

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

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

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 8:10 a.m. on Wednesday, May 4, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator John J. Lee, Chair  
Senator Mark A. Manendo, Vice Chair  
Senator Michael A. Schneider  
Senator Joseph (Joe) P. Hardy  
Senator James A. Settelmeyer

**GUEST LEGISLATORS PRESENT:**

Senator Dean A. Rhoads, Rural Nevada Senatorial District  
Assemblyman David P. Bobzien, Assembly District No. 24  
Assemblyman Ed Goedhart, Assembly District No. 36  
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1

**STAFF MEMBERS PRESENT:**

Michael Stewart, Policy Analyst  
Heidi Chlarson, Counsel  
Cynthia Ross, Committee Secretary

**OTHERS PRESENT:**

Jason King, P.E., State Engineer, Division of Water Resources, State  
Department of Conservation and Natural Resources  
Dean Baker, Baker Ranches, Inc.  
John A. Erwin, Director, Natural Resources, Planning and Management,  
Truckee Meadows Water Authority

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Andy Belanger, Southern Nevada Water Authority; Las Vegas Valley Water District  
Rosemary Menard, Director, Department of Water Resources, Washoe County  
John O. Swendseid, Bond Counsel, Washoe County  
John Sherman, CPA, Finance Director, Washoe County  
Susan Lynn, Coordinator, Great Basin Water Network  
Mike Baughman, Humboldt River Basin Water Authority; Lincoln County Regional Development Authority  
Vahid Behmaram, Water Rights Manager, Engineering Division, Department of Water Resources, Washoe County

CHAIR LEE:  
I open this meeting with Assembly Bill (A.B.) 73.

ASSEMBLY BILL 73 (1st Reprint): Revises provisions governing the appropriation of water for a beneficial use. (BDR 48-467)

JASON KING, P.E. (State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources):  
The Office of the State Engineer introduced this bill, and we support the bill as amended.

Language in sections 1 and 5 of A.B. 73 is from the groundwater statute, *Nevada Revised Statutes* (NRS) 534. The language is intended to give our staff authority to enter lands where there is use of surface water and where a dam or other obstruction exists at any reasonable hour of the day to investigate and carry out duties. It mirrors protocol under the groundwater statute.

CHAIR LEE:  
The Office of the State Engineer can enter lands to investigate and carry out duties regarding groundwater.

MR. KING:  
Yes.

CHAIR LEE:  
Which water would be affected with this language?

MR. KING:

*Nevada Revised Statutes* 533 as it pertains to surface water. The language will give us the ability to go onto lands and look at a head gate or a flume. We want the language in NRS 535 which deals with dam safety. If we need to get on a person's property to look at a dam, we will have the ability.

CHAIR LEE:

How do you inspect now?

MR. KING:

We infer we have the ability. The issue recently surfaced when we needed to look at a dam. Our authority was questioned, and we said we have it in NRS 534 but not in NRS 535. The language is needed. We try to contact people when we are going on their land. If they are not there, we continue with the investigation.

CHAIR LEE:

Why are you inclined to add "at any reasonable hour of the day"?

MR. KING:

The language is existing language in statute.

The amendment in section 3 reflects our long-standing interpretation of water law. We do not see the amendment as a change but as a clarification. It deals with the type of water rights that can be forfeited. The only types of water that can be forfeited are certificated water rights. These water rights have been perfected, and it pertains only to groundwater. This has been law since 1947. Section 6 is a reviser's note that makes clear that section 3 is a clarification, not a change in water law.

Section 4 amends NRS 534.350, which provides for the establishment of a domestic well credit program in certain areas where water can be provided by a municipality or another water purveyor. The amendment would delete the requirement for holding a public hearing on the merits of establishing this program. The proposed language requires the Office of the State Engineer to issue an order for the domestic well credit program before adopting the program. The order is appealable by anyone aggrieved by it. Due process is maintained. We propose the change because people do not appear at the hearings to oppose the establishment of a domestic well credit program, and

I question why anyone would. Domestic well credits allow a purveyor the ability to hook to another's domestic well and a credit is given for the domestic well if the person chooses to participate. We travel across the State holding hearings for the people to oppose a domestic well credit and no one attends. This is a waste of time and money.

DEAN BAKER (Baker Ranches, Inc.):

I support A.B. 73. Spring water investigations have not been thorough. The Office of the State Engineer needs land access to investigate water. Better information allows the Office of the State Engineer and others to make better water decisions. The handout ([Exhibit C](#)) shows a graph of the Owens Valley spring flows. In 1970, water began to get pumped, and it had a huge impact on spring flows in Owens Valley. Before 1970, there was about 35,000 acre-feet coming up, but once the pumping began, the flow dropped to about 7,000 acre-feet. Knowledge of spring water, groundwater and examples of the drawdown are important for water management.

JOHN A. ERWIN (Director, Natural Resources, Planning and Management, Truckee Meadows Water Authority):

We support A.B. 73. The bill brings clarity to domestic well issues.

ANDY BELANGER (Southern Nevada Water Authority; Las Vegas Valley Water District):

We support A.B. 73 for the mentioned reasons. We have worked with the State Engineer and interested parties. The bill as presented in the first reprint is clarifying legislation defining the State Engineer's authorities.

CHAIR LEE:

Mr. Baker, do you expect the Office of the State Engineer to inspect your water annually?

MR. BAKER:

Yes. This year we had to undergo maintenance work on a dam as a result of an inspection. I have no problem with the inspections, and they do occur about once a year.

CHAIR LEE:

The hearing on A.B. 73 is closed. I open the hearing on A.B. 237.

**ASSEMBLY BILL 237**: Authorizes counties to issue securities for projects and programs concerning public water and sewer systems. (BDR 20-243)

ASSEMBLYMAN DAVID P. BOBZIEN (Assembly District No. 24):

Assembly Bill 237 was drafted on behalf of the Legislative Committee to Oversee the Western Regional Water Commission. The mission of the Committee was to watch the progress unfold for the Western Regional Water Commission.

Assembly Bill 237 authorizes the issuance of bonds to finance loans to persons who need to connect to a public sewer or water system. It is designed to help folks afford making the costly switch from private wells and septic systems to public water and sewer systems. During the interim, we heard testimony about what the problems are and how Washoe County is assisting people in making the change.

ROSEMARY MENARD (Director, Department of Water Resources, Washoe County): I have provided a presentation on Washoe County Department of Water Resources' Water and Sanitary Sewer Financial Assistance Program ([Exhibit D](#)). Assembly Bill 237 resolves issues from A.B. No. 54 of the 75th Session. The bill has had two purposes. The first is to provide the financial assistance to persons connecting to a public water or sewer system under certain circumstances. The second has to do with a flood management project in the Truckee Meadows. I will talk about why we pursued a financial assistance program for people converting from on-site septic systems and domestic wells to community systems.

The financial assistance program was in response to the economic conditions in our community. Median home values have fallen. A graph is presented on page 4 of [Exhibit D](#). The typical money source for people making a capital investment in their property was a second mortgage, but these mortgages are no longer easy to obtain because many people have little or no equity in their homes. High unemployment and foreclosures in our community have also led to the need of a financial assistance program. We want to make it feasible for people to have public systems available due to faulty septic systems or failed domestic wells and to be able to afford to make the change.

We want to keep people in their homes and maintain property values by assisting them with the financial costs. After A.B. No. 54 of the 75th Session

was adopted in May 2009, we developed policies, procedures and an ordinance last summer establishing the financial assistance program in our community. We began implementing the program but discovered the bill's language did not authorize the County to issue bonds to help finance the program over a long time period. We fronted money to get the program running.

The amendments to Assembly Bill 237 would allow us to package the commitments when we reach a certain threshold to get a long-term bond to finance the program. We are making 20-year loans. This will allow us the ability to establish a revolving loan fund as a way to continue to finance our efforts.

Page 10 in [Exhibit D](#) shows about 6,000 properties in southern Washoe County having domestic wells. This southern area is known as the Truckee Meadows Service Area, and urban services are intended to become available. The map on page 11 shows the same geographic area. There are about 15,000 parcels with septic systems. There will be a transition from these wells and septic systems to community infrastructure. Every parcel does not have the community infrastructure, but they will. Regulations require that property owners must connect to the community system if septic tanks or domestic wells require permitted work and if a well needs deepening. These are regulations coming out of our health district.

JOHN O. SWENDSEID (Bond Counsel, Washoe County):

The provisions of A.B. 237 allow the issuance of bonds pursuant to the County Bond Law; two, it requires that if loans are made under this program, they be made only to natural persons as per the Nevada Constitution; and three, it provides how bonds can be used.

Section 2 amends the County Bond Law allowing bonds that we issue for this program to be revenue bonds. This is in addition to general obligation bonds used to fund the program.

Sections 4 and 5 are conforming amendments to the definition of sewer project and water project to make it clear in a county the size of Washoe County, sewer projects and water projects include funding connections to public water and sewer systems.

Section 6 allows the bonds to have a higher interest rate than is typical for the bonds we issue. Bonds of these types under federal law are not tax-exempt.

Normal interest rate limits are based on tax-exempt interest rates, so it is necessary to allow the bonds to have a higher interest rate.

CHAIR LEE:

If a natural person gets the assistance program loan and converts to the community system, what happens to the loan if the person sells the property?

MR. SWENDSEID:

The specifics of the program are left to each county.

MS. MENARD:

Policies, procedures and ordinances require loans be paid at the time of property transfer. A bank or mortgage company wants encumbrances removed. The loan acts like a second mortgage. It would be paid off at the time of property transfer.

CHAIR LEE:

The loan is for the duration of 20 years. Money accumulates with each payment. The investor will not be paid off early. The money will continue to move from loan to loan, or do you hope to pay the bond faster than the note?

MS. MENARD:

We anticipate the people taking our loans would pay over the 20-year life of the loan. The bondholder would get its payments over time. A special assessment district allows individuals in that district to pay off assessments early.

MR. SWENDSEID:

The bill and the County Bond Law leave the call features of the bonds to the county at the time bonds are issued. Bonds issued for projects having low risk of repayment, such as jails or city halls, typically have no call for ten years. This is traditional in the municipal market. Bonds with risk of repayment have earlier call features. Assessment bonds are similar to what we are addressing. Property owners can prepay, but they have to pay a prepayment penalty. The county is allowed to call the bond, but it pays a prepayment penalty to the bondholder.

CHAIR LEE:

The hearing on A.B. 237 is closed, and I will open the hearing on A.B. 238.

**ASSEMBLY BILL 238 (1st Reprint)**: Revises provisions concerning the refunding of certain municipal securities. (BDR 20-244)

ASSEMBLYMAN BOBZIEN:

Assembly Bill 238 deals with the challenge of integrating service providers in the Truckee Meadows into one consolidated system with the goal of providing better value to the ratepayers across the Truckee Meadows through future avoided capital costs, such as facilities and wastewater treatment. This was the Legislative Committee to Oversee the Western Regional Water Commission's major component of discussion.

Assembly Bill 238 allows for the issuance of County Bond Bank bonds for the refinancing of securities previously issued to an entity other than the County Bond Bank and for the issuance of new debt by the County Bond Bank. This bill provides a tool for Washoe County to use in the event the consolidation of its Department of Water Resources with the Truckee Meadows Water Authority goes forward.

MS. MENARD:

This bill is a mechanism to assist in the consolidation of the Truckee Meadows Water Authority with the Department of Water Resources water utility function. The goal is to use County Bond Bank resources on a going-forward basis and to potentially refinance the Truckee Meadows Water Authority's acquisition for cost-savings to ratepayers.

JOHN SHERMAN, CPA (Finance Director, Washoe County):

Law passed in 1999 allows counties to create County Bond Banks wherein if a county has a higher credit rating, it can partner with a municipality that has a lower credit rating to take the higher credit rating to issue debt. This will result in lower interest rates.

Sections 1 and 2 of Assembly Bill 238 allow the refinancing of existing debt that was not issued through the County Bond Bank. Law allows refinancing debt issued through a County Bond Bank but not issued outside of it. The bill allows us to refinance existing debt. In the case of the Truckee Meadows Water Authority and the Department of Water Resources, if it is economically advantageous to refinance the Truckee Meadows Water Authority debt, it could be done under the County Bond Bank laws.

There is an agreed-upon amendment that limits the provision of refinancing debt outside of the County Bond Bank for only Washoe County. The population threshold is in the bill. Section 1, subsection 1 reads " ... refunding of municipal securities on or before October 1, 1999." It should read "on or after 1999." This language is found in section 2, subsection 2. A change needs to be made.

MR. SWENDSEID:

The October 1, 1999, date comes from the date the Legislature authorized County Bond Banks. The purpose is to allow refunding of bonds issued after the date. The date "on or after October 1, 1999" is also found at the end of the Legislative Counsel's Digest. We want section 1, subsection 1 amended to say after instead of before.

CHAIR LEE:

The hearing is closed on A.B. 238. I will now open the hearing on A.B. 115.

[ASSEMBLY BILL 115 \(1st Reprint\)](#): Revises provisions governing the appropriation of water for beneficial use. (BDR 48-207)

SENATOR DEAN A. RHOADS (Rural Nevada Senatorial District):

Assembly Bill 115 was sponsored by the Legislative Committee on Public Lands, and I am Chair of this Committee.

One duty of the Legislative Committee on Public Lands is to monitor water issues in the State. This interim, the Committee heard from the State Engineer about the desire to revise NRS 533.370 to make it more understandable, and to address changes caused by last year's Nevada Supreme Court case, *Great Basin Water Network v. State Eng'r*, 126 Nev.\_\_\_\_, 234 P.3d 912 (2010). The case involved Southern Nevada Water Authority's applications. The Committee submitted a bill draft request for this purpose. The Committee did not endorse specific language, and members are neutral on the bill. The Committee wanted these important issues to be heard by the Legislature.

ASSEMBLYWOMAN MARILYN KIRKPATRICK (Assembly District No. 1):

I am Chair of the Assembly Committee on Government Affairs. This water issue was contentious during the Special Session. The Committee, having ten new members, agrees the legislative record is not clear. We spent many hours clarifying the legislative record and the intent of each amendment from the original bill. We addressed intent and problems to create legislation that will

rectify the issues. Several different meetings took place, producing a few hundred pages of minutes addressing this bill section by section. Water issues are seldom clear. From our perspective, the Assembly has gone out of the way to ensure the water bill's intent is clear as well as the floor records. The best water attorneys in the State, representatives from the Great Basin Water Network and the Office of the State Engineer came together and agreed the bill as written addressing NRS 533 is the intent of the Legislature going forward.

CHAIR LEE:

The seven-year time frame is pronounced in this bill. Why this time frame?

ASSEMBLYWOMAN KIRKPATRICK:

The seven-year time frame refers to the time water must be put to use. If water is not used in this time period, it must go to a public hearing. The seven-year period is in statute. The Committee also talked about republication as it relieved many issues.

MR. KING:

The purpose of Assembly Bill 115 is to clarify the provisions of NRS 533.370 and related citations, and to address the ambiguity found by the Nevada Supreme Court in the *Great Basin Water Network* decision.

*Nevada Revised Statute* 533.370 is the most important section within water law. It is the main provision that guides the Office in determining whether to approve or deny a water right application. This section needs to be comprehensive and clear. This section originally became law in 1913 and has been amended in 18 Legislative Sessions. Office staff work daily with this statute and have difficulty interpreting it. We support A.B. 115 as amended in the first reprint.

Section 1 has a small change. It is an internal reference amendment as a result of other changes in the bill. Section 2 deletes language relating to provisions addressed later in the bill that are a result of the Nevada Supreme Court decision in *Great Basin Water Network*. Section 3, subsections 2 and 3 add existing language from NRS 533.370. We moved the language in the bill to make the bill read clearly. Section 3, subsection 4 has been amended to allow the Office up to two years to take action on a water application rather than the existing one year. Two years is more reasonable. Exceptions the Office can cite to postpone action on applications have been added to section 3, subsection 4.

These are based on problems facing the Office. This includes water application protests, adjudications and authorizations for water use from other governmental agencies. We have a number of pending applications that we cannot take action upon because we are waiting for the Bureau of Land Management to say yes, this land is suitable for farming.

Section 3, subsection 7 provides that after seven years if the Office has not acted or held a hearing on an application regardless whether there were valid reasons to postpone, we must republish the application. This is a direct result of the *Great Basin Water Network* decision. When time goes by and nothing has been done, due process is necessary and an additional republication of the application must occur. The intent of the language is that the republication must occur "immediately preceding the time at which the State Engineer is ready to approve or reject the application." This is to prevent a number of seven-year increments where applications would have to be republished. If an application goes seven years without the Office acting or holding a hearing, we know we have to republish the application. We republish it at seven years. If there are additional ongoing studies that might take three years, we might wait another two and one-half years before we republish, right before we know we will set it for a hearing. It did not make sense to add seven years, republish it and maybe wait another seven years and republish again. We will republish it when we are ready to take action on the application.

Section 3, subsection 8 deletes language because of new language in section 3, subsection 7 requiring all water rights to be republished. The previous section 3, subsection 8 dealt with the republication of only certain interbasin transfers greater than 250 acre-feet. They had to be republished after seven years, but now it is any application the Office has not acted upon after seven years that we have to republish.

Section 3, subsection 9 is deleted because it was specific to section 3, subsection 8 which has been deleted. The provision of any successor in interest to a protestant can file a written protest against the granting of the application is still allowed in section 3, new subsection 9.

Section 7 provides that the amendments only apply to applications filed after July 1.

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CHAIR LEE:

The City of Mesquite lost its place in line. When an application is republished, is the place in line lost, or does the priority remain in place?

MR. KING:

Republishing occurs on the same application, so the application maintains the priority date of when it was filed. The place in line is not lost.

SENATOR SETTELMAYER:

Section 8 says the act becomes effective on July 1. For legislative intent, will this bill affect people already in the system?

MR. KING:

No. The new provisions including the seven-year republishing provision and the two years for us to take action only applies to applications filed after July 1 or change applications. Applications pending will not be affected.

SENATOR HARDY:

Looking at section 3, subsection 7, do you have the obligation to publish the hearing? This addresses the application only.

MR. KING:

Yes. We would notify people of the hearing through certified mail, and how we publish it on our Website would not change.

MR. BAKER:

I support A.B. 115. There needs to be knowledge and background. This legislation began in 1913, but there were water rights before that time, and they need to be protected. Knowledge and study needs to occur for the application and for those who may become affected. A large water pipeline was put in Owens Valley. It created problems for the Los Angeles Department of Water and Power, and costs ran high. The State Engineer needs good facilities and clear-cut laws to do his job well. This bill is an improvement to existing law.

MR. ERWIN:

We support A.B. 115 as amended in the first reprint.

MR. BELANGER:

We support A.B. 115. We worked exhaustively on the Assembly side on this bill. The bill affects only applications filed after the effective date of July 1. The reordering of the statutes and new language only apply to applications after the effective date. This is important to many parties in the State, and we support it.

SUSAN LYNN (Coordinator, Great Basin Water Network):

We support A.B. 115. We do have concerns about this linked to S.B. 153. A.B. 115 fulfills the Nevada Supreme Court ruling on *Great Basin Water Network* by codifying it.

[SENATE BILL 153 \(1st Reprint\)](#): Revises provisions governing the appropriation of water by municipalities. (BDR 48-821)

CHAIR LEE:

The hearing is closed on A.B. 115, and the hearing is open on A.B. 410.

[ASSEMBLY BILL 410 \(1st Reprint\)](#): 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 GOEDHART (Assembly District No. 36):

Assembly Bill 410 has been heard on the Assembly side a number of times and legislatively, I have learned to take baby steps.

The genesis behind this bill is job creation. This bill is also about personal private property rights. In Nevada, we have property rights as it relates to physical land and property, and we have water rights which is determined as a property right.

Nye County has the challenge to create economic development in a county that is 98 percent owned and controlled by the federal government. Less than 2 percent of the land is allowed to be owned by private individuals. When a person buys land and water rights, it is common to run into government interference in allowing the utilization of those property rights to create jobs, wealth, opportunities and wages, and to pay taxes.

The genesis of A.B. 410 is the Nye County Resolution ([Exhibit E](#)) in 2004 and 2005. In both instances, it was approved unanimously by the Nye County Board of Commissioners. Amargosa Valley water rights in Nye County are personal,

private water rights. In many cases, people want to buy those water rights and move them around the Valley. Over a period of several years, agencies in the U.S. Department of Interior, such as the U.S. Fish and Wildlife Service and Death Valley National Park, are utilizing robo protests. These protests can be lengthy. The State Engineer is backed up and in certain cases, these protests have driven people out of the Valley. I refer you to the document from Lisle Lowe ([Exhibit F](#)). Mr. Lowe is a professional land surveyor who is a second-generation resident of Amargosa Valley. The document in [Exhibit F](#) says that various United States federal agencies are protesting water right changes in Amargosa Valley. The water rights protested by federal agencies are in good standing and should be used to operate legitimate agricultural and commercial ventures.

The Nevada Division of Water Resources will overrule most of these robo protests, but the process takes several months and has a chilling effect upon potential buyers. Mr. Lowe says these federal protests will cripple economic development in Amargosa Valley.

Since bringing attention to these protests, the population of Amargosa Valley has dropped almost 50 percent. Jade Robinson, from Utah, wanted to build Horizon Academy ([Exhibit G](#)), a school for troubled teens. The school was under construction and had about 15 acre-feet of water. I told Robinson he needed to buy water rights. I lined him up with a buyer because the Academy needed about 30 acre-feet. The school purchased the additional needed 15 acre-feet of water rights, which were transferred to Horizon Academy.

In the middle of this multimillion dollar construction project, the school officials were approached by a representative of the Division of Water Resources recommending them to stop construction. The Division told Horizon Academy that Death Valley National Park was likely to launch a protest, and the 15 acre-feet of water rights might never transfer. The school construction stopped, and the workers were sent home. I interceded and encouraged the owner to proceed with the project rather than to pull out of Amargosa Valley. Over the course of the next two and one-half years, Horizon Academy negotiated with the National Park Service and gave the National Park Service one-third of its water rights to make the protest stop. Imagine if a person buys a 30-acre property, and a government agency says we do not want you to own that property, but if you give us 10 acres, we will allow you to keep the other 20. This is what is occurring in Amargosa Valley.

The Esmeralda Development and Economic Network (EDEN, Inc.) of Esmeralda and Nye Counties has also signed a letter of support ([Exhibit H](#)).

Another gentleman wanted to invest in Amargosa Valley to create a retail shopping center ([Exhibit I](#)). He needed to apply for five acre-feet of water rights, which he purchased from a willing seller. He was protested by the National Park Service. After four years, he gave up and went somewhere else. These are a few of many examples. It is getting ridiculous. We had a lady from Las Vegas who moved to Amargosa Valley to retire. She bought five acre-feet of water so she could have a one-acre horse paddock pasture. Her horse died before she was able to utilize her water rights.

I have a personal story. I invested in 100 acres about 11 years ago for economic opportunity and to create jobs. It was one of the oldest homesteaded operations in Amargosa Valley. The well gave out in early summer. I had completed leveling the land, had planted alfalfa and it was growing. The well started to give out, so I made an application to move the point of diversion 1,200 feet to the west on my property. That application was protested by the National Park Service. By the time it was resolved with the National Park Service, it was November. During the interim period, I would have to drive by my fields and watch them dry up, turn brown and blow away. This loss in crops cost my family an estimated \$70,000. During the resolution, the National Park Service said, that is all you wanted? No problem and the protest went away. I said are you going to issue me an apology? I did not receive an apology nor was I reimbursed \$70,000. This type of behavior is causing extreme economic hardship in rural Nevada. It has a chilling effect on economic development. It costs jobs, it costs tax revenue and it costs people their livelihoods.

Assembly Bill 410 says that if a water right is to be protested, the protest should be peer-reviewed, moved up the rank and file and signed off by the chief deputy, administrator on the State level or head of the governmental agency. It places accountability on the people issuing and making the policy of protesting these water right applications.

We have defined the water applications to be valid, permitted or certificated in good standing within the same hydrographic basin. This bill does not address exporting water outside of basins. It is only the movement of water rights within the same basin. Assembly Bill 410 also does not go against the

State Engineer's rulings within Amargosa Valley. Water cannot be moved south and east as it would move toward the endangered Devil's Hole pupfish. The bill says that if a federal agency wants to do a robo protest, it should be peer-reviewed, moved up through rank and file, and signed off by someone with culpability and responsibility for making the policy decision rather than by someone new or in the back office having no accountability. The people signing the robo protests make the policy that is killing Nevada jobs and opportunity and denying property owners their rights to utilize their water rights. These property rights belong to the people in this State and to people willing to invest in Nevada. The federal robo protests threaten the doctrine of Nevada sovereignty. We want to hold the people accountable who are executing the policy.

CHAIR LEE:  
What is a robo protest?

ASSEMBLYMAN GOEDHART:  
A robo protest is a 15- to 20-page protest drawn up by attorneys. They are turned in for water rights as little as one or two acre-feet. The same protest is used. It is simply copied and stamped with the needed name and sent in. Robo protests are allowable. Under this bill, we want the protests to go up the rank and file and be signed by a person in charge because these protests can delay the use of one's water rights by seven to ten years. Imagine purchasing a home and having to fight to move into the home. If the court battle lasts seven to ten years, that time period is a significant delay in moving into the home you purchased.

CHAIR LEE:  
Is the National Park Service protesting because it is aware of the endangered Devil Hole's pupfish?

ASSEMBLYMAN GOEDHART:  
The Park Service has legitimate concerns. We are not advocating its ability or authority to protest, but in our case, the water usage over the past 15 years has increased in the Valley. In this time, the water levels have raised in Devil's Hole. Are you worried about the nuclear reactor in Fukushima and the radioactive cloud? Yes, there is radiation, but how serious is it?

CHAIR LEE:

The National Park Service asked Horizon Academy for one-third of its property rights in exchange to stop the protest. I see the same coercion with the Tahoe Regional Planning Agency (TRPA) in the Tahoe Basin. How was the land-taking chosen to take the protest away?

ASSEMBLYMAN GOEDHART:

The gentleman purchased 15 acre-feet of water rights, and for the Park Service to drop the protest, there were two options: Take the protest to court and spend thousands of dollars on attorney fees, or give up a third of the water rights. The man was new to Nevada and he wanted to get Horizon Academy running. The school needed the additional water rights to water the soccer field and a baseball diamond, and he did not have time on his side, so he gave up one-third of the land.

We have a multibillion dollar green energy project that is going forward in Amargosa Valley. I have volunteered over 1,000 hours of my time to the project. It is a 500-megawatt concentrated solar power project with an investment of about \$3 billion. It will employ thousands of people in construction and 160 people upon full buildout. Long-term permanent jobs will be provided, and \$15 million per year will be paid in property taxes. This will help the State, as 45 percent of those taxes go to the State, local school districts and county government. The energy project went from wet cooling to dry cooling, so it reduced their water right usage from 4,000 acre-feet to 400 acre-feet. It will cost 15 percent more per kilowatt of energy produced. The National Park Service approached the project developers and said since you are going to use 400 acre-feet, we want you to buy 230 acre-feet more and give it to us, or we will protest and hold you up in court. The developers bought the additional 230 acre-feet and gave them to the National Park Service.

Protests are launched in almost all cases. The last person hired working at the National Park Service is the one who stamps a name on the protests. Policy decisions that kill economic development, Nevada jobs and taxes for infrastructure need to be made by people who are accountable for these decisions. On a State level, we want these agencies and their directors, chiefs, or administrators to sign the protests.

CHAIR LEE:

Does the accumulated water have to be used for beneficial use?

ASSEMBLYMAN GOEDHART:

The main priority is not to use the water. The beneficial use is not to use the water. It protects resources into perpetuity. We are not denying or questioning that policy. Someone at an appropriate level of responsibility should be held accountable for these decisions. We want the person's name and signature on the paper.

CHAIR LEE:

The idea is for the applications to be reviewed. How much does an acre-foot of water cost in Amargosa Valley?

ASSEMBLYMAN GOEDHART:

The cost of an acre-foot is about \$2,500. This is about 325,000 gallons. This can flood 1 acre of land 12 inches deep.

SENATOR HARDY:

There are set times laid out in the bill. The peer review going up the rank and file to the person in charge of the government will take time. Is there a time period for when the protest is filed to the time the protest is resolved?

ASSEMBLYMAN GOEDHART:

In statute, there is a protest period. The launch is triggered by the public notification in the paper, and if there is time to do a robo protest, the agencies have time to call their State directors and find out if they want to sign off on the protest. We do not want to lengthen the protest period. There is no time set for the period it takes to adjudicate a water protest.

SENATOR HARDY:

This bill will not give them more time.

ASSEMBLYMAN GOEDHART:

Correct. It allows the protest to be launched within the preexisting statute of the time. This does not preclude anyone from launching a protest.

SENATOR HARDY:

This bill will not help your field of alfalfa in the spring get to fruition by the end of the summer.

ASSEMBLYMAN GOEDHART:

It will not help in that case, and we know that spurious protests will continue to occur but when a person wants to move five acre-feet or ten acre-feet of water, or a person wants to irrigate a horse paddock, this bill will make a person with accountability for signing a protest to question if he or she wants his or her name on a protest.

SENATOR HARDY:

Will there be an incentive for parties to resolve a protest sooner than the protest deadline?

ASSEMBLYMAN GOEDHART:

By putting accountability on the person signing a protest, the bill is intended to lessen the protests on small movements of water.

SENATOR HARDY:

The director or person in charge has to answer to somebody else who would be under the accountability of the electorate. The director, governmental agency, subdivision or administrative chief would have a person above them to answer to if a protest is taking too long and is spurious.

ASSEMBLYMAN GOEDHART:

We want this bill to have that effect. This bill is a baby step, but it is a movement in the right direction and standings for the people in Nevada. The water belongs to the people. Our doctrine of sovereignty over the water in the State should not be subjugated and held hostage by these robo protests filed by a federal agency.

SENATOR SETTELMAYER:

I support the bill's concept. To have a specific person sign off on the protests is good. In that vein, I have concerns with the wording in section 2, subsection 3, paragraph (g), subparagraph (1) that says "or other person in charge." I want to ensure a specific individual directly responsible to be held accountable. The language "or other person in charge" allows the agencies to allow any person to be in charge.

ASSEMBLYMAN GOEDHART:

We have that language because we did not want to preclude anyone to have the ability to launch a protest. This is a shot across the bow rather than put

handcuffs on the people who would want to protest. The amendments to this bill have watered it down. This language was requested by people who would otherwise oppose this bill. We are moving forward with this bill, and if the bill does not have the effect we want, we will return to the Legislature and tighten up the bill.

CHAIR LEE:

No people in this hearing are representing the National Park Service. Did Park Service representatives or other federal agency people testify on the Assembly side?

ASSEMBLYMAN GOEDHART:

No. They did talk to a reporter at the *Pahrump Valley Times*. The National Park Service representatives said they did not file many protests, and the protests did not cause significant economic hardship on Nye County. They did not want to testify. They know they have been overzealous in denying Nevadans their right to utilize their properties. A proposed amendment has been included in the first reprint of A.B. 410, and it was sent to us by the U.S. Forest Service. The amendment in section 2, subsection 3, paragraph (g), subparagraph (2), sub-sub paragraph (l) says: "The Forest Supervisor for the Humboldt-Toiyabe National Forest, if the protest is filed by the United States Forest Service ... ." The language reflects that if a protest occurs in the Humboldt-Toiyabe National Forest, the Forest Supervisor is to be the person in charge of signing the protests.

CHAIR LEE:

These protests are wrong, and Nevadans and their personal private property should not be constrained by the federal government without good reason. It is wrong that people's property rights are stolen by threat.

ASSEMBLYMAN GOEDHART:

We cannot preclude people with legitimate rights from protesting. This can be a private individual or private or governmental agency. We did not know how to address this issue, so we left it aside. We have a long history of water law which allows for legal protest. This bill is intended to tighten up the law. Within governmental agencies, it adds accountability to bureaucrats launching the protests.

SENATOR SETTELMAYER:

I agree with the Chair to have language in statute prohibiting the condition of receiving something upon protest. My concern is I have witnessed circumstances in local government where an individual comes forward wanting a zoning change and offers to donate a park to make it happen. By adding no conditions, it can preclude good.

Assemblyman Goedhart, I share your concern. We have witnessed similar occurrences with the TRPA and with local jurisdictions. It is problematic.

CHAIR LEE:

I can understand an offering, and I can understand a taking.

ASSEMBLYMAN GOEDHART:

The federal agency refers to its actions as mitigation.

CHAIR LEE:

This legislation is worthy of discussion.

MR. KING:

Our office is neutral on the bill. I have one clarification to the language Senator Settelmeyer addressed concerning "or other persons in charge of the government, governmental agency or political subdivision" signing off on a protest. This could be head of the local office to sign off on the protest.

ASSEMBLYMAN GOEDHART:

Yes, this is the intent. In the local office, the political subdivision would be the county board of commissioners and with governmental agencies, it is directed to State directors. There is no local Death Valley National Park or U.S. Fish and Wildlife Service. For the most part, the most local is the State level.

CHAIR LEE:

When a robo protest is used, are the involved parties required to attend the hearing and testify, or do they only send the paperwork to disrupt the process?

ASSEMBLYMAN GOEDHART:

Nevada water law is specialized. When a protest is filed, a public hearing is held. There is an adjudication process when the parties cannot come to terms. The course of action commonly involves hiring a water right surveyor and often

a water right attorney. In some cases, a person might pay five times the value of the water to utilize the water. Most people do not know how to navigate the system. Nevada water law is unique, and people do not know the details if they have not had to immerse themselves in the minutiae of water law. A policy is in place, and we are not denying due process.

MR. KING:

Amargosa Valley is unique. It is home to the endangered Devil's Hole pupfish. There is a federal reserved water right, and it is a top senior water right in the basin. Every water right my office issues for groundwater allows for a reasonable lowering of the water table. There is a water ledge for the Devil's Hole pupfish. If the water table drops more than seven inches, the pupfish cannot reproduce and will die. In another basin, a reasonable lowering of a water table might be a foot a year. In Amargosa, we are addressing inches, and this is why the basin is heavily regulated.

I cannot verify the National Park Service demanding water to stop a water right protest, but I have heard the story a number of times. The alternative for the applicant is to not cower to the demand and move forward on the application, have it protested and move through the process. We have seen the robo protest. There is a boilerplate protest. Some of the protest issues are valid, while others are not. They all go through the process, and we render a decision.

ASSEMBLYMAN GOEDHART:

In the last 15 years, the water table in Amargosa Valley has risen. There is a fault. The water emanating from Ash Meadows is about 10,000 to 14,000 acre-feet per year. It comes up to the surface, goes across the desert and evaporates. The State has done a good job in being vigilant in light of the federal reserved water right. We are on the other side of the fault in Amargosa Valley. The office of the State Engineer's Order 1197 says a person cannot move a water right south or east toward the direction of Devil's Hole if the water right is within a ten-mile radius from Devil's Hole. There are other provisions concerning a 25-mile radius. In the case where people conform to these safeguards, it is disappointing to see Nevadans or those who wish to invest in Nevada precluded from using their property rights.

CHAIR LEE:

The distance becomes critical for the seven inches. Are junior water right holders, including businesses, prevented from using their water rights if the ledge drops below seven inches?

ASSEMBLYMAN GOEDHART:

The water level has not diminished in Devil's Hole. With a hydrology study, we contend that the water is from the other side of a ground fault. It is what forces the water up to the surface. There are 10,000 to 14,000 acre-feet a year that boils to the surface. It hits a tertiary dike, creates pressure and forces the water to the surface. If it were to diminish, the junior water rights would be under the authority of the Office of the State Engineer, Division of Water Resources, and limits would be set to protect the federal senior water right. We are not denying or questioning this process.

CHAIR LEE:

Can this Committee stop Nevada water right holders from becoming hostage to the National Park Service? Are threats and coercion by use of protest intentional to prevent growth in Amargosa Valley?

ASSEMBLYMAN GOEDHART:

It seems perplexing because the Valley has about 20,000 to 24,000 acre-feet of permitted water rights. Had National Park Service officials purchased water rights from willing sellers, they could have purchased 90 percent of the water in the Valley with the money they have spent in litigation. They chose to spend \$10 litigating to the \$1 they could spend to buy water from willing sellers. We do not oppose the federal government buying land and water rights, but it chooses to spend \$10 on litigation, and it is a taking. This germane issue is not addressed in this bill.

SENATOR HARDY:

Municipalities do long-term master planning. When developers come in, they must follow the plan. If a person wants to buy water rights and needs 30 acre-feet of water, can it be planned that person must buy 40 acre-feet and give 10 acre-feet so it is not a taking? The 10 acre-feet can support the water table and the Devil's Hole pupfish.

ASSEMBLYMAN GOEDHART:

There is not a State policy for people to buy extra water rights and retire them to utilize the remaining or existing water rights. The buying of extra water rights has occurred behind closed doors with the protestants to get the protestants to go away. It is not required.

SENATOR HARDY:

It appears we have a de facto system because it is occurring.

ASSEMBLYMAN GOEDHART:

It has happened in several instances in Amargosa Valley. I have been involved in cases fighting Death Valley National Park that went through the adjudication process. The water rights were allowed to move, and we did not pay the Park. It requires a person with deep pockets, intimate knowledge of Nevada water law and tenacity to take it two to five years. The water right also cannot be needed immediately. If the water is needed, the person is more willing to make a deal.

CHAIR LEE:

I do not want to disrupt Nevada water law with this additional legislation. Can we carve out Amargosa Valley? I do not want to harm other communities with A.B. 410.

MR. KING:

When you are talking about additional legislation, are you talking about what is beyond this bill concerning buying additional water to get a water right through?

SENATOR SETTELMAYER:

He is addressing the concept of a condition of donation.

CHAIR LEE:

The situation in Amargosa Valley is unique. The Devil Hole's pupfish is the culprit behind the water right issues in the valley. I do not want to expand Nevada water law because of circumstances in Amargosa Valley, yet the issues in Amargosa Valley need to be addressed. I do not want this bill to be detrimental for others in Nevada.

ASSEMBLYMAN GOEDHART:

We narrowed the bill to address water rights to be moved in the same hydrographic basin, permitted or certified water rights. New water right applications are excluded, and the right of protest is not precluded. The bill does not address condition of donations. We want accountability by the parties who file the protests and execute the policy.

SENATOR HARDY:

I have a question for counsel. Is there a way to add the size of the largest county in the State of Nevada or a hydrographic basin definition on the application of this legislation?

ASSEMBLYMAN GOEDHART:

This legislation is germane to the State. Amargosa Valley is the canary in the coal mine with the Devil's Hole pupfish. It is happening here but it can creep into other counties. We also have the chilling effect of losing thousands of jobs and millions of dollars of taxes to the State. This bill should be applicable to the State. Assembly Bill 410 is a tiny step forward in advocating and protecting private personal property rights. In 2008, the People's Initiative to Stop the Taking of Our Land bill was approved. Few people are involved with water rights, so people do not realize Nevada needs to have similar laws to prevent the taking of water rights.

HEIDI CHLARSON (Counsel):

To answer Senator Hardy's question, I need to research your propositions.

MIKE BAUGHMAN (Humboldt River Basin Water Authority; Lincoln County Regional Development Authority):

The Humboldt River Basin Water Authority is a five-county water resources group. It includes the counties of Elko, Eureka, Humboldt, Lander and Pershing and the economic development entity, Lincoln County Regional Development Authority. Both parties support A.B. 410. We also support the conceptual amendments. The River Basin Authority has a question about why the National Park Service is not specifically mentioned in the bill. The agency has been mentioned in testimony, but it is not one of the agencies listed in terms of having leadership sign the protest. I suggest this might be an omission.

I want to address the issue of mitigation or taking. How the process works, for little effort and cost, is that a person can file a protest against an application to

change the manner and place of use of water. The application is ready for action, it becomes protested, and before the State Engineer acts, time has accrued and the parties conceptually have a conversation and seek to resolve the protest. It is entirely incumbent upon the applicant to initiate the conversation to resolve the protest as the applicant has the incentive to move the water. Protestants often do not want to engage in conversations. If those conversations occur and bear fruit, it results in a stimulatory agreement to withdraw the protest.

The stipulated agreement is where a deal is cut. An applicant agrees to provide something to the protestant to resolve the protest. It does not have to be water. Often times it is money to provide funding for a study on a species or money for the improvements for wildlife. The process can go on for a long time, and the applicant is waiting to move forward. The Legislature in the future might figure out how to compel a protestant to come to the table quickly to work to resolve the protest. Time is money. The applicant has to wait, and negotiations can take a long period of time. It can be costly even in the advance of an agreement.

CHAIR LEE:

Mr. Baughman, what was the pipeline that went across northern Nevada where a nonprofit group extorted money from the developers to help them continue their antics on others?

MR. BAUGHMAN:

It was the Ruby Natural Gas Pipeline, and the group was the Western Watersheds Project out of Idaho that protested the Bureau of Land Management's decision to allow the project to go forward. The two parties worked together, and the pipeline company provided money to the Western Watersheds Project.

VAHID BEHMARAM (Water Rights Manager, Engineering Division, Department of Water Resources, Washoe County):

I oppose this bill. The legitimacy of a protest against a water right application should depend on technical and legal merit. Who signs it is irrelevant. The Office of the State Engineer has discretion within NRS to overrule a protest without holding a hearing and proceed in granting an application. The quantity of acre-feet is immaterial as who signs the protest to the State Engineer's decision to exercise his discretion.

CHAIR LEE:

How are you affected if another person signs the protest?

MR. BEHMARAM:

Washoe County has an extensive water operation. It is an enterprise fund. We have in excess of 15,000 water customers in various basins in the cities of Reno and Sparks extending north in Lemmon Valley south to Washoe Valley. We own many water wells, infrastructure and permits. If a water application can negatively impact our wells and affect our ability to serve water customers, we have had the ability to file protests. Most applications filed with the State Engineer are in-basin applications. Out-of-basins exports are a minority. This bill is restrictive to in-basin transfers. It has an impact, but it does not make it impossible for us to function. This legislation is not warranted. Washoe County has been in the water business since 1984. No objections have occurred when we have filed a water protest.

Assemblyman Goedhart mentioned the process might allow smaller water rights to proceed. People will object to all applications because allowing small water rights to proceed will set a precedent for large water rights. A line will need to be drawn. What is considered de minimis?

CHAIR LEE:

The process works in Washoe County.

MR. BEHMARAM:

City governments are exempted, but counties are included in this bill. Why make that differentiation? Cities and counties are both local governments.

MR. BELANGER:

We are neutral on the bill. We support the bill's concept of making sure that the people filing the protests have the authority and proper clearance. The protests we file are approved by our general manager. This is consistent with the bill. In some cases, action has been ratified by our elected board. The general manager signs off on protests prior to being filed. We understand why this bill is important in parts of the State.

ASSEMBLYMAN GOEDHART:

The opposition to this bill by Mr. Behmaram demonstrates the bill will have an effect. Mr. Behmaram stated that protests are based on technical merits, but

the fact that he is advocating against the bill says the bill will serve as the intended effect. Some bureaucrats do not want the light of transparency and accountability shined upon their actions. This legislation will take care of those protests done in a punitive, arbitrary or discriminatory manner. If county commissioners or people in the lead must sign off on these protests, they will ensure protests are legitimate. This bill adds another measure of accountability on the person filing the protests.

CHAIR LEE:

Mr. Behmaram brings forth the point that cities are exempt.

ASSEMBLYMAN GOEDHART:

The bill in section 2, subsection 3, paragraph (g) subparagraph (1) says "or other person in charge of the government, governmental agency or political subdivision ... ." This would include cities, towns and unincorporated areas.

CHAIR LEE:

Is this how you read that section?

MS. CHLARSON:

Yes. In section 1, subsection 2, paragraph (b), I do not read those people as an exhaustive list. If there is a governmental agency, a political subdivision or a government that has a water right that is filing a protest, the language that says the director, administrator, chief, head or other person in charge of the government, governmental agency or political subdivision would be required to sign in those cases.

CHAIR LEE:

Concerning Mr. Baughman, this would bring the National Park Service into this bill regardless if it is listed.

MS. CHLARSON:

Correct.

MR. ERWIN:

We are neutral on A.B. 410. We deal with applications we file and numerous times we get protests that are frivolous in their claims and they are dismissed. We see a repeat of protest particularly on Truckee River applications as we move water from agricultural purposes into municipal and industrial uses.

Two or three Sessions ago, an increase in protest fees was considered. It is \$150 to file a water right application and it costs \$25 to file a protest. It might be useful to revisit the cost it takes to process and manage a protest, and a price increase might cause a potential protestant to think twice. The difference in cost between an application and a protest is significant.

In numerous cases, protestants have filed protests on our applications. We try to get together with protestants and work out a position we can agree upon to get the protest withdrawn. The alternative is we rely on the Office of the State Engineer to process the protests as swiftly as possible. The process can be lengthy and costs money. We support the concept of having the decision maker responsible and appear. We support having scientific and technical merits of protests laid out clearly as opposed to a robo protest. The office of the State Engineer spends time sorting through information.

CHAIR LEE:

Application fees and protest fees are different processes, so mirroring fees do not make sense. One application can draw several protests and it can become a cash cow. I understand your intention of limiting frivolous protests.

There is no further business on A.B. 410. I now open the hearing on A.B. 422.

ASSEMBLY BILL 422 (1st Reprint): Revises provisions relating to water.  
(BDR 48-681)

ASSEMBLYWOMAN MARILYN KIRKPATRICK (Assembly District No.1):

This bill is unique to my district. I represent a specific neighborhood that was built in the early 1960s. The developer was allowed to build a specific number of lots based on the water right allocation. Clark County forgot to consider the water right and allowed for additional lots to become developed. The developers had water rights for over 70 homes, and they built 138. The homes are on one-half-acre lots. The yards are large, many have pools, and the homes are large family homes consuming a good share of water. The neighborhood has been overpumping water for many years and is a top water user in southern Nevada.

The neighborhood wants to come into water compliance, and every year the residents make strides. They do not want to go on the municipal system. They have water rights for a reason, and they want to keep them.

In 2007, the Legislature passed a law that allows for fines when people overuse water. The neighborhood has been working with the Office of the State Engineer to come into compliance.

Assembly Bill 422 would allow Southern Nevada Water Authority (SNWA) to make allowances within the groundwater management program to lease water to the residents of the neighborhood to make them compliant. The residents are not paying for water now, and they are using it. They are willing to pay for their extra water usage.

An amendment was added to the bill. It addressed well owners and changed the number of meetings of the Advisory Committee to once a year. The well owners work well together, and they do not need to meet twice a year.

CHAIR LEE:

What is the neighborhood zoning? This neighborhood is zoned for horses.

ASSEMBLYWOMAN KIRKPATRICK:

These are ranch estates. There is an arena within the subdivision.

CHAIR LEE:

Do the homes have water meters?

ASSEMBLYWOMAN KIRKPATRICK:

No.

MR. KING:

We are neutral on this bill. We have met with the neighborhood residents and they are trying to come into compliance. I understand the homeowners want meters for their homes. They also want an audit on their water system. A leak can be a source of overusage. The changes in this bill to water law are benign.

The substantive changes are in the groundwater management portion under NRS 572. It allows water purveyors to lease water to private entities. In the case Ms. Kirkpatrick presented, the intent is homeowners can lease water, file change applications, bring more water into their systems and not be out of compliance.

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CHAIR LEE:

Other areas are out of compliance, such as the area around Texas Station. Would this give that area the same opportunity?

MR. KING:

Yes.

MR. BELANGER:

We support A.B. 422. Section 1 is drafted to allow any public body that has water rights to lease them. The Southern Nevada Water Authority, water districts, cities and counties have the option to use their water rights to assist people who are overappropriated. This benefit creates flexibility, and in this difficult economic time and perpetually difficult water climate, it provides partnership opportunity.

Several sections of this bill have clean-up language to the groundwater management program in the Las Vegas Valley, and it makes it more flexible to meet the needs of the community. We are required to meet four times a year. At times, people do not show at the meeting and at other times, meetings are packed if there is an issue of interest. Workshops can also necessitate additional meetings. We have worked earnestly with the community for 14 years and, at times, it has not been easy.

CHAIR LEE:

The bill deletes requirements of the Advisory Committee.

MR. BELANGER:

We are keeping the Advisory Committee. We are eliminating duplicate reporting requirements. Under statute, we have to send Legislators an annual report. The first year, we send an annual report; and the second year, we send a report covering the two-year period. We removed the intermediate report. Under this bill, Legislators will get a report every two years

CHAIR LEE:

Section 4 reads: "The Advisory Committee shall meet at least once every year." Deleted language in section 4 reads, "The Advisory Committee shall elect from its members a Chair ... ." Can you review the Committee?

MR. BELANGER:

The bill as drafted in 1997 required Advisory Committee members to meet four times a year or once every three months, and they had to name a chair. Working through the process, naming a chair to the Committee is of no value but a formality. The chair has no power or authority, so we removed it. We want to keep the Advisory Committee. It is comprised of seven members representing different groundwater users in southern Nevada. This includes two domestic well owners, a quasi-municipal well owner, a private water company representative, a person who receives water from a water district that has a well, a public water entity representative and a commercial-industrial well owner. The Advisory Committee looks at issues holistically in the valley and comes up with recommendations everyone can support. Assembly Bill 422 is not eliminating the Advisory Committee. We are removing the statutory requirement that the Committee meet four times a year and to allow the Committee to meet when needed. The Committee will also meet at least once a year to hear and address community issues.

CHAIR LEE:

The Advisory Committee gathers information, but it does not control the agenda.

MR. BELANGER:

No, the Committee drives the agenda. The Committee identifies community issues, tells us about the issues, and we work with them and provide recommendations that can go to the SNWA Board of Directors and in some cases, the Legislature. We had bills in the 1999, 2001 and 2003 Sessions that addressed specific changes in water law to clarify protections. The Advisory Committee would still continue to advise the Southern Nevada Water Authority, the Office of the State Engineer and the Division of Environmental Protection on groundwater issues specifically in the Las Vegas Valley.

CHAIR LEE:

For disclosure, I own a building in a similar water usage situation. This is good legislation.

SENATOR HARDY:

The neighborhood had been granted less than 100 units of water rights, and it became 170 units. There is a central well. The neighborhood pumps more water than allocated, and this bill will allow it to lease more water out of the well.

MR. KING:

The residents are overpumping between 200 acre-feet to 350 acre-feet on an annual basis. They would contact a local purveyor to lease 200 acre-feet because of the overpumping while they work to come into compliance or purchase more water rights. A temporary change application would be filed, moving the 200 acre-feet from one entity to the neighborhood, but the water right name would remain with the entity owning the water right. A new point of diversion would exist, and the neighborhood could legally pump the additional 200 acre-feet. After one year, the temporary application goes away and a new temporary application would need to be filed if the need for additional water exists to keep the neighborhood in compliance.

SENATOR HARDY:

This leads me to think of pipes, leaky pipes and sewer systems. When there are no pipes, people have independent sewer systems. What kind of sewer system is in this neighborhood?

MR. KING:

Assemblywoman Kirkpatrick believes the neighborhood is on individual septic systems.

SENATOR HARDY:

I am concerned with leaky pipes and independent sewer systems. There is a diameter around a well and an independent sewer system. We overlay the maps to figure out public health safety. We want to minimize E. coli migrating through to the water. I have been involved with a water system that had a significant leak, and we could not locate it. Leaks can expose people to sewer systems that are not on the public pipes.

MR. BELANGER:

The health district code as it relates to sewer systems and septic systems is that to have a septic system, a person must have a minimum of one acre to ensure water quality standards can be met. In the Las Vegas Valley, if the density is one-half acre, it will be a sewer system that governs the wastewater. The concern is valid. If wells are concentrated in an area, the potential is there for nitrates and other problems.

ASSEMBLYWOMAN KIRKPATRICK:

The neighborhood has one community well. We have identified leaks from the pump itself, such as water not going into the pipes but spewing on the outside. This neighborhood is located in unincorporated Clark County. The main thoroughfare is Madre Mesa Drive, and it has been dug up seven times in the last 20 years to supply pipes across Jones Boulevard to a subdivision in the city of Las Vegas. There could be damage. Clark County signed a development agreement with the subdivision developer so it does not have to come back to evaluate the problems on the road for another three years.

The subdivision has stricter water restrictions than what Southern Nevada Water Authority requires. It made changes because there was breakage within the pipes.

The neighborhood is unique because there are corner lots adjacent to the city of Las Vegas. Some houses have transferred to public sewer and public water, but I understand the interior of the subdivision remains on septic systems.

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CHAIR LEE:

The hearing on A.B. 422 is closed. This meeting on Senate Government Affairs is adjourned at 10:25 a.m.

RESPECTFULLY SUBMITTED:

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Cynthia Ross,  
Committee Secretary

APPROVED BY:

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Senator John J. Lee, Chair

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

<u><b>A.B. 425S</b></u>			
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 73	C	Dean Baker	Graph
A.B. 237	D	Rosemary Menard	Presentation
A.B. 410	E	Assemblyman Ed Goedhart	Nye County Resolution No. 2004-02
A.B. 410	F	Assemblyman Ed Goedhart	Letter from Lisle Lowe
A.B. 410	G	Assemblyman Ed Goedhart	Letter from Horizon Academy
A.B. 410	H	Assemblyman Ed Goedhart	Letter from EDEN, Inc.
A.B. 410	I	Assemblyman Ed Goedhart	Letter from Alosi Investment Group LLC