

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON NATURAL RESOURCES, AGRICULTURE, AND  
MINING**

**Seventy-Seventh Session  
April 30, 2013**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Skip Daly at 12:49 p.m. on Tuesday, April 30, 2013, in Room 3161 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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 [nelis.leg.state.nv.us/77th2013](http://nelis.leg.state.nv.us/77th2013). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Skip Daly, Chair  
Assemblyman Paul Aizley, Vice Chair  
Assemblyman Paul Anderson  
Assemblyman Richard Carrillo  
Assemblywoman Lesley E. Cohen  
Assemblyman John Ellison  
Assemblyman Ira Hansen  
Assemblyman James W. Healey  
Assemblyman Pete Livermore  
Assemblyman Tyrone Thompson  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Heidi Swank (excused)

**GUEST LEGISLATORS PRESENT:**

Senator Pete Goicoechea, Senatorial District No. 19  
Assemblyman Tom Grady, Assembly District No. 38

Minutes ID: 1040



**STAFF MEMBERS PRESENT:**

Amelie Welden, Committee Policy Analyst  
Randy Stephenson, Committee Counsel  
Cheryl Williams, Recording Secretary  
Steven Sisneros, Committee Assistant

**OTHERS PRESENT:**

Jacob Tibbitts, Manager, Natural Resources, Eureka County  
Jason King, P.E., State Engineer, Division of Water Resources, State  
Department of Conservation and Natural Resources  
Edwin James, representing Carson Water Subconservancy District  
Neena Laxalt, representing Nevada Cattlemen's Association  
Elmer Bull, Chief, Habitat Division, Department of Wildlife  
Colleen Cripps, Ph.D., Administrator, Division of Environmental  
Protection, State Department of Conservation and Natural  
Resources  
Steve Walker, representing Truckee Meadows Water Authority  
Robert Sack, Director, Environmental Health Services Division,  
Washoe County Health District

**Chair Daly:**

We will get started. I had a request from the Senator from Eureka County asking if he could do his two bills first so he could get back to his committee. We will go ahead and open the hearing on Senate Bill 133 (1st Reprint).

**Senate Bill 133 (1st Reprint):** Requires the State Engineer to allow a county to participate in an advisory capacity in the development and implementation of a plan relating to the appropriation of water for beneficial use under certain circumstances. (BDR 48-631)

**Senator Goicoechea, Senatorial District No. 19:**

It is always a pleasure to be back in this room. I spent four of my last five sessions here. It is a great committee.

Senate Bill 133 (1st Reprint) is a fairly simple bill. The language in S.B. 133 (R1) requires the formation of a monitoring, management, and mitigation (3M) plan. This language was a bill request from Eureka County. As we have some of these larger water appropriation projects coming forward, the counties would like to cooperate in the formation of the 3M plan, which the state engineer would be able to require. This is only language that spells out the 3M plan and the conditions under which the county may participate.

They can, in fact, comment and supply some analysis and information to the state engineer as he is forming this plan. However, the key component of it is that the county is in no way subject to judicial review, even after they have submitted and participated in the comments and analysis of the plan.

I will have Eureka County's natural resource person and the state engineer come to the table with me shortly, and we will walk through the bill a little more specifically for you. However, I would like to close right now and allow my colleague from the Assembly to make a few comments. I know he has another committee hearing to attend. I will turn it over to Assemblyman Grady.

**Assemblyman Tom Grady, Assembly District No. 38:**

I am a cosponsor of this, and I do not have to tell most of you that one of Nevada's most precious commodities is our water. The state water engineer probably has one of the toughest jobs in the state, and I think the intent of this bill is to try to give him some assistance to accomplish the goals of this bill. I am pleased to sign on with my colleague from the Senate, and we ask for your consideration and approval of the bill.

**Senator Goicoechea:**

With that, if I may, I would like to call the state engineer, Jason King, to the table, as well as Jake Tibbitts, the natural resources manager from Eureka County. I will just walk through it again. Specifically, this is enabling language for the state engineer to grant the local government the ability to participate in a 3M plan. I will stand for any questions.

**Chair Daly:**

We will hear their testimony and then have them stay at the table because we might have some questions.

**Jacob Tibbitts, Manager, Natural Resources, Eureka County:**

I have submitted written testimony ([Exhibit C](#)). You should have it on the Nevada Electronic Legislative Information System (NELIS). I am just going to hit the high points because Senator Goicoechea pretty much covered the intent and provisions of the bill.

Essentially, it comes down to local government participation, having a seat at the table and having a say in the monitoring, management, and mitigation of water resources within the county. The bill does not tie the state engineer's hands. It does not abrogate the state engineer's authority by any means. It just allows counties to participate, and if the state engineer chooses not to include their input or comments into the plan, it is not appealable. It is not subject to judicial review.

Another issue that it addresses is that *Nevada Revised Statutes* (NRS) Chapter 278 calls for local jurisdictions to do master planning within their jurisdictions. One of the elements that is required in NRS Chapter 278 is planning for water resources within that jurisdiction. We find it somewhat of a catch-22 to be mandated to plan at the local level for our resources yet not have that seat at the table.

I also want to mention that with these larger appropriations that have taken place in Eureka County, the state engineer has been very gracious and has allowed Eureka County to come and participate. We are not saying that this is not taking place. However, there is nothing in this statute requiring him to do that. It is not always going to be Mr. King as the state engineer, and we do value our working relationship with him and thank him for giving Eureka County that participation.

Those are the high points. I am open to take any questions.

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

We do support this bill as amended. First and foremost, we do believe the county should be at the table. They are a primary stakeholder, and we believe that they should have that kind of input. We opposed the bill when it first came out because, if the county was at the table and made a recommendation to our office and, for whatever reason, our office chose not to insert that recommendation, it was uncertain to us whether or not that would become an appealable decision. We would then be back in court, and everything would get locked up there.

With the way it is amended, we support the bill. We do believe the county should have a voice. With that, I would be happy to answer any questions.

**Senator Goicoechea:**

I have one more comment, if I may. This bill was worked on extensively on the Senate side. I was just looking at my file, and there were at least four or five different amendments as we came through this process. However, there is one thing I have to clarify. This only considers applications to appropriate water for beneficial use that were filed on or after January 1, 2012. This does not allow us to go back any further than that. There are some applications we are all very aware of, especially in eastern Nevada, that have been pending for years. This does not allow us to go back any further than January 1, 2012 for that consideration of a 3M plan.

**Chair Daly:**

Thank you. Are there any questions from the Committee?

**Assemblyman Hansen:**

All we are really doing here is putting in statute what is already current practice. Is that the purpose of this bill?

**Jason King:**

Yes. However, another reason that I support this is it does away with the ambiguity in terms of whether or not a decision we make relative to a 3M plan is appealable.

**Assemblyman Ellison:**

I thought this was a great bill when I first read it. I have not gotten caught up on the amendments, but what is good about this is it allows the local government to monitor, manage, and mitigate. I think that is going to be key, working with both the state engineer and the counties.

**Chair Daly:**

Are there any other questions from the Committee? [There were none.] I have a couple of questions. They have to do with section 1, subsections 1 and 3.

First of all, why are we going back to January 1, 2012? What is the story there? Obviously, we are a year past that date. There have been some applications that have been made. Which ones are we talking about?

**Senator Goicoechea:**

There are a number of filed applications that have not been dealt with. We are talking about new applications. The date was agreed upon by the proponents of the bill. They felt that would be a good starting point.

As the state engineer just addressed, there are 3M plans in place that are being worked on by local government and the state engineer. This language does come forward. It is a little bit unclear if they could file an appeal and say something is an appealable action without this bill in place. Let us move it back to where we actually have some 3M plans moving forward and make sure it is clear. Let us make it clear by applying this language that even if it were an application that had been done since January 1, 2012, it is not appealable.

**Chair Daly:**

You keep saying "3M plan." For the record, I want make sure that stands for monitoring, management, and mitigation.

**Senator Goicoechea:**

It is a mouthful, but yes. The 3M plan is monitoring, management, and mitigation. These are ongoing plans that are occurring all across the state. That is the reason for bringing the language, to clarify once and for all that you have the ability to participate and are not subject to judicial review.

**Chair Daly:**

I just wanted to have that clear so 150 years from now someone will know what a 3M plan is.

**Senator Goicoechea:**

I hope we will be done with them by then.

**Chair Daly:**

Do some of these applications for beneficial use involve more than one county, or is it only just the one county? The language I keep reading in the bill talks about "a county." How do you involve more than one?

**Senator Goicoechea:**

It would probably be better to allow the state engineer to address this because he is the one who will administer it. Technically, if it did overlap into another county, both counties would have the ability to participate. Typically, you would have a 3M plan that could overlap county boundaries, but I will let the state engineer address that.

**Jason King:**

That is incorrect, Senator. It is the county where the point of diversion lies. If you have an application for a water right that is in Eureka County, even though it may be an interbasin transfer that might take the water to White Pine County, by statute, only Eureka County can participate in this 3M plan. I will tell you right now, as I started out my testimony, I believe that every county should have a seat at the table, but that is not what this language does. It has to do with where the water is being taken out of.

**Chair Daly:**

I appreciate that. To me, you would want to have the point of diversion county and the other county that might be affected. We can have our legal counsel look at that.

**Senator Goicoechea:**

That is exactly what it says. The state engineer is correct. If you had an instance where a well field overlapped a county line, then both counties could participate as long as they had a point of diversion. Again, you are not subject

to just whatever the drawdown is. You would have to have a point of diversion, but typically, if you had a well field, it might cross a county line and both counties could participate. That is what the bill says.

**Chair Daly:**

We want to keep it at the point of diversion.

**Senator Goicoechea:**

Exactly. You would not want an adjacent county just because they felt they were impacted. If there was no water being pumped in their jurisdiction, I do not see why they should participate.

**Chair Daly:**

My final question goes to the judicial review part of the bill. I understand what it is that you are trying to do. The state water master has the jurisdiction. He makes the decision. Everybody has their appeal rights after that. You want to be able to participate at the table when you are making that decision. It seems to me—and I just want to make sure you understand it the same way I do—that if he does not take your advice, you are not going to be able to appeal that on judicial review, which would be the normal process. It is almost like, if you are sitting at the table, you are giving up your right even though there might have been something else. It is almost to say that now you are here at the table, and you do not get to bring that up on judicial review even though it might not have been something that you recommended.

It seems to be a gray area there for me, and it seems to be a risk to the counties that are saying that. I would just like to get your comment. I do not want to see you give up rights you might otherwise have.

**Senator Goicoechea:**

I will allow Mr. King and Mr. Tibbitts to also comment on this, but this does nothing to preclude you from the normal process, which is when you file an application and have a protest period. That is still maintained. This only pertains to when you are sitting at the table and dealing with water applications that are subject to a monitoring, management, and mitigation plan that is ordered by the state engineer. It is very narrow and very focused. No jurisdiction is giving up its ability to go through the normal process, which is to file an application, have a protest period, and potentially go into a full-blown hearing. This is typically done once we move ahead. I will let the state engineer comment to that.

**Jason King:**

I agree with what Senator Goicoechea just said. I would argue that judicial review of a decision on the 3M plan is not appropriate even though we are talking about it in this bill. We are clarifying that it is not appropriate. Thereby, I could now argue that it is not appropriate.

Secondly, a county has input into the 3M plan, and it is not implemented in the 3M plan. However, if the appropriation of water in this water project, which the 3M plan is a part of, is conflicting with existing rights, all the water right holders still have that due process to come back to our office, say they are being harmed, and ask for a decision there. If our office says we do not agree, then that decision is appealable. They are not losing any due process. It is just that input at the 3M.

**Chair Daly:**

Are there any further questions from the Committee? [There were none.] At this time, we will take additional testimony in support of S.B. 133 (R1). [There was none.] We will take testimony in opposition. [There was none.] Is there any testimony in neutral? [There was none.] Seeing no further questions and no further testimony, we will close the hearing on S.B. 133 (R1) and open the hearing on Senate Bill 134 (1st Reprint).

**Senate Bill 134 (1st Reprint):      Revises provisions governing animals.  
(BDR 48-249)**

**Senator Pete Goicoechea, Senatorial District No. 19:**

Senate Bill 134 (1st Reprint) was also subject to a lot of negotiations as we worked through the process. I know there will be some, at least, neutral testimony. I hope there is no testimony in opposition because, again, we took quite a while working on this. This started out as the infamous guzzler bill. There was some real opposition to it.

We are all aware that last year we experienced a significant drought, especially across northeastern Nevada. Nevada was declared a drought disaster area both by the Governor and by the U.S. Department of Agriculture. There was funding available to drill wells for livestock water. We had a lot of areas where we just did not have any water available.

The problem was, once you filed an application, got your map done, and got that permit, it could be three to eight months down the road by the time you completed the process. Unfortunately, livestock cannot wait that long.



What section 1 of the bill allows for is the issuance of a temporary permit to appropriate groundwater to water livestock. It is a very straightforward, simple process. It can only be triggered if there is a disaster declaration by the Governor, the President, or the Secretary of Agriculture. All you have to do is file an affidavit, and at the point of diversion, you can drill the well. That permit is good for a year. At the end of a year, you can either perfect those water rights through the normal appropriation process, or you would have to plug the borehole. If you were going through the normal application process and the state engineer did, in fact, determine that you, by drilling this emergency well, were impacting someone else's rights, you would have to plug the hole. However, in the interim, it does allow you to access the emergency funding and water your livestock. That portion of the bill is for a temporary water right that allows you to get out there quickly, access the money, get the relief you need for your livestock, and move through the process.

The second part of the bill pertains to wildlife guzzlers. There are a number of them across the state. I have seen numbers between 1,600 and 1,900. The Department of Wildlife (NDOW) has a list of all the guzzlers, a map, and a book that talks about all the guzzlers and the sites they have in the state. We had originally talked about a maximum capacity for the guzzlers, but we moved completely away from that.

What it says in section 7 is, "If the Department constructs or causes to be constructed a fence in carrying out its duties . . . ." The guzzlers are an asset to wildlife, and we all understand that. We want to make sure they are at least being maintained. We want them in good working order, and we want fences around them. I know NDOW is really working hard at replacing a lot of the old fencing that was in place before. They started with cable and some wire, and now they are going to pipe rail fencing. I am sure they will be here to testify on that.

The other change in the bill was that each guzzler will have a notice posted on it as to who you should contact if you are a sportsman or a recreationist out there. You go by a guzzler and see it is in disrepair; either the float mechanism is not functioning or maybe the apron is broken. There would be a phone number on the corner of that guzzler site that would give you the contact information of the person or agency responsible for that guzzler. We do have some that were actually put in place by the Fraternity of the Desert Bighorn down south. Those are not NDOW's guzzlers. This would make it so if you are responsible for a guzzler, there would be contact information.

This part of the bill also defines guzzlers. That is the long and short of S.B. 134 (R1).

I know there will be some additional testimony, but I will stand for questions.

**Assemblyman Aizley:**

If you make the phone call, who answers? Do you get a recording?

**Senator Goicoechea:**

That would be a good question for you to ask the people who will be following me. It will be NDOW or an agency who answers. You might have to call them during office hours or something. It is a lot better than walking by there, finding a mess, and not having anybody to contact. All I can say to you is to keep trying.

**Assemblyman Ellison:**

I think this bill is important, not only for cattle but for wildlife. Some of the old guzzlers that were out there were blocked off, and the wildlife could not get to them. Is that what created this provision at the beginning? We had areas that were plugged off and had no water coming through them, and then there were areas that were pinched around them. You could not get to them. Could you hit on that?

**Senator Goicoechea:**

I will be honest with you. We have a lot of volunteers all across the state, such as the Fraternity of the Desert Bighorns or Carson Valley Chukar Club. They all love to get out there, have a function, and build a guzzler. It is a good chance for a barbecue, a lot of fun, and a lot of camaraderie. They build guzzlers, which are great for wildlife and the resources out there. However, once they are constructed, then somebody has to maintain them.

This bill is really just focused on trying to help NDOW and the other groups a little bit. Do not get me wrong, you are going to hear some testimony. There are a number of volunteers out there who really work on the guzzler program. I think with this bill coming forward, there is the intent to try to schedule some more volunteers to go out. Maybe Pershing County's Chukars Unlimited are willing to go out, do an annual visit on those facilities, and make sure they are functioning. There are at least 1,600 guzzlers in this state in some very remote locations, and the question becomes: are they being visited and maintained in a practical manner?

That is where this bill is headed. That was also one amendment we put in this bill. The different entities have until October 1, 2014 to get around and put the notices out. That gives them at least two seasons in the field. The Department of Wildlife recognized that they could not get around to all of them in one year. There are a number of them. That is really what the bill is

focused on. They are good facilities. They are great for wildlife. The bottom line is this is just some more language so we can maintain the guzzlers.

**Assemblyman Wheeler:**

I am just wondering if you have an estimate of how long it will take to actually get a temporary permit. Even those can take some time.

**Senator Goicoechea:**

Again, I will let the state engineer address this, but we anticipate it could be done in 30 days or less.

**Assemblywoman Cohen:**

You touched on the fences, but could you give a little more detail about what kind of condition we are seeing out there and what is going on?

**Senator Goicoechea:**

Some of these were constructed in the 1960s. This has been a process evolving from wire to cable. The new program that NDOW is bringing forward now, which is pipe rail fencing, is a vast improvement over what we had in the past. We need to go back through all these guzzlers we have built over the last 40 years and make sure they are upgraded. The bill does not demand that they be constructed past the greatest extent practicable. We understand that. Some of these guzzlers were flown in with a helicopter. The tanks and the fencing were all flown in. It is a significant undertaking. We are not saying you have to have this all done by October 1, 2014. The bill just says to the greatest extent practicable.

**Assemblywoman Cohen:**

Do you have any idea how much of the usage of the guzzlers is going toward wildlife and how much is going toward livestock? Is there any information?

**Senator Goicoechea:**

Guzzlers typically are not for livestock. They are only for wildlife. Let us hope we can keep the horses out.

**Chair Daly:**

Do you have to get a permit to put in a guzzler? Obviously, some of them are older than that. Anyone can go put them in. I see you shaking your head. Who is responsible for them if you do not have to get a permit?

**Senator Goicoechea:**

I will let NDOW respond to that. We could probably save some time if I got Mr. Bull and Mr. King up here, but you would have to get, at least, permission from the U.S. Department of the Interior or the Bureau of Land Management (BLM) if the guzzlers are on BLM or U.S. Forest Service lands. You would have to go through that process and make sure that they are at least notified. They have to be aware that you are siting the guzzlers.

In some of the cases down south, such as with the Fraternity of the Desert Bighorn, I believe some of those are approved by the BLM and maintained by the Fraternity. In some cases, I think they are even offered and given back to the federal agencies, but I am not sure how that works. However, you definitely have to have a site permit from the federal agencies if the guzzlers are on public lands.

**Chair Daly:**

When you get permission to put a guzzler in, and you are putting it in as a private group or entity, what requirements or commitments come with that? Where does NDOW come in, saying they are responsible for the guzzlers when they put them in? I am just trying to figure out what the commitments are and who has the responsibility.

**Senator Goicoechea:**

My understanding is that, typically, especially in northern Nevada, they would be done in conjunction with NDOW, and NDOW would assume responsibility of those facilities once they were constructed. The bottom line is, again, everybody wants to build them, but there is a maintenance factor.

**Chair Daly:**

Once they are put in, they become the responsibility of the state agency.

**Senator Goicoechea:**

There would be a designated responsible party. In some cases, I understand, that might be the federal agencies in southern Nevada and/or the agency that built it or NDOW.

**Chair Daly:**

I appreciate that. I do not think I have any other questions for the Senator. If you have to run, you can. If you want to stay, that is great, as well. Do you have people in support?

**Senator Goicoechea:**

Yes. There are a number of people who I think are either in support or neutral on the bill. The state engineer and Elmer Bull from NDOW would probably be appropriate.

**Chair Daly:**

If you are in support, come on up. We will take testimony at this time in support of S.B. 134 (R1).

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

Our office is in support of S.B. 134 (R1). Assemblyman Wheeler, I believe you had asked how long it takes to get a temporary permit. Before I answer that question, I want to make sure everyone understands how we are distinguishing this temporary permit from others. We issue a lot of temporary permits through our office, but 99.9 percent of them are changes of existing rights. That is where the temporary permit provision in our statute came from. It was for temporary changes of existing rights. What we are talking about here is a new appropriation of water on a temporary basis for one year. This is a new appropriation. The language is written such that it does not have to go to publication. It does not have to go through a 30-day protest period. If the application is filed complete, they can submit a paper map. If it passes the statutory criteria, we can then issue it once the fee has been paid. We can issue a temporary permit like this in certainly less than 30 days, probably within a week. I just want to make that clear that this is a new appropriation for a temporary basis versus a change application of existing rights.

**Chair Daly:**

If the temporary permit required a well, there would be more other than permitting on your side to go forward. You have to do whatever permits you have to do to drill a well or have access to the roads. Do you have to have a disturbance plan? What do you have to do?

**Jason King:**

That is a good question. If you are on private land, you have to contact a well driller. Our agency licenses well drillers. The well driller would have to see that we, in fact, issued that temporary appropriation. Once we have issued that temporary appropriation, which I said can happen very fast, that well driller can go out and drill the well that day.

If it is on public land, you are right. The applicant for that temporary appropriation is going to have to jump through whatever hoops they would normally have to with that federal agency. I do not know what all of those are, to be honest with you.

**Chair Daly:**

It may not be as effective on public lands as it will be on private land.

**Jason King:**

I think that is probably a safe guess.

**Chair Daly:**

Are there any other questions for Mr. King? [There were none.]

**Edwin James, representing Carson Water Subconservancy District:**

We are in support of the temporary permit language. I was on the drought response committee last year, and this issue came up. Most of these are private individuals who have water rights out of the river. Last year, a lot of the rivers went dry, and they have been unable to get water to the livestock without hauling it in. This was an alternative, and they actually had funding available. However, because of the process, they were not able to drill a well last year. Their only resource was to either move the cattle off or to haul the water in.

This year looks like it could be as bad. I would predict that the Carson River will probably go dry again this year. I do not know how many will take advantage of this or declare drought, but if it is as bad as last year, we will at least have the tools in place to meet the needs.

**Chair Daly:**

Are there any questions from the Committee? [There were none.] Do we have anybody else in support of S.B. 134 (R1)?

**Neena Laxalt, representing Nevada Cattlemen's Association:**

I just want to go on record to say that the Nevada Cattlemen's Association does strongly support this bill.

**Chair Daly:**

Are there any questions from the Committee? [There were none.] We are going to open the microphones up for testimony in opposition to S.B. 134 (R1). [There was none.] We will open the microphones up for testimony in neutral to S.B. 134 (R1).

**Elmer Bull, Chief, Habitat Division, Department of Wildlife:**

Overall, we are testifying neutral on this bill. However, we would like to note that we are in support of sections 7, 8, and 9, which are related to the water development or guzzler program within the Habitat Division of NDOW. Given that there have been major modifications made to those sections, we are in support of how those sections read now.

There were some questions that have been asked which Senator Goicoechea answered. I would be happy to try to expand on some of those answers if it is all right with you ([Exhibit D](#)).

To give a little history behind the water development program, there have been guzzlers built in Nevada going clear back into the 1940s when the first guzzlers were built in southern Nevada, targeting Gambel's quail in the desert areas. Since then, there have been just under 1,700 guzzlers built in the state of Nevada. They provide tremendous value to wildlife in that they allow wildlife to occupy habitats that they normally would not be able to inhabit because of the lack of drinking water.

All of our guzzlers are built on public land. We have not built any guzzlers on private land due to the uncertain nature of the future of those guzzlers. That is why we build our guzzlers on public land. In most cases in Nevada, that is BLM land. However, we have built some on Forest Service land, as well.

When we would like to build a guzzler, we select sites that are devoid of natural water sources. We approach the appropriate land management agency and request the authority to build a guzzler in a given location. That whole process goes through a mini National Environmental Policy Act (NEPA) process in which the land management agency analyzes the potential impacts of the guzzler construction, such as disruption of cultural resources, aesthetically unpleasing situations, and so forth, and if everything is fine, they will grant us the authority to build a guzzler in that location. In some cases, we have been rebuffed on that because of certain factors. Once we get the authority to construct the guzzler, we enter into an agreement with that land management agency. In that agreement, we outline what our responsibilities are relative to the construction and future maintenance of that guzzler.

Over the years, in looking back, one can imagine that those cooperative agreements vary considerably between different BLM districts, between the BLM and the Forest Service, and so forth. In most cases, we are the primary responsible party for the maintenance of those guzzlers.

Once that is completed, then we actually construct the guzzler. We have two different types of guzzlers. One targets small wildlife, primarily birds, and the other targets larger wildlife. However, guzzlers benefit a wide array of wildlife. The manner in which they are constructed allows access by a wide range of wildlife species. From that standpoint, they provide a tremendous benefit to all wildlife, not just the types of wildlife that we hunt.

The principle of all guzzlers is the same. There is going to be some kind of collection surface on which the natural precipitation lands. It is conveyed from there into some type of storage tank. Through one means or another, it is made available to wildlife, whether that be direct access to the tank or, in many cases with big game guzzlers, through a plumbing system that transfers the water to a drinker, and the wildlife access that drinker.

We put fences around almost all guzzlers. The only exceptions are those that are located in areas where there is not really a threat of any other large animals accessing the guzzler site. Typically, those are in southern Nevada in some of the really extreme, harsh desert areas, which cattle and other large animals do not inhabit.

We have, as the Senator mentioned, begun an assessment of the fences that are in place around a number of the guzzlers. We have definitely upgraded our methodology with regard to the construction and maintenance of fences. We are getting away from those fencing strategies that have proven ineffective. We are moving to something more substantial, such as pipe rail fencing, that is intended to keep large animals out, such as cattle and wild horses. It is not that we have anything against those classes of animals, but, quite frankly, the guzzler is not going to be able to capture enough water to support all of those animals and still provide water for wildlife.

We do receive a tremendous amount of support for our water development program from a wide array of conservation groups, such as Nevada Bighorns Unlimited, the Fraternity of the Desert Bighorn, Carson Valley Chukar Club, and Pershing County Chukar Unlimited. They really enjoy helping out with this program, not only in the construction of the guzzlers but also in the maintenance follow-up. We really appreciate that support.

We, as an agency, spend a considerable amount of money doing maintenance work on guzzlers. Over the last couple of years, we have spent roughly \$95,000 per year, primarily in helicopter time. We use helicopters to access some of the remote locations so that we can check on the conditions of these guzzlers.



Because of poor moisture conditions, last year we actually had to do an emergency water haul to one of our guzzlers. Climatic conditions in that area did not yield enough water to keep the wildlife populations in water in the area around Beatty. We spent \$35,000 last year hauling water into one of those guzzlers. We have since implemented an upgrade of a couple of the guzzlers in that area to increase their capacity, but we are going to spend another \$35,000 or \$40,000 this year hauling water to that site. There is not much that we can do about Mother Nature and the way moisture patterns are. We, in monitoring the conditions of these, realize that there could be wildlife populations in serious problems in that area. We are hauling water to those.

We are currently also working with our big game staff specialist in analyzing the size of the herds that are reliant on those particular guzzlers and determining whether there might be a need to trap and transplant some of those animals to another location, thereby reducing the population.

That is pretty much how our program works. We have taken steps to modify and improve the fencing that we have around these guzzler sites. The addition of signs to these guzzlers is really something that makes all the sense in the world, and we are moving in that direction. I have instructed our people to order signs and begin installing those. As Senator Goicoechea mentioned, we have until October 1, 2014 to complete signing all of the guzzlers. We will be busy. As I mentioned, there are just under 1,700 of them. We have our hands full. I would be happy to answer any questions.

**Chair Daly:**

You mentioned a mini NEPA. Whether it is mini or full-blown, NEPA stands for what?

**Elmer Bull:**

It stands for the National Environmental Policy Act. Anytime a federal agency is going to either be doing an undertaking of their own or allowing someone else, such as NDOW, to do that, there is a process that needs to be gone through. Essentially, it is intended to try to determine what the overall impact of that action is going to be and provide the opportunity for folks to comment on this proposal and so forth. Obviously, a NEPA process on a guzzler is nothing compared to the NEPA process on a major pipeline pumping water out of an area. Nonetheless, it does go through that process.

**Chair Daly:**

Do you think you would be able to take advantage of the temporary permit? Do you have to go through too much BLM stuff to make it work?

**Elmer Bull:**

We have to work through the public land management agencies.

**Chair Daly:**

Do you think the passage of this bill would benefit you, though? What is it, \$6,000 or \$10,000 to drill wells versus \$35,000 to haul water to the site?

**Elmer Bull:**

We have never looked at that opportunity. With the guzzler program, we intend to try to capture natural water and do it through that means.

**Chair Daly:**

You have a temporary permit process now. You might want to try.

**Assemblyman Carrillo:**

More for the understanding of the guzzler itself, it says that it is an artificial basin, but if it is drilled as a well, does it require power to pull water from the ground? Is there a back-up generator somewhere that powers it out in the middle of nowhere to make sure these pumps are pumping water to fill the guzzler up? I just want to understand that process.

**Elmer Bull:**

Our water developments are not based on the drilling of wells and the mechanical transport of water. It is entirely based on natural precipitation, such as rain and snow water that falls, lands on an apron, and goes into a storage tank.

**Chair Daly:**

Are there any other questions from the Committee? [There were none.] Is there any other testimony in neutral? [There was none.] Do you have any final comments, Senator Goicoechea?

**Senator Goicoechea:**

I do appreciate your taking my bill out of order. I hope Dr. Cripps forgives me at some point. In closing, I think S.B. 134 (R1) is a good bill. It is a step in the right direction. Clearly, as it pertains to the drought wells or the emergency temporary wells, most of those would be done on private property. I think it is very clear that you could not go through the NEPA process and get a well sited on public lands. As Mr. James stated, even here in the Carson Valley, when the river goes dry, you might own that property, but there is no mechanism for you to drill a well and water that livestock even if it was on your property. Going through the normal process would take you at least six months. The livestock would either be dead or moved, or else you would have to haul

water to them. Again, I think for the livestock industry, that is a good move. I also think the improvements we have made through the guzzlers and with the support of NDOW is a step in the right direction. I hope I have your support.

**Chair Daly:**

Thank you. We will close the hearing on S.B. 134 (R1), and we will move on to Senate Bill 65 (1st Reprint).

**Senate Bill 65 (1st Reprint):** Revises provisions relating to public water systems and certain laboratories. (BDR 40-349)

**Colleen Cripps, Ph.D., Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources:**

With me is Jennifer Carr. She is the chief of the Bureau of Safe Drinking Water in the Division of Environmental Protection. Although I am going to be presenting the bill, we will both be here to answer any questions you might have.

The purpose of this bill is to clarify the Division's enforcement authorities related to the regulation of drinking water supplies and the certification of laboratories that perform analyses of drinking water. [Continued to read from prepared text ([Exhibit E](#)).]

**Chair Daly:**

Do we have any questions from the Committee?

**Assemblyman Hansen:**

Can you give me a field example of where this would apply? Is this like in my area where everybody has private water companies that serve small communities? I am trying to picture where this law would be applied.

**Colleen Cripps:**

It would apply to those small water systems as well as to other municipal water systems.

**Assemblyman Hansen:**

Is that a current problem such that we need to bring this? Is this just cleaning up, giving you a little more authority and filling a loophole?

**Colleen Cripps:**

It basically is doing that cleanup. We have implied authority to be able to do that, and we have been using that authority since those programs were moved over to the Division. However, this would make that authority explicit in the statute.

**Chair Daly:**

I just had one comment, and you spoke to it briefly, about the preemptive nature of being able to do a cease and desist order. You do not see that in a lot of statutes. You have them in some areas. I know municipal inspections for buildings can issue a red tag and a cease and desist order if you are not going forward for public safety types of issues. Those are the only places I have ever really seen that, and I think you explained the purpose of it pretty well. I do not know if anyone else caught on to that, but when I see the preemptive stuff, I know you are not allowed to do it in regular law enforcement. I think you explained that well. That was the only comment I had. The rest of it seems to be in order.

Do we have any other questions from the Committee? [There were none.] We will open up the microphones for testimony in support of Senate Bill 65 (1st Reprint).

**Steve Walker, representing Truckee Meadows Water Authority:**

Truckee Meadows Water Authority (TMWA) has enhanced enforcement on both aspects of this bill. It has a water testing laboratory and runs one of the largest water systems in the state. We applaud the Division of Environmental Protection moving forward to make sure the integrity of the water supply is well protected. We think these laws do that. Also, the Division of Environmental Protection got a hold of me and operators of TMWA in July on this bill and coordinated with us. We really appreciate how they did the bill and made sure that everybody was on board prior to the start of the legislative session. I would like to thank them for that.

**Chair Daly:**

Are there any questions from the Committee? [There were none.] On the laboratories, what type of testing does TMWA use? How do they select their labs? Do they have a monitoring system for the labs, or do they rely on public agencies to oversee that?

**Steve Walker:**

I can speak to the TMWA lab. It is a water lab. It tests the quality of the TMWA water to make sure that it meets all of the drinking water requirements, and they just test their own water.

Having been in the water business for a while, there are also private water testing labs. If you had a domestic well and you wanted to prove that it met drinking water standards, your water would be given to them. They would test it. Under this change of the law, they are now under a better jurisdiction with better oversight. The testing would be required of a domestic well almost on any sale of a property with a domestic well. The bank will require that. That is where the other water testing companies come in doing drinking water standards.

**Chair Daly:**

This is going to strengthen where the labs are at now. Where were they before? What kind of additional oversights are they going to have? Now they have sanctions if they are going outside of the standard test. When you do drug testing, you have a standard and a procedure you are supposed to follow. You have limitations that are set by somebody and a regulation on what it is. You have a similar thing with the water, obviously, on what is safe drinking water, but they have standards they have to follow. There is somebody overseeing them. Is it additional oversight or new oversight? Is it comparable, or was there none before?

**Steve Walker:**

I am getting out over my skis here. I think that the regulator should answer that question. I just would add that the way I understand the bill is the penalty phase, if you are not following the protocol for testing, is enhanced. It gives you a warning, but it also gives you actual ability to shut them down. However, I think the regulator is better to answer that question.

**Chair Daly:**

We might get them to come back up.

**Robert Sack, Director, Environmental Health Services Division, Washoe County Health District:**

I just wanted to say that we are in support of this bill, as well.

**Chair Daly:**

Can you answer any of the questions I was just asking Mr. Walker?

**Bob Sack:**

I can try. The perception I have of the bill, as it relates to the labs, is that it gives more flexibility on the use of an appropriate penalty if there are violations, as opposed to having to go all the way to removing a certification, which could, in essence, shut down a laboratory. It would allow you, as a regulator, which

the Division of Environmental Protection is, to implement a penalty that is more appropriate for the violation.

**Chair Daly:**

Are there any other questions from the Committee? [There were none.] We will continue with testimony in support of S.B. 65 (R1). [There was none.] Is there any testimony in opposition to S.B. 65 (R1)? [There was none.] Is there any neutral testimony? [There was none.] Dr. Cripps, do you want to come up and take a stab at any of those questions? If you have the answers, we want them.

**Colleen Cripps:**

With respect to the lab program and the ability for us to issue fines and penalties, Mr. Sack was absolutely correct. Right now, we only have the ability to either suspend, revoke, or limit someone's certification. This bill would allow us to actually issue penalties in addition to that and give us more flexibility so that we would not, in essence, be shutting down someone's business.

**Chair Daly:**

Seeing no other questions from the Committee and no other testimony from the audience, we will close the hearing on S.B. 65 (R1), and we will move to our last bill, which is Senate Bill 505.

**Senate Bill 505: Abolishes the Columbia Basin Interstate Compact Commission of the State of Nevada. (BDR 48-578)**

**Amelie Welden, Committee Policy Analyst:**

It is very strange being on this side of the dais. I am nonpartisan staff, so I do not advocate for or against any legislation. However, I am presenting to you today Senate Bill 505, which was requested by the Legislative Commission. [Continued to read from prepared text ([Exhibit F](#)).]

**Chair Daly:**

Do we have any questions from the Committee? [There were none.] This has been in existence since 1951, was never enacted or adopted, and has been collecting dust in our statutes for over half a century.

**Amelie Welden:**

That is my understanding. The Columbia Basin Interstate Compact Commission was created in 1951. The Compact language was added in 1961 but also never went into actual effect.

**Chair Daly:**

That is still over half a century. Seeing no further questions from the Committee, we will take testimony in support.

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

Our office does support the abolition of the Columbia Basin Interstate Compact Commission of the State of Nevada. Ms. Welden was right in terms of the history of it. Two states, Washington and Oregon, never adopted statutes to address it. Another two states, Idaho and Utah, did adopt statutes, but they have long since abolished those statutes. No one around our office, going back more than 30 years, remembers anyone attending it or having any involvement with it. We support getting it off the books.

**Chair Daly:**

Are there any questions for Mr. King? [There were none.] Is there any further testimony in support? [There was none.] Is there any testimony in opposition to getting rid of a law that had never been implemented? [There was none.] Is there any testimony in neutral? [There was none.] We will close the hearing on S.B. 505. Is there any public comment? [There was none.]

Meeting adjourned [at 1:57 p.m.].

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

---

Cheryl Williams  
Recording Secretary

---

Maysha Watson  
Transcribing Secretary

APPROVED BY:

---

Assemblyman Skip Daly, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Natural Resources, Agriculture,  
and Mining

**Date:** April 30, 2013

**Time of Meeting:** 12:49 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 133 (R1)	C	Jacob (Jake) Tibbitts / Department of Natural Resources	Testimony
S.B. 134 (R1)	D	Elmer Bull / Nevada Department of Wildlife	Testimony guideline
S.B. 65 (R1)	E	Colleen Cripps / Nevada Division of Environmental Protection	Testimony
S.B. 505	F	Amelie Welden, Committee Policy Analyst	Testimony