a comment. I think that on the noticing in the newspaper, you should add a web page there. If there is a web page, it should be on the web page.

Assemblyman Goicoechea:

Yes. And I will let the State Engineer address that. As far as the noticing, that is fine with the web page if they hold one or have one available to them. I think that is going to be language in almost every bill. As far as where the hearings would be held, I assume the State Engineer would not have any problem holding a second hearing if the majority of the water rights were held in another county, even though they were in the same hydrologic basin.

Vice Chair Bustamante Adams:

Thank you very much. With that, we are going to go ahead and close the hearing on A.B. 419. We will now open the hearing on Assembly Bill 422.

Assembly Bill 422: Provides specific authority for public bodies to lease water rights to certain owners or holders of water rights. (BDR 48-681)

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:

Today, I come before you with A.B. 422.

I just want to give you a little bit of history, really quickly. I represent an area that is rural in nature, as well as urban in other parts. I have a particular neighborhood in my district that was the end of Las Vegas, back in the day. The residents moved out there when Tonopah Highway did not exist. So you can imagine, for them, that they had a lot of challenges over time. One of the things that they did have, though, is that they had a subdivision that was built and they had water rights for their subdivision. The subdivision was approved

for, probably, 76 acre-feet of water. However, there are 137 homes there. I am sure you always hear me ask, "How many gallons of water do you think the home is supposed to live on?" I actually have a subdivision that struggles with that on a daily basis. As the laws changed, they did not really transition or stay up on the process because they bought into their homes thinking they had a community well and they were fine, as a group. That is why I ask, "What happens to the people who continue to move there?" Do they know what they are buying into because most people really just are looking for a certain type of home, in a certain type of neighborhood, and they do not think about everything else that goes along with it.

My constituents within my district and I will say the Office of the State Engineer has worked with me for about four years to try and help them come into compliance. However, they will never be able to come into compliance because they do not have the appropriate water rights to do that. They have spent hundreds of thousands of dollars over the course of ten years trying to update their systems, fixing all their leaks on a regular basis. They are very good stewards of trying to do the right thing. However, they do live on half-acre lots. They would like to have a little bit of grass; some of them do have pools. I would say they are not lush, by any means, as much as they are comfortable. They have large trees that have been in place for over 40 years. They do not have the xeriscaping that can survive on the 500 gallons a day. However, they are making strides. We did put a law in place, I believe it was in 2007, that put fines in place. In working with the State Engineer's Office then so that folks like this would not be hurt by the process, it would allow them to try and come into compliance.

The State Engineer's Office keeps a list, every year, of those that are no longer in compliance. My residents fall at number two on the list. Here are their options. They can hook up to municipality water. I cannot even invite Mr. Belanger to my district to have a neighborhood meeting about that because they do not want to see the Southern Nevada Water Authority there. They want no part of them. They do not want to see the Las Vegas Valley Water District there because they are very rural in nature and they want to stay rural in nature, even though all the parcels around them do have municipality water. They are a small neighborhood. For those of you who live in southern Nevada, if you ever want take a drive by it, it is off of Jones Boulevard and Cheyenne Avenue. It is a very nice neighborhood. Their second option is to buy more water rights. Most of the people within that neighborhood are older folks who have lived there and paid off their house, and paying higher homeowners' association fees to buy water rights is not something a lot of them can do. Their third option is one that I am here with before you today

because they really would like to come into compliance, but they are not sure how to do it.

I spoke with the Southern Nevada Water Authority on ways that we can do it so that they can be in compliance. This is an option that I spoke with the Southern Nevada Water Authority about, being able to let them lease the rights of water so that they can actually come into compliance. The State Engineer's Office sends out a nice letter every year. I can always tell you when the letter goes out because I get 137 phone calls in the same two days because they are concerned they are going to be fined for not being in compliance. Originally, we had talked about letting them buy the water at wholesale prices and that does not necessarily work out so well for either side, after doing a lot more investigation. However, I think that if they could make an arrangement to lease water from another agency, they would not have the expense of buying the actual water rights, and they would be in compliance with their pumpage. I believe that the State Engineer's Office is going to be neutral on this, as they should be. But I believe that he could probably tell you that they are hundreds of acre-feet over on a regular basis. They have made strides. I think that when I first became their Assembly person, they were 250 acre-feet over, for the year. That is huge. That is what some cities use. They are now down to about 110 acre-feet over. They are working to get some meters on some of their homes so that they can figure out where the leaks are. They are repairing roadways. I will tell you, in their defense, they happen to be in a situation where they are in an unincorporated county line; however, the city is directly to the west of them and through their neighborhood is where a lot of those lines go for more development, on the city side. They currently have one of their roads that is torn up and will be torn up for three years because that is what the developer was given in Clark County to tie into the Las Vegas city water. At no fault of their own, again, they are subject to being in the middle of this rural neighborhood with big oak trees and big cottonwoods, being a thoroughfare for water pipes. With that, I come to you and ask to give the Southern Nevada Water Authority or other municipalities the ability to lease folks that are overpumping. The State Engineer keeps a very good list, on a regular basis, so they have a third option. I will tell you, though, that we are working with them to see if there are some other remedies. Also, my community serves on the Well Owner's Association meetings. They attend on a regular basis. The Southern Nevada Water Authority and I, over time, with the water laws that we have made and made changes to, have gotten to where we do not need as many meetings. We were having them quite often. In the beginning, they turned into a lot of brawls on the way out. Over time, trying to work with everyone on an individual basis, within their communities, we have gotten to where we have a really good dialogue. So well of a dialogue, that the

attendance is low now because people feel that they do have a voice after all of this time.

Also, in working with the Southern Nevada Water Authority, we agree that one year is well enough so that people can come and have their voice. I think it will actually help the attendance, over time, so that people know that they are getting together once a year to address their concerns. That is sufficient at this time. I would say to the legislative body that they have made great strides in order to give people those voices. So now they have their picnic and they have a regular voice with their legislative folks. I just wanted to give you a little bit of background and show where my constituents are coming from. I am able to answer any questions.

Vice Chair Bustamante Adams:
Mr. Goedhart.

Assemblyman Goedhart:

Thank you. In this situation of your neighborhood where you have a community with a municipal water well in their own system, if they were to lease that extra water that they are overappropriating now, over and above what they are allocated to pump, that would be a physical transfer of water. You could pay for it. Theoretically, they could lease it and still pump it out of the same well. They do not have to physically move it off of their system into your system. Is that correct?

Assemblywoman Kirkpatrick:

That is correct, and that was my point because currently they are not paying for anything and they are willing to pay for something.

Assemblyman Goedhart:

I thought that kind of makes sense, too, because I know the SNWA also has a certain number of water permits within that basin. Thank you.

Vice Chair Bustamante Adams:
Mr. Stewart.

Assemblyman Stewart:

I am familiar with this area. It is a beautiful area. I think this is a wonderful idea.

Vice Chair Bustamante Adams:
Ms. Pierce.

Assemblywoman Pierce:

If they lease this water, and you spoke about meters, they would get meters, so they would have some idea what they are using?

Assemblywoman Kirkpatrick:

Currently, there are two separate issues. One is that it has taken us about four years to even get them to agree to some homes having meters because they feel that it is an infringement. However, we have made great strides. Some of the homeowners are working now to get meters on their homes so we can try and at least identify where the potential leaks could be. In the meantime, as that process takes place to get a regular setting on it, they are agreeing; they want to pay their fair share for water and they do not want to get the letters anymore. We thought if they could lease the water rights and as they get the water meters, they would be able to determine where their problems are and hopefully help them fix it, eventually. Honestly, we have made great strides because it took us four years to get that far.

Vice Chair Bustamante Adams:

Ms. Benitez-Thompson and then Mr. Livermore.

Assemblywoman Benitez-Thompson:

So for your residents in this area, what has noncompliance meant for them? They have been receiving a letter. Have they been paying fines or is it just the threat of fines?

Assemblywoman Kirkpatrick:

They have been receiving the letters but I can tell you what has happened. Over the course of years they got used to getting the letters and really just chucked them. In 2007, when we put the fines in place, we tried to start working with them because, although Mr. Taylor was great to work with and Mr. King is great to work with, what if another engineer comes in and enforces it a little more sternly than they have in the past? Their work with me has been to get these people into compliance; let us help them. This particular community has a more stringent drought code than the Southern Nevada Water Authority. They have made great strides on trying to come into compliance. Have they gotten any fines? No. Have they done a master plan on the things that they can do? Yes. Is there concern that for the future, they could get fines? Yes. But ultimately, they are overpumping, and the rest of us are paying for that.

Assemblyman Livermore:

I really like the bill because it shows the willingness of people to come together and find a solution that works for them. Can you help me understand who is

going to be leasing the water? Is it the homeowners' association (HOA)? Or is it the individual homes?

Assemblywoman Kirkpatrick:

Currently, they have an HOA because that helps with the water master and the community well that they have. With the HOA, the water master would be the one that would sign all documents. They have an active board that meets on a regular basis. They meet every Tuesday. They are pretty active as far as wanting to do the right thing. As a group, they would own it because the water rights are to the association.

Vice Chair Bustamante Adams:

Mrs. Benitez-Thompson.

Assemblywoman Benitez-Thompson:

My last question. This language is written as "any public body may lease to anyone else who owns." Is there anyone throughout the state in which you would not like to see this apply to? Or just apply in any situation where the two bodies, the two entities can come to an agreement on that lease?

Assemblywoman Kirkpatrick:

I think that it is important to know that this does say, "as designated by the State Engineer" on who is overpumping. Because the State Engineer does keep a very detailed list of who is overpumping. I think those are the folks that are currently, in my opinion, if they did not take an option like this or they were not making strides, that they should get the fine. This is to give them an ability to come into compliance, yet another way to come into compliance. There are those who probably do not ever think they should come into compliance or do not want to come into compliance. The penalty applies to those who are not even trying to come into compliance, so this gives them yet another option to come into compliance.

Vice Chair Bustamante Adams:

With that, we are going to go ahead and transition to any others that are in support of A.B. 422. Are there any in the neutral position?

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

We support Assembly Bill 422. We did propose an amendment that the Chair, Mrs. Kirkpatrick, went through ([Exhibit M](#)). I will go through that in a little bit more detail. Section 3 of the amendment takes the language that is in section 1 and puts it specifically in the special act creating the Las Vegas Valley

Groundwater Management Program. This is necessary in order to ensure that our program specifically has that language in it.

Section 4 through section 7 of the bill makes minor technical changes to the administration of the Las Vegas Valley Groundwater Management Program. As the Chair said, currently the committee meets four times a year. They have to submit biennial reports to the Legislature and an annual report, as well, to outline what happened with the groundwater management program the year prior. This amendment removes the requirement for three quarterly meetings and makes it at least once a year. We have committed that if there are other meetings that are necessary, we will continue to have those. But if there is nothing going on in the community, we want to make sure that we do not have to have meetings just to have meetings.

There is a requirement in the original bill draft, in section 9, that required the election of a chair to the committee. It has been somewhat cumbersome to appoint a chair, and the chair does not really have any duties or responsibilities. The process has always been consensus driven, and so we are suggesting that that be removed as well. That is in section 5.

Section 6 has to do with reports. Section 7 has to do with the program for providing financial assistance to well owners who choose to get off of their wells and connect to the municipal system. Our program provides 85 percent of the cost of connection for people who choose to do that, or who are required by the State Engineer to do that. And what this language does is it allows us to decouple some of the requirements of that. One of the requirements is that you have to provide for repayment over time. That is not something we have done. We have always provided it as a grant and not as a repayment. They do not have to pay the 85 percent back. Changing "must" to "may" and including a line in there, "including any other provision reasonably necessary to carry out the provisions and intent of the program," will allow us to use this section of law in a more consistent way with the way the statute reads.

Those are the comments I have, and I am happy to answer any questions.

Vice Chair Bustamante Adams:
Any questions? Mrs. Pierce.

Assemblywoman Pierce:

In a situation like this, the whole community would have to agree to be hooked up to the municipal water. It is not something a group of people could do or something, right?

Andy Belanger:

The way that the program works is that if it is a community well, we require that every property owner in the community agrees to connect. In the case of a mandatory connection, where the well has failed and the property is within 180 feet, they do not have a choice because they do not have a water supply. But in the case that they want to volunteer to connect, we require unanimity.

Vice Chair Bustamante Adams:

Any other questions? Okay. Mr. King.

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

Thank you for the opportunity to testify on A.B. 422. As Chair Kirkpatrick has already stated, our office is neutral on this bill. I did want to get on the record, though, that I concur with what Chair Kirkpatrick said about her constituents and the fact that they have been working with our office for many years. They have made strides towards coming back into compliance. They are still a ways out, but they are trying to do the right thing and we will continue to work with them. Thank you.

Vice Chair Bustamante Adams:

Any questions for Mr. King? Mr. Walker.

Steve Walker, representing Truckee Meadows Water Authority:

We are neutral on the bill, as amended. I was directed by the board of Truckee Meadows Water Authority to oppose the bill unless it was amended, so I am glad it did get amended more to our liking. We feel that the amendment puts the solution where it belongs, and that is within the local area, where the problem is. Quasi-municipal wells serving several houses are a pretty rare beast in northern Nevada. We are on the record as neutral, supporting the amendments. Thank you.

Vice Chair Bustamante Adams:

Thank you, Mr. Walker. Any questions? Seeing none, are there any others in the neutral position? Those in opposition to A.B. 422, please come up. Seeing no opposition, Chair Kirkpatrick do you have any closing remarks?

Assemblywoman Kirkpatrick:

Thank you for the opportunity to try and give my constituents another way to come into compliance, and I appreciate the time today.

Vice Chair Bustamante Adams:

We will close the hearing on A.B. 422. We will adjourn until 7:30 a.m. on Friday. Thank you.

[Meeting adjourned at 12:03 p.m.]

RESPECTFULLY SUBMITTED:

Sheryl Burrows
Committee Secretary

Matthew S. Baker
Transcribing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 30, 2011

Time of Meeting: 7:30 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 410	C	Assemblyman Goedhart	Water Right Protest Packet
A.B. 410	D	Assemblyman Goedhart	Handout Regarding Water Right Applications
A.B. 276	E	Assemblyman Conklin	Conceptual Amendment
A.B. 329	F	Carrol Abel	Prepared Testimony
A.B. 329	G	Sheila Schwadel	Prepared Testimony
A.B. 329	H	Bonnie Matton	Pamphlet and Prepared Testimony
A.B. 329	I		Several Letters in Opposition to Bill
A.B. 387	J	Michael DeLee	Amendment Proposal
A.B. 419	K	Assemblyman Goicoechea	Amendment Proposal
A.B. 419	L	Susan Lynn	Prepared Testimony
A.B. 422	M	Andy Belanger	Proposed Amendment