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

Seventy-Seventh Session
March 28, 2013

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Skip Daly at 12:34 p.m. on Thursday, March 28, 2013, in Room 3161 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at 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; 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
Assemblywoman Heidi Swank
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman David Bobzien, Washoe County Assembly District No. 24

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Steve Hill, Executive Director, Office of Economic Development, Office of the Governor
James R. Lawrence, Administrator and State Lands Registrar, Division of State Lands, State Department of Conservation and Natural Resources
Joshua Hicks, representing American Whitewater
James Litchfield, representing American Whitewater
Kyle Davis, representing Nevada Conservation League
Tom Smith, Private Citizen, Reno, Nevada
Karen Boeger, Board Member, Nevada Chapter, Backcountry Hunters and Anglers
Joe Johnson, representing Toiyabe Chapter of the Sierra Club
Ron Alling, Private Citizen, Lake Tahoe, Nevada
Jan Brisco, Executive Director, Tahoe Lakefront Owners Association
Gordon DePaoli, representing Edgewood Companies; and Walker River Irrigation District
Thomas J. Hall, Attorney, Reno, Nevada
Joseph Guild, representing Union Pacific Railroad
Michael Pagni, representing Truckee Meadows Water Authority
Neena Laxalt, representing Nevada Cattlemen's Association
Mike Hayes, Private Citizen, Minden, Nevada
Doug Busselman, representing Nevada Farm Bureau Federation
Steve Walker, representing Douglas County; Carson City; and Eureka County
Jason King, P.E., State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources
Tom Starrett, Private Citizen, Gardnerville, Nevada
Mark Gonzales, Manager and Engineer, Gardnerville Water Company
Bruce R. Scott, P.E., Engineer, Resource Concepts, Inc.
Jennifer Carr, P.E., Chief, Bureau of Safe Drinking Water, Division of Environmental Protection, State Department of Conservation and Natural Resources
Mike Workman, Director, Public Works, Lyon County

Chair Daly:
I think we are going to go ahead and do the work session first now that we have a full group. With that, Ms. Welden, will you take us through Senate Bill 121?

Senate Bill 121: Authorizes the State Land Registrar to transfer the Belmont Courthouse to Nye County. (BDR S-268)

Amelie Welden, Committee Policy Analyst:
Senate Bill 121 was heard on March 21. It authorizes the transfer of the Belmont Courthouse from State ownership to Nye County. The measure sets forth a number of conditions. [Read from work session document (Exhibit C).] There were no amendments proposed. You may recall that this was presented by Senator Goicoechea and Assemblyman Oscarson. We heard support from Lorinda Wichman, Nye County Commissioner; Jim Lawrence from the Division of State Lands; Eric Johnson from the Division of State Parks; Donna Motis from Friends of the Belmont Courthouse; and Dagny Stapleton with the Nevada Association of Counties. There was no opposition or neutral testimony.

Chair Daly:
Senator Goicoechea was here earlier. I told him that I did not anticipate any problems. If it looks like there will be problems, we will get him to come back. The motion would be to do pass.

ASSEMBLYMAN LIVERMORE MOVED TO DO PASS SENATE BILL 121.

ASSEMBLYMAN AIZLEY SECONDED THE MOTION.

Are there any questions from the Committee? [There were none.]

THE MOTION PASSED UNANIMOUSLY.

Chair Daly:
Next is Assembly Bill 125.

Assembly Bill 125: Revises provisions governing the lease of state lands. (BDR 26-30)

Amelie Welden, Committee Policy Analyst:
Assembly Bill 125 was heard on Tuesday, February 26. There is a fairly extensive amendment, so I will go through that rather than the original bill. This amendment was proposed by Assemblywoman Kirkpatrick and there have been

a couple of small changes since then as well. The amendment is included in the work session document (Exhibit D). [Read amended bill language.] This bill and amendment were presented by Assemblywoman Kirkpatrick and Jim Lawrence, the State Lands Registrar. We also heard neutral testimony from the AFL-CIO and the American Federation of State, County, and Municipal Employees.

Chair Daly:
I will accept a motion to amend and do pass with the amendment that is on the Nevada Electronic Legislative Information System (NELIS) that we just referred to (Exhibit D).

> ASSEMBLYMAN CARRILLO MOVED TO AMEND AND DO PASS ASSEMBLY BILL 125.
>
> ASSEMBLYMAN LIVERMORE SECONDED THE MOTION.

Does anyone have any questions on the motion?

Assemblyman Healey:
I see the Governor's Office of Economic Development here. Are they good with this bill?

Chair Daly:
I was going to get to that. The real question is, are we good with this? I invite Mr. Hill up and he can make a comment if he would like. I also spoke to Mr. Lawrence, Administrator of the Division of State Lands. If you remember, when this came forward I talked to Assemblywoman Kirkpatrick about some labor standards. We were looking for a way to do that. Understanding the actual parcels of land that we might be talking about, some of them are small. We wanted to find a way to still have it work with some standard.

Steve Hill, Executive Director, Office of Economic Development, Office of the Governor:
We are in support of this bill. We think it is a tool for economic development that at times may be very helpful. We would urge your support.

Chair Daly:
We talked about the fact that most of the provisions for getting a tax abatement, which is the normal route for economic development, are in *Nevada Revised Statutes* (NRS) 360.750. Within NRS 360.750, the director of the Office of Economic Development has certain latitudes. When we talked about how we were going to work this, it is pretty prescriptive sometimes in

NRS 360.750. I believe NRS Chapter 231 is the economic development statute. Is that correct?

Steve Hill:
It is actually in NRS Chapter 360 as well.

Chair Daly:
It has the ability to have certain waivers under certain conditions. The orphaned pieces of property that are 25,000 square feet or less, we are never going to be able to meet the criteria for the investment or the number of workers. We wanted to allow some flexibility and that is what I told Mr. Hill that I wanted to speak about today. We also wanted to put on the record that we know there is some flexibility in your office. We do not want you to abuse it. If you can meet as many of the standards as you can, we are hoping that there are legitimate reasons for any waivers that might be put in. We will be watching. Are there any other questions from the Committee?

Assemblyman Aizley:
Do you anticipate having a schedule of rates depending on who is leasing the land and possibly different rates for government, nongovernment, profit, and not-for-profit entities or would it be on a case-by-case basis?

Steve Hill:
The leases that would come before us would be for economic development purposes. That would typically not include a nonprofit or I do not think it would include a nonprofit. It would be for businesses that are looking to move to the state or expand in the state. The Administrator of State Lands is here and may have something to add to my answer. I would think this would be on a case-by-case basis. Every piece of property that we have would really have a different application for different businesses. Frankly, there are not many state-owned properties that would be appealing for economic development, but there are some. In fact, the Administrator of State Lands and our office have worked through a lengthy process on one parcel and are exploring a second. I do not think this would happen on a very regular basis.

Chair Daly:
Along those lines, situations like the Easter Seals lease for $1 for 30 years would not happen again. You cannot give the lease free for more than 12 months. The way I understand it, unless there is another statute that would allow that to happen, it does not have anything to do with this bill.

For the rest of our discussion, there was comment about state parks and wildlife resource areas being included. We added that in as an active use.

That was a concern of someone who testified. Then there was a provision in there that would have given the state director whatever he saw fit, notwithstanding another law. We took that out. We want to make sure that there are some checks and balances on these types of things. We want to promote economic development but we also want to make sure that if we are letting someone take us out on a date, it is worth our while.

Steve Hill:
Yes, it is my understanding that the issue around the Easter Seals lease is actually contained in a different statute. Certainly, the language that is proposed in this bill and the amendments would not have anything to do with that lease. We understand we are not going to lease state park and wilderness areas.

Chair Daly:
That was my understanding. The other lease to a nonprofit is not really in this bill.

James R. Lawrence, Administrator and State Lands Registrar, Division of State Lands, State Department of Conservation and Natural Resources:
You and Mr. Hill are correct. The lease provisions for nonprofit organizations are found in another section of the statutes, under NRS 322.065. There are specific criteria laid out for those types of leases. Assembly Bill 125 is only for those leases that would be for economic development types of purposes.

Chair Daly:
Thank you very much, that is what we wanted to get on the record. I know we have all received some emails about the Easter Seals and various things and that is not part of this bill. Are there any further questions from the Committee? [There were none.] We have a motion to amend and do pass with the amendment on NELIS as presented by Assemblywoman Kirkpatrick.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Carrillo will have the floor statement. For Senate Bill 121, I will say that because Assemblyman Oscarson is the cosponsor, he can take the floor assignment. Assemblyman Bobzien, please come up and we will open the hearing on Assembly Bill 396.

Assembly Bill 396: Revises provisions relating to the waters of this State. (BDR 48-763)

Assemblyman David Bobzien, Washoe County Assembly District No. 24:
With your permission, Mr. Chair, I would like to provide some brief introductory remarks, walk you through the bill, and then walk you through the conceptual amendment (Exhibit E) that is on the Nevada Electronic Legislative Information System (NELIS) that changes this bill rather significantly. It is all in the spirit of trying to provide a map for this float trip, if you will. I will talk about what the bill does and does not do. I have learned from my years in the Legislature that anytime you do a water bill it gets a lot of attention, as it should. Hopefully we can talk a little about the issues that are open for debate and should be discussed and the issues that probably do not have as much substance. Nonetheless, people have concerns.

Chair Daly:
I am looking at the amendment (Exhibit E). Could you run us through the bill and refer to the amendments? That way, people can make notes. Then as soon as you can, get us a mock-up amendment that shows that and we will get that up as well.

Assemblyman Bobzien:
I apologize that the amendment that you have right now is a conceptual amendment rather than a mock-up, but yes, we will get the full thing for you.

Chair Daly:
I completely understand and we know we are in a crunch. We accept this. We are saying that it is easier if you run through the bill and say where the changes go. That will help me and the Committee.

Assemblyman Bobzien:
Quite frankly, there will be additional amendments as we hear concerns from folks about how to make this bill better. Yes, we will all be driving toward getting you a more complete project. I will crosswalk the amendment as much as possible. The best example of doing that is in section 2 and the reference to the Nevada Supreme Court case *Lawrence v. Clark County,* 127 Nev. Adv. Op. 32, 254 P.3d 606 (2011), which was the first instance of acknowledgement of the Public Trust Doctrine in Nevada case law.

In discussions I had with opponents of the bill prior to today's hearing, there was sufficient concern about the inclusion of this full section. Section 2, subsection 4 of the bill explicitly recognizes recreation as a beneficial use of water. It is important to note that beneficial use in most people's minds relates to consumption or actually doing something with the water. This bill is more contemplation about what you can put on top of it. We are not talking about water being used and then it is no longer there. This is more about waterways

themselves. We agreed with folks who had concerns and that this language should probably come out because it convolutes what this bill is about.

Section 3 is the heart of the bill. This creates a classification called public access water. It is water that is flowing or collecting on the surface within a natural or realigned channel or in a natural lake, pond, or reservoir on a natural or realigned channel; and is navigable or is capable of being navigated by oar, paddle, or a watercraft propelled by a motor. Subsection 2 excludes irrigation ditches, flumes, or canals located on private property. I want to make it very clear that we are not talking about those objects.

In section 4, public access water is open to use year-round at or below the ordinary high-water mark for any otherwise lawful activity that uses water, including, without limitation, boating, fishing, swimming, and wading. Here is the meat of this, in subsection 2: a person using public access water is subject to any other restriction lawfully placed on the use of the water by a governmental entity with authority to restrict the use of the water. When leaving public access water, a person shall remove any refuse or tangible personal property that the person brought to the public access water, or, essentially, be a good neighbor.

Section 4, subsection 4 is very critical. What this bill contemplates is an instance where you have to make your way around an obstacle. This bill does not let you cross private property to access this public water. It also does not allow you to cross private property to exit the water. All it does, and this is the appropriate debate, is if you are using this public access water and you are navigating downstream, you are not standing on land below the high-water mark. You are on the water and you come to a rock weir or diversion; to get around that safely it does allow you to get onto the land and move across. This is absolutely a debatable point. That is the crux of the bill and one point that I am sure you will hear a lot of testimony about.

That is the overview of the bill. I will turn attention to the amendment and talk about additional issues in the spirit of giving you the road map here. The amendment (Exhibit E) on NELIS will make some significant changes to the bill. The first one says, "Move language of the bill into *Nevada Revised Statutes* (NRS) Chapter 537 Navigable Waters." The State Engineer expressed some concern that we not put this in the big water statute. Frankly, that is an echo of the concern people had with that reference to recreation being a beneficial use. We are not talking about consumption of the water, water rights, or that aspect of water law. We are just talking about these access issues.

Number 2, "Remove references to *Lawrence v. Clark County* decision in statute and remove language interpreting the decision; instead, add *Whereas* clauses, with a simple reference to the decision and a recognition of the existence of Public Trust Doctrine in common and decisional law." We are not going to try to statutorily further interpret the Public Trust Doctrine; we are just going to make reference to the fact that it is there. It is a great principle and it is good that it is there, but we are not going to get into a debate about what the decision meant or what implications it has for the Public Trust Doctrine. Again, most importantly, we are not going to touch the beneficial use part of this.

Number 3 is important; "Add language similar to Montana Statute § 23-2-309 to the effect that: the provisions of 'this bill and the recreational uses permitted by [A.B. 396] do not affect the title or ownership of the surface waters, the beds and the banks of any navigable or non-navigable waters or the portage routes within this State.'" We are not going to get into that fight. We are not going to lay claim. It is not going to be contemplated by this bill.

Then, number 4, "Add provision for civil enforcement through the courts—including injunctive relief, actual damages, and attorney's fees for prevailing party." The idea and concern here was that we did not want to set up some sort of enforcement framework that would be a burden on a state agency or county agency, or any other public division. If someone has a concern about how this law is interpreted in a particular situation, it is a civil issue and it is done. It is not something you would appeal to a state agency or try to get a fine on. We did not want to go there. That is the amendment.

To continue the road map, I want to back up and point some things out that I think are pertinent to keep in mind as you are contemplating this bill. On line 8 of the Legislative Counsel's Digest, it reads, "In addition, Nevada has a recreational use statute in existing law which, with certain exceptions, limits the liability of an owner, lessee or occupant of a premises to persons who enter or use the land for recreational activities, including, without limitation, fishing and water sports." You are not liable. You have the shield. This acknowledgement of NRS 41.510 draws that connection. There is no liability if someone exercises the portage right contemplated in this bill. The landowner is not liable because we have this established recreational use statute that I think is very important.

There are a lot of scenarios to contemplate here. I am sure we can have a lot of back and forth about how those would play out. As I see it, you are in a kayak. You are up at a certain lake about a half-hour from here. You are on open water. Your portage right that is contemplated in this bill is not to take a break, have a picnic, or pull up on a private beach. That is not what this is.

Portage on open water is a no. If you are on flowing water and you have to get around for safety reasons, that is a scenario that I do not think applies to the scenario I just gave. As I mentioned previously, you cannot cross private property to get to the public access water and you cannot cross private property to exit public use water. It is the portage itself. With that, my advocacy for this bill is based on the belief that outdoor recreation, particularly paddling and angling, is very important aspects of Nevada's economic game [referred to (Exhibit F)]. I think the passage of this bill sends a strong message that we are open for business and we very much welcome those industries.

Chair Daly:
All of the naturally occurring lakes, rivers, and streams in the state are open to or owned by the public. Even if you have property with a stream running through it, you do not own the stream. If you have property right next to the river, you do not own the river. If you have property that has lakefront, you do not own the lake. Is that correct?

Assemblyman Bobzien:
I am going to kick this to your legal counsel because this is exactly where things start to get a little murky. We are not talking ownership. That is the purpose of the amendment; we are not going to get into a fight over who has title. There is a concept of navigable waters and that is the connection to the Public Trust Doctrine. All of the Western states deal with that issue slightly differently.

In the case of Nevada, you have a series of designations of navigable waters. Some are in statute, some are in case law. I am sure there are legal experts in this room far more well versed on this than I am. Some of those were determined at the point of statehood about what were actually navigable because they were being used for commerce at that time. You have others that are in statute. There are a whole slew of them from 1921 that are actually in the law. There is a section that lists some of these. It is an open question as to how that applies to all of the waters as you were describing them.

Chair Daly:
Streams are not usually navigable but if you have a private pond that is on your private property and it is man-made, you do not own that. For instance, the marina in Sparks is a man-made pit that filled up in a flood. It is still navigable water and open to the public. I am trying to figure out where some of this is coming from and we want to make sure we get it right. There is a companion question. Territory of the United States goes 25 miles offshore, so we claim the ocean for 25 miles. How far do they get?

Assemblyman Bobzien:
This is great stuff. I think water law is really fun because it is always very interesting and it goes way back. Mr. Chair, you spoke to the idea of territory off of the shores out to the ocean. As I understand it, the evolution of public trust was that we started with those open waters. Eventually, we started applying it to the stuff that is on land, so it is fascinating.

Chair Daly:
Because nobody really owns the Truckee River.

Assemblyman Bobzien:
All of the Truckee River is considered navigable.

Chair Daly:
I understand. Nobody owns it.

Randy Stephenson, Committee Counsel:
I will not try to answer all of the questions. I could be here for several hours talking about this. I certainly do not know this entire subject; I do not think anyone does. To answer your first question, Mr. Chair, at least the court in the *Lawrence* case made the distinction that the Public Trust Doctrine applies specifically to those bodies of water for which the state has acquired the bed and the shores below the ordinary high-water mark when the state became a member of the Union. In other words, the state has to own that land. Specifically, in the Public Trust Doctrine, the right of the public to navigate on those bodies of water certainly exists on those bodies of water. For example, Lake Tahoe, the Truckee River, the Carson River, and the Walker River have been specifically held to be navigable bodies. We are really getting into some fun common law here.

To the issue of how far out you can navigate, there is a notion in common law and courts—not specifically in the courts of this case in the state—that talks about the line of navigation. There is a certain point that is often subject to litigation in which the public has a right of navigation. You cannot just come in so far to a body of water. I am not being very clear, but there is a distinction called the line of navigation that is off the shore of an otherwise navigable body of water. I am trying to keep it short.

Chair Daly:
In a nonlegal way, I think you said that it is going to take a little common sense to figure out when you are inside the navigable part and when you are outside. I can accept that. I understand there are private shores at Tahoe and various other bodies of water. Then there are public access points. Once you go in

through the public access point, you can go by on the navigable waters. We understand the commonsense approach to that. It seems to me on a lake that there would not be many portage issues. I can come to your beach if I am drowning, but other than that, you are supposed to go to a point where there is public access. Can you give the Committee an example where there are going to be issues?

Assemblyman Bobzien:
Again, we are talking about section 4, subsection 4, paragraph (a). This reads, "If a natural or artificial obstruction interferes with the use of a public access water, a person may, along with his or her vessel, portage around the obstruction in a manner that is reasonably direct"—so, that's the line—"and closest to the water to reenter the water immediately above or below the obstruction at the nearest point where it is safe to do so." So you cannot go for a hike and come back in a mile later.

I am in my kayak and I am heading downstream. There is a leftover weir and I have to get around this thing. My duty is to look for a safe access point off of the body of water that is as close as possible to that obstruction. I find the stream bank with a little run up onto the beach. I get out. I am not going to dawdle. I am going to move up on the bank, look for my next safe reentry below the dam. Then I am going to get back in the water and keep on going.

Chair Daly:
If there is a dispute between that property owner and the person who decides to dawdle, sit and have lunch, and leave his beer cans—in addition to the littering charge—would that be a civil dispute or a trespass charge? You already spoke to liability.

Assemblyman Bobzien:
Liability is it and we are done. If someone is going to deface or damage property through their actions, that is not contemplated in this bill. That is criminal statute and somewhere else. If there is a dispute, for example, and Landowner Joe does not let people through a nasty part of the river, you do not get to appeal to a government agency. You do not get to do anything other than seek relief in civil court. How willing are you to push the issue? Commonsense will usually take hold.

Assemblyman Livermore:
I want to relate to the Committee an experience. When I was a county supervisor in Carson City, with others, I created an aquatic trail. This legislation's liability is a result of that planning. We had to ask the Legislature to adopt this. Through the Department of Tourism and Cultural Affairs,

we created a recreation purpose and whitewater event on the Carson River; it is put-in to takeout. In fact, it is dealing with multiple county arrangements with Lyon County and Carson City. At the foot of East Fifth Street at Lloyd's Bridge, there is a put-in with a parking lot, a restroom, signs, and brochures. Midway down, on the south end of Carson City, there is a put-in and take out there. It eventually goes through the Carson Canyon, which has class III rapids. It eventually comes out to the Santa Maria Ranch in Lyon County. Lyon County developed their takeout.

Before this bill, I did not contemplate the diversions and the many reasons navigable crafts cannot get around. Most of the crafts that use the aquatic trail are float tubes or rafts. There are a couple of commercial rafters in Carson City that you can hire to take you down the river when there is enough water. The Carson Water Subconservancy District, the Carson City Parks and Recreation Department, and the Department of Tourism were the main bodies in creating this so that it can function. It functions like you described it.

I had a lot of calls from people thinking that something is going to be created that would void their private property ownership rights. There is nothing that even contemplates taking advantage of personal property rights. The liability issue was in part to relieve a private party. You can imagine that if your float tube gets snagged on a piece of barbed wire and loses its air, you are not going to float down the river. You are going to reach the shoreline someplace that you are safe and secure. That created the sense of relieving the property owner of whatever may have gone wrong. It has been in operation for five or six years and there has been no difficulty that I know of. It is advertised through Parks and Recreation's monthly activity log. I do not know how much water we are going to get this year, but if it is floatable you will find people rafting those waters. I think your intent is to create the availability to carry your float or raft out around a diversion ditch.

When we decided to go down to the Santa Maria Ranch, it was because we could not figure out how to overcome obstacles further down the river. That was for the next group who wanted to enhance it.

Assemblyman Bobzien:
That is a great summary of the Carson effort. You are going to hear from one proponent who was very instrumental in the Truckee effort in downtown Reno and really turned Reno's economy around with the Truckee River Whitewater Park. It is a big business and there is tremendous economic opportunity with it. I appreciate it very much.

Assemblyman Hansen:
I have had a lot of experience with this. I asked the Legislative Counsel Bureau (LCB) to do research for me on navigable waters in Nevada after a group of Boy Scouts started floating in the South Fork and went into the main Humboldt River. When they got near Battle Mountain, someone had stretched fence across the river. When they tried to go around it, a guy came out screaming that they were trespassing. What are the rules? According to LCB who inquired with Washoe County and the Western Regional Water Commission, interstate waters like the Truckee River and its tributaries are navigable waters or waters of the United States under the federal Clean Water Act. It is essentially the same thing with the Humboldt River. These are navigable waters. John Heggeness of the Bureau of Water Quality Planning confirmed that the U.S. Army Corps of Engineers considers the Humboldt River as navigable water under the Clean Water Act. Under this act, are we allowed to have Boy Scouts on a canoe trip if they have to work around a fence? Is that considered trespassing on private property or do they have a right to the high-water mark or the bank?

Assemblyman Bobzien:
That is a great reference to some of the competing issues here. Certainly, we have state law that deals with navigable waters. Under state law, the Humboldt River is not considered navigable but you are right, we have this whole issue of the Clean Water Act and what is navigable there. That is going to be the extent to which I can answer that. I do not believe that you have those sorts of portage rights under the Clean Water Act. It is much more focused on clean water. There is confusion because our interpretation of navigable waters is far more limited. I would leave it to someone far more versed in the Clean Water Act to comment on that.

Assemblyman Hansen:
I had a similar situation at Lake Tahoe. It is my understanding that you are allowed to utilize the lake up to its high-water mark on the Nevada and California sides. I never heard if it was ever adjudicated or if there was a specific ruling on that. California has said that if I am floating around in a canoe and I pull up on a beach, if I am below the high-water mark I have a legitimate right to use that public portion of the beach. If I am in a river that is considered navigable, my understanding is that the bed of the river can be owned by the adjacent property owner. If I step out of the water and I am walking along the bank, am I actually trespassing on the bed of the stream?

Assemblyman Bobzien:
I am looking at legal counsel. As I understand it, because the Truckee River is navigable, the state owns the bed on the Truckee. The Walker River is not

navigable under state law so that is not definitive. If you are below the high-water mark, currently you can get out and do that. Returning to the Chair's allusion to common sense, you are talking about the high-water mark at Lake Tahoe in a situation where the levels may fall below that. Even in a fairly low water year, the practical amount of landscape between the high-water mark and the low is not something I would want to test.

Assemblyman Hansen:
Lake Tahoe is five vertical feet or more.

Assemblyman Bobzien:
But what if you think of the gradient?

Assemblyman Hansen:
That is why we have utilized the beaches quite a bit over the years based on that. Again, on the Truckee River, even though it says that interstate waters and their tributaries are navigable waters of the United States under the federal Clean Water Act and in the definition of Truckee River, it is not in state law. It is not in Nevada law.

Randy Stephenson:
To answer your first question around the issue with the Clean Water Act, the federal government has to exercise its authority. Those are navigable waters of the United States. Just because something is declared to be navigable water under the Clean Water Act, it does not involve the Public Trust Doctrine that we are talking about here.

I think you really need to focus on the Public Trust Doctrine as an issue of ownership. If the Truckee River or any other navigable body of water in the state is owned by the state below the ordinary high-water mark, then the idea is that it is public property. You should be able to use it. As a member of the public, there is a right to use the accompanying water that flows over this property. That is where we are getting off base. It is the state that owns that land; therefore, it is public property, available for public use.

Assemblyman Hansen:
Has that actually been placed in statute?

Chair Daly:
If the State of Nevada through our statutes is going to be able to affect federal law, we have much bigger things to do than this. Until we can do that, let us stick to this bill and state-owned lands and state-controlled waters. We could go off for a long time and we do not have it.

Assemblyman Bobzien:
To Assemblyman Hansen's point, you have overlays. You have the concept of navigable waters at the state law level and then you have this issue at the federal level. It is my understanding that there has been case law at the state level that says the Truckee River is a navigable waterway, irrespective of the federal discussion of navigable waters in the United States that is not present for other rivers in the United States. You have this mixture and some of them are specifically in state law. I love the one that says Winnemucca Lake is navigable. Maybe my kids can navigate it someday. Then there is the Truckee River. A number of bodies of water have been considered navigable because of case law. I do not know if that is correct or not.

Assemblyman Wheeler:
I am worried about liability problems on private property. Along the Walker and Truckee Rivers and maybe a few others, I know where property owners have stretched fences across them and stocked those areas with fish. Let us say that someone gets out to go around the fence. First he trips on a rock walking down to the river, goes in, and catches a fish that belongs to the other guy. Does the passage of this law and the possibility of those liabilities increase the property owner's payments? I realize they would have a civil remedy if the guy was in there catching their fish without paying but it seems ridiculous to take someone to court. Still, you are stopping their livelihood.

Assemblyman Bobzien:
The recreational use statute would provide the liability shield in that case. Your point about the fish that are stocked and whether they are taken is absolutely not part of this bill. Then we can get into a conversation about the state and public owning wildlife and the confusion about who owns the fish. I think the scenario that you bring up is important to this policy discussion. It is recognition that private property owners do things for their community.

Assemblyman Ellison:
If you cross the navigable waters in a rubber raft and it goes flat, you have got to get somewhere so you can hitchhike back. I had a friend cross an area just like this and he and the bull did not get along. As he was running, he tried to go through a barbed wire fence. He was cut up pretty bad. The liability could have gone back to the rancher, but thank goodness, it did not. How can we address these kinds of issues?

Assemblyman Bobzien:
That calls to mind one of my favorite fishing stories. Up on the Teton River in eastern Idaho, I availed myself of an Idaho public access point. They do some

great things in Idaho and that is one of them. They have these easements negotiated that provide public access points so you can enter the river.

The river was among some private ranch land and it was very clear that you do not get out there. There I am, casting to some rising trout. The sun was going down and I heard some rustling. I thought it was just a cow and no big deal. The next thing I know, I was five feet from the bank and here was this cow moose up above me. I had to look around to see where I was going to go and that access point was a good 100 yards away. I splashed like a complete idiot all the way back there rather than get out on the ranch land.

Your point is one of self-sufficiency and the responsibility of the recreationalist to know what they are doing. Some of this stuff could happen and maybe they should be ready for it. Again, the liability shield absolutely comes into play. A little common sense goes a long way. We would not want legions of boaters having to show up like refugees on somebody's ranch because they do not know what they are doing. I think the likeliest scenario is on that one particular reach, where you have five or six people a year float, certainly they know what they are doing and are prepared to prevent those sorts of conflicts.

Chair Daly:
Do we have any other questions from the Committee?

Assemblyman Bobzien:
If I may, I have two more comments to complete the map for your float trip today. I want to make it very clear that this bill is not about a particular reach of river, a particular landowner, or a particular incident. This is something that I believe would be good policy. The second piece is that I understand there might be skittishness out there. Again, it is not about crossing private property to enter or exit. It is just the flow through and portage right. There is no secondary push in a future legislative session to throw open the doors and say everyone can access any piece of water. That is not the intent. If you have a reach that is not accessible because there is no public access, you do not have to worry because this is not going to impact you. If it is not possible to publicly access it, it is a completely different matter.

Assemblyman Livermore:
I think it is important for the Committee to understand something like I described. Adopting this trail plan is actually part of the city's master plan. When people wander off, go down some bridge, get in the water, and float down the river, then you have a search and rescue problem. What I described was really a well-thought-out use of navigable water. I think this is what you are expanding. I do not think you are encouraging people to park their truck

along the Truckee River, get in, and hope they make it to the end. I trust your presentation to reflect that.

Assemblyman Bobzien:
That is really important to remember. Those community efforts where you are working with government agencies and nonprofits that might represent recreationalists as well as private property owners, those kind of partnerships are very important. The Carson example is a great one where everyone can get together.

In my perfect world, we would have a little bit of extra money where we could partner with private landowners and secure easements to allow for access. Private property owners could be compensated appropriately to provide more opportunity. This is just about the portage right.

Chair Daly:
Seeing no other questions, we will ask people to come to the microphone to testify in support of A.B. 396.

Joshua Hicks, representing American Whitewater:
I am here with Mr. Jim Litchfield. You should have a copy of the letter we submitted (Exhibit G) in support of this bill. American Whitewater is a nonprofit nationwide organization that advocates for recreation rights on rivers throughout the country. We look at this bill as an important piece of legislation in Nevada that clarifies and codifies the public's right to recreate on these waters. I certainly accept and agree with the conceptual amendments that were put out there. It is not our position that water rights should be appropriated or anything like that. It is about a right to recreate on these waters. A secondary and very important right is to make a reasonable portage around a natural or man-made obstacle. As we have heard in the testimony, there are plenty of those obstacles on our rivers in Nevada. Some rivers including the Truckee are very highly used by recreationists. A clarification of these rules is an important step for everyone to understand their roles.

Chair Daly:
People go whitewater rafting and do it at their own risk but there are different skill levels. You may have gone through an area when the water was higher or lower, changing the rapids' skill level. At some point, if you are doing that, a person has to make the choice of whether they want to do it. There is a safety element when we are talking about portage.

Joshua Hicks:
You are absolutely right. Things do change. From personal experience, there are places on the Truckee River where I have gone through or around depending on what the water level looks like. There are some deteriorating old man-made dams on that river. As water flows go up and down, those conditions can change on you. It is important to have the ability to get around it. Usually getting around something is pretty quick. You are in and out. You walk a little way on the land. These things are dynamic. Like any river, it changes every year. The big mission of American Whitewater is the safe use of these rivers. Being able to safely get out and portage around these kinds of obstacles is critical to a safe enjoyment of the sport.

Chair Daly:
We want people to be comfortable rather than say I cannot get out and go around so they push their limits.

James Litchfield, representing American Whitewater:
I am here in support of the intent of this legislation as well as the conceptual amendments. I have had the opportunity to spend the majority of my professional life working in and around the waters of the western United States. More importantly, I have brought up two boys who recreate on our state waters. The intent of this legislation will codify the understanding of how they get in and around dangerous structures and their responsibilities.

Kyle Davis, representing Nevada Conservation League:
We are in support of this bill and the amendments that have been offered by Assemblyman Bobzien. Some of the best things about Nevada are the outdoor opportunities to see and enjoy the great parts of our state. The waters and streams are no different. We absolutely support legislation that will make sure that the public has the ability to recreate in our state.

Chair Daly:
Are there any questions from the Committee? [There was no response.]

Tom Smith, Private Citizen, Reno, Nevada:
I am representing myself today but I am also a member of the Truckee River Flyfishers. I was the director of that group for 24 years. I am also the director and vice president of the Federation of Fly Fishers Nevada and California Council, and past director of the Sagebrush Chapter for Trout Unlimited.

I want to speak to one specific incident that I happened to come across, similar to Assemblyman Hansen's story. I was wading down the Truckee River and

a high-water event had undercut a bank and tree, making it very dangerous to continue to wade down the river. I had the choice of putting my life in danger or trespassing. There were only two choices. I chose to trespass. I went around the tree that was undercut. I think that is exactly what Mr. Bobzien is aiming for. I did not feel comfortable trespassing on somebody's property but also was not comfortable continuing down the river. I would very much like to hear Mr. Hansen's story completed. What did the Boy Scouts do? Did they get arrested for trespassing, did they cut the fence, or did they pick up their stuff and go back upriver to a point where they could get out?

Chair Daly:
I would recommend that you talk with Assemblyman Hansen outside because we want to stick with the bill and we have another bill after this.

Karen Boeger, Board Member, Nevada Chapter, Backcountry Hunters and Anglers:
Assemblyman Bobzien gave a very eloquent and careful explanation of the purpose of this bill, which we strongly support. I am grateful that trespass liability and portage problems were addressed very clearly.

I am a member of Backcountry Hunters and Anglers. I am a lifetime canoeist and angling goes back in my family to the Pleistocene. Half of my family is in ranching and farming, so I have concerns for that too. Personally, on my life list before I croak—I am almost 70 so it is getting close—I have a lifetime ambition to canoe the Humboldt River in the spring from as high up as I can start and go all the way down the lake. I have thought about this for decades and I realized all of the obstacles on that river but I have been puzzled on how to do it. I am looking to you to solve my problem for me fast while I am still ambulatory.

Joe Johnson, representing Toiyabe Chapter of the Sierra Club:
We are in support of this bill as well as the amendments.

Chair Daly:
Are there any questions from the Committee? [There was no response.] Seeing none, is there anybody else in support of A.B. 396? [There was no one.] We will take testimony in opposition.

Ron Alling, Private Citizen, Lake Tahoe, Nevada:
I am here to talk about the problems this bill has with regard to Lake Tahoe. Nevada understands that when it was admitted to the Union, it took title to the submerged lands under the lake and held it in trust for its citizens. When Nevada was admitted to the Union, the lake could only be as high as the start of the Truckee River, the only outlet to Lake Tahoe, which was deemed to be at

elevation 6,223 feet. Clearly, it is an interstate body of water and navigable. The problem I see is this bill disregards a long-established definition of "navigable body of water" and creates a new concept, which I think is murky. Other than that, the problem I have with this bill is it fails to recognize that Nevada, under NRS 321.595, clearly established the boundary between the Public Trust Doctrine properties owned by the state in its sovereign capacity and the boundary of the littoral property. It is at elevation 6,223 feet, which would be the natural high-water mark of Lake Tahoe.

In the early twentieth century, the federal government, acting through the newly created Bureau of Reclamation (BOR), created the first BOR project. The purpose of that statute was to green up the desert to allow homesteading in Fallon. It created a reservoir on the top six feet of Lake Tahoe and the federal government took an easement from the littoral property owners to flood their land up to 6,229.1 feet Lake Tahoe datum. We now have a current high-water mark that is at 6,229.1 feet and we have ownership of the littoral land going out to 6,223 feet.

This bill encourages trespassing because it gives people the right to wade and use private property. This bill also addresses the rights to go around obstacles such as fences, breakwaters, and piers. Breakwaters in Tahoe are currently a nonconforming use so they cannot be modified in any manner that would enlarge their cubic volume. The placement of a ladder or other means to get around that breakwater would violate the Tahoe Regional Planning Agency's (TRPA) rules and regulations and would require a scenic evaluation before it could even be thought about. The creation of a gate on a fence that is properly permitted also would defeat the purpose. I thought it was interesting that the testimony we heard in support of this bill all dealt with rivers and streams. This bill creates a problem when you try to apply it to Lake Tahoe and I would ask that there be an exclusion for it.

Assemblyman Carrillo:
You referenced Lake Tahoe. How would you be able to place a fence in the lake? It sounds silly but pertaining to this I would appreciate it if you could give that answer.

Ron Alling:
There are fences that parallel piers or other properties. They are allowed in the backshore under the current rules of TRPA. Unless they have been found to be a hazard to navigation, those that preexisted the Division of State Lands or TRPA still remain. They are basically perpendicular to shore, not parallel.

Assemblyman Carrillo:
Do you run into easement issues pertaining to the placement whether they are perpendicular or parallel?

Ron Alling:
Since this is an interstate body of water, there are federal rights to navigate in that water. That still exists under federal law. This bill expands that navigation to include wading, which means you are then on private property.

Assemblyman Hansen:
I think this is an interesting idea, but Lake Tahoe should absolutely be included. His point, while interesting, I do not think would hold up too well. Basically he is suggesting that the government has stolen about six feet of property. If that is the case, then they can sue under a takings clause. But in Nevada we have eminent domain, which is why we have Sand Harbor today. I think the public has a right to use the waters of Lake Tahoe as well as the property up to the high-water mark, including the 6,229-foot level. I would definitely discourage the idea of removing Lake Tahoe from this bill.

Ron Alling:
Assemblyman Hansen, I would beg to differ with you. The right of the federal government to flood Lake Tahoe was done by easement with those littoral property owners so it has been a contractual right. There has not been any eminent domain or taking.

Assemblyman Hansen:
Then you are suggesting that everyone who has been using those shorelines all this time has been trespassing? If they wade or anything else up to the 6,229-foot level, everybody who has been doing that at Lake Tahoe ever since the building of the dam has been trespassing?

Ron Alling:
No, if you are in the water, you are not trespassing.

Assemblyman Hansen:
Okay, that is still the same point. If you are in the water or on the land up to 6,229 feet, you are suggesting now that we will be telling people they are trespassing if they are walking in the water up to the 6,229-foot level.

Ron Alling:
I am telling you that NRS 321.595 establishes the boundary between the Nevada state-owned land and that of a littoral property owner as being 6,223 feet, not 6,229 feet. The natural high-water mark is at 6,223 feet.

Assemblyman Hansen:
Then if I am in the window in between, am I trespassing or not?

Ron Alling:
You are trespassing.

Chair Daly:
It is an interesting argument. I know that whenever the Legislature passes a law it does so with the full knowledge of all the other laws we have passed. When we pass one it is with knowledge of the others. I heard your testimony about breakwaters and piers. That is why I brought up the difference between lakes, rivers, and streams when Assemblyman Bobzien was up. I was looking for the example on a lake and I am not seeing where it would happen too often. It is a big lake. I cannot imagine a thing they cannot get around on the water unless they need to come off that lake for safety reasons, in which case most normal people would understand an emergency. I am not saying too much on the things you bring up. I understand the difference between the natural lake level and the dammed lake level, the reservoir and the benefits to the states, and the land in between. In some areas, it is about six inches because it is steep. In other places, it could be a hundred yards depending on the gradient.

Jan Brisco, Executive Director, Tahoe Lakefront Owners Association:
The Tahoe Lakefront Owners Association represents private shoreline owners around Lake Tahoe. We have 591 lakefront owners in Nevada alone. We are here today to present our concerns regarding this proposed bill and the language set forth regarding public use of private land, whether wet or dry. At Lake Tahoe, the title held in private ownership for both California and Nevada is to the rim of Lake Tahoe or 6,223 feet Lake Tahoe datum. The reservoir of six feet inundates the property to the legal and artificial high-water mark at 6,229.1 feet Lake Tahoe datum. We are unique, as the reservoir can fluctuate up to six feet and is dependent on the federal water master's operation of the dam at the outlet in Tahoe City. We are concerned with the area between high and low water, the intent of the legislation, and how that language is interpreted. As you always know, the devil is in the details. It has been our experience at Lake Tahoe, even in California where there is a public trust easement, it is not always the use that makes my phone ring, it is the abuse of whatever those privileges and rights might be. I think that is what we are especially concerned with here.

Additionally, we feel there may be conflicts between the federal definition of certain aspects of this bill that is not consistent between the public uses and rights. I think the testimony you heard today both for and against this proposal really needs to be vetted. Lastly, we are concerned with the environmental

impacts associated with a change in how the public might access waters, banks, and beaches. We believe there needs to be a very careful analysis of the environmental issues. I have not heard anything today about that. We are living in the most regulated place in the entire world at Lake Tahoe. We make sure that anything resulting from the passage of this legislation needs to be carefully analyzed to protect natural resources and the TRPA environmental thresholds for water quality protection and erosion potential. Since we have only had this draft for a few days, we would appreciate an opportunity to further discuss this with the author to determine whether our concerns have a resolution.

Assemblyman Aizley:
Do you know the number of properties that actually touch the water line versus those that are set back so that the access would be different?

Jan Brisco:
I am not sure I understand your question but our lakefront owners touch the waters of Lake Tahoe at least to the high-water mark. All of the properties that we represent touch Lake Tahoe.

Assemblyman Aizley:
I was thinking of the Thunderbird Lodge which goes right to the water line.

Jan Brisco:
That is correct.

Assemblyman Aizley:
Are there others like that?

Jan Brisco:
Yes, there are.

Chair Daly:
I understand the environmental concerns. We support TRPA and all of the issues in the state compact. We want to make sure people are not abusing anybody's process. We do not expect people to be wading in front of private beaches. If you are on a boat in the navigable area of the lake, there has to be some common sense. Do you have an example of the least and most amount of land that is in this six-foot area? If the land is steep, it is not very much. If it is more gradual, it could be quite a distance. Do you have any idea of the average amount of land?

Jan Brisco:
It is very much dependent on the shoreline. I think you were pretty accurate. There are areas where you would never see people trying to get out of the water, especially in the Crystal Bay area where you have huge boulders and it is very difficult to navigate depending on the reservoir elevation. In the area of Incline Village, however, we know that it is very sought after by watercraft enthusiasts to be able to come on to those beaches and make some kind of claim of portage or wading. Those are the areas you can have as much as a hundred yards between the high and low lake levels. This bill insinuates that it can be in the area between the artificial high and natural low rim. Does it have to be wet or dry? These are all things we are looking at when we read the intent and how it will be applied.

Chair Daly:
From what I have heard, it has to be wet. The gentleman here said if you are on the water, you are okay. If you are on the land, you are not. Clearly, we are talking about water use. We are not allowing wading. The people enjoying recreational use and fishing did not come in on a boat, or if they did, we are clearly saying that you cannot get out and wade and fly fish from there. You need to be out on the water and we need to figure out where that is. It is an interesting argument depending on the slope of the land, whether you are on private land and if there is an easement. Clearly, if the government and you folks are giving an easement for the lake water to go up, if the water is there then the easement is in place and it seems to me that people would have the use. If the water is not there, the easement goes up and down with the water. I understand you have to have common sense.

Maybe we are looking for some words. We are not talking about wading. We are talking about the portage issue. Come on, come off, do not leave debris. You have to have a reason or an obstacle to do this. I do not think that there are as many concerns as you might have. It is certainly not the intent that I have seen from the sponsor to be inflicting anybody's wrongful use onto these property owners or shorelines. We are not in support of that. I do not think the bill has the same implications. We need to get the safeguards. I think you guys have indicated willingness. You will get an opportunity to work with the sponsor and we are open to seeing that, but it has got to be soon. I hope that gives you ideas for what to look for and alleviates your concerns.

Jan Brisco:
I appreciate that very much. It is the submerged land sometimes where the wading might occur. Because we have a unique situation, I appreciate your comments and the sponsor's willingness to work with us on this.

Chair Daly:
I do not believe we are encouraging or allowing the wading or loitering. It is portage on and off for a reason and that is all this is intended to do.

Jan Brisco:
Then we will work with that definition of wading.

Chair Daly:
That is how I am seeing it. If the sponsor of the bill has a different idea, he will come and tell me.

Gordon DePaoli, representing Edgewood Companies; and Walker River Irrigation District:
Edgewood Companies owns the Edgewood Tahoe Golf Course at Lake Tahoe. It also owns a working cattle ranch in Carson Valley, Nevada. The golf course includes several thousand feet of frontage on Lake Tahoe and gets its water to irrigate from ponds that are on the golf course.

The ranch in the Carson Valley consists of several thousand acres and thousands of feet of land are on both sides of the East Fork of the Carson River. The Walker River Irrigation District is in the Smith and Mason Valleys in Nevada on the west, east, and main Walker River. The Walker River Irrigation District owns and operates Topaz Reservoir, which is an off-stream reservoir on Alkali Lake in Douglas County.

I am in opposition to this bill with respect to a number of concerns which relate to the fact that it is a confusing mix of separate legal concepts of beneficial use, state title to the bed and banks of navigable water, and the complex and evolving Public Trust Doctrine. As drafted, it also creates serious problems concerning unconstitutional infringement on private property rights of property owners whose lands encompass or are adjacent to water bodies in Nevada. I have seen the conceptual amendment that has been proposed. I am certainly willing to work with the sponsor to address the concerns that we have with the bill as it relates to those issues. I am hopeful that we can do that.

I provided some prepared testimony today (Exhibit H), and included in that is the standard under which navigability is defined for purposes of determining whether or not a state owns title to the bed and banks of a lake or stream within that state. There is a 2012 U.S. Supreme Court case called *PPL Montana, LLC v. Montana,* 132 S.Ct. 1215 (2012), which deals in great detail with those questions. I encourage you to look at it. Title and ownership of the bed and banks within the waters of a state are determined by a federal definition of navigability under the Equal Footing Doctrine of the

Constitution of the United States. The determination is made based upon whether the water body at issue was, at the time of statehood in 1864, used or susceptible to being used in its natural and ordinary condition as a highway for commerce or for which trade and travel are or may be conducted in the customary modes of trade and travel on water. With respect to rivers, that case makes it clear that you do not simply look at an entire river and determine that because it is navigable in one spot, it is navigable from one end to the other. The case makes it clear that you have to look at each segment of a river to determine whether or not a particular segment was navigable at the time of statehood.

The case also makes it clear that you do not look at what you can float on a particular river by today's standards except to the extent it may inform a historical determination. The question is whether or not it was navigable in the modes that existed at that time. One of the main concerns that I have with this bill is that the definition of navigability in this bill is not that definition. The definition of this bill will encompass lands that are owned by private property owners on both sides and the banks of streams or lakes in some basins. Anything that did not meet the federal test of navigability, ownership of that land was retained by the United States. When persons obtained title to their property, they obtained title to the bed and the banks of that land. There is a potential conflict here between folks recreating on those kinds of water, which they might be able to do under today's standards, and private property owners. I am hopeful that we can work with the sponsor and address today's issues. I will work with them to see what we can do.

Chair Daly:
Are you telling me that submarines are not legal or allowed at Lake Tahoe, even if we had one, because that vessel was not in use at the time we became a state?

Gordon DePaoli:
No. What I said was, and the Supreme Court case specifically deals with, there is recognition of certain kinds of crafts, like kayaks today, that can navigate in very shallow water. At the time of statehood, those kinds of things did not exist. Just because a kayak can navigate on it today does not mean that it was navigable.

Chair Daly:
I beg to differ. At the time of statehood, kayaks did exist; submarines did not. Natives in Alaska and I am sure natives here used some type of small canoe or floating vessel similar to a kayak, but nothing similar to a submarine.

Assemblyman Hansen:
With your understanding, when my group of Boy Scouts was going down the Humboldt River and some guy stretched a fence across the river, they would have had to get out of the water and paddle back upstream because now that one section happens to be illegal because every single section is supposedly under some different jurisdiction?

Gordon DePaoli:
The test for ownership is based upon whether the water body itself is navigable in its ordinary condition. The fact that someone has put a fence across it does not mean that now it is not navigable for title purposes. You would disregard that artificial obstruction in determining whether the state owns the bed of the Humboldt River. That fence cannot change that determination.

Assemblyman Hansen:
Would you agree that we as a legislative body have a right to try to figure out some of these things or are we locked in place as of 1864?

Gordon DePaoli:
For purposes of ownership of the bed and banks under the Equal Footing Doctrine of the *U.S. Constitution*, you are locked up under the federal law as expressed by the U.S. Supreme Court and based upon that law, it is determined at the time of statehood.

Assemblyman Livermore:
The Carson River has been declared navigable. I am not a lawyer and I do not know what law supersedes a court law. There may be other streams and rivers that have had a judgment in the court system about navigability. Maybe it is just not the full number that you are citing here. There could be court documents that also attested to that. Am I correct?

Gordon DePaoli:
Yes, you are very right. The Nevada Supreme Court case *State v. Bunkowski,* 88 Nev. 623, 503 P.2d 1231 (1972) determined that the Carson River was navigable under the federal navigability test that I have expressed. I am not here to tell you that I know of every court case that has made any determinations in Nevada as to what is or is not navigable under that test. That is definitely one.

Chair Daly:
Are there any further questions from the Committee? If we have some others in opposition, if it is something new, we will be happy to hear it.

Thomas J. Hall, Attorney, Reno, Nevada:
I worked at the Supreme Court at the time that the *State v. Bunkowski* case was determined. I served as a law clerk to Justice David Zenoff and wrote the bench memo that turned out to be the opinion of the court. I sit here today representing six property owners in cases involving access to navigable bodies of water, one in Reno at the Truckee River and five in Lake Tahoe.

The normal case determines the boundary between the high and low water. I join with Ron Alling, who stated NRS 321.595 declared the boundary between the state-owned property and private ownership. As opposed to private ownership, that statute says the boundary between the bed of Lake Tahoe owned by the State of Nevada in a sovereign capacity and adjacent land owned by others or by the state in any other capacity is established as a line whose elevation is 6,223 feet Lake Tahoe datum. You create a situation of trespass. I am against the current configuration of the proposed bill because you create a trespass on the upland portion.

Looking at the water at Lake Tahoe, the boundary is the low-water line as opposed to the high-water line elsewhere in the state of Nevada. The low-water line is the dividing line between the property owner, the state, and the private ownership above it. Assemblyman Hansen asked the question about where the line falls in the Truckee River. If you think of it as a cross-section of a bathtub, there is a mean high-water line that descends into the banks of the river and emerges at the high-water line at the other side.

There are two cases in Nevada that have established the Truckee as a navigable body of water. One is called *Reno Brewing Company v. Packard,* 31 Nev. 433, 103 P. 415 (1909) and the other is *Shoemaker v. Hatch,* 13 Nev. 261 (1878). They both determined that the Truckee River was a navigable body of water. One of the statements in the Truckee case regarding state ownership is to low water but I think the prevailing rule is that it is to high water.

State v. Bunkowski determined the Carson River and various reaches to be navigable. In that case, they accumulated logs and flumed them down the Carson. That was the commerce that was used, so there are reaches of the Carson River that were submerged. They made a dam and flushed the water and logs down freshets. This is how they got the logs from the high country in Alpine County down to the mills owned by Bunkowski.

The statute that is being proposed is troublesome on the basis of private property rights, particularly at Lake Tahoe where several of my cases—I have handled about 15 cases at Lake Tahoe—concern the boundary. I have also

presented about 20 seminars for surveyors, attorneys, and others who are interested in property rights and laws.

I coauthored *Law of Easements: Legal Issues and Practical Considerations In Nevada* with other experts on the issue. We discuss extensively in this manual the dividing line between private and public ownership at Lake Tahoe. I join with Jan Brisco, Ron Alling, and Gordon DePaoli in recommending caution when you legislate in this area because it is very important to the people who own.

Also, there is an issue of conflict between the two statutes, the one I mentioned and another statute that the state has legislated in the past, which is NRS 445A.170. It states that the construction or alteration of the Lake Tahoe shoreline between high-water elevation 6,229.1 feet requires written permission from the State Department of Conservation and Natural Resources. There are two legislation pieces that are already on the books and I think whatever you do this time around, you need to be cognizant and reflective of the other statutes that pertain to this topic.

Chair Daly:
I am sure those other statutes are talking about other types of land use and we are talking about a guy being able to carry a boat around obstructions. I do not think the laws will conflict. We can ask legal counsel, but I am pretty sure that they are not going to conflict.

Assemblyman Hansen:
One of the people who testified said that California has a public access law that allows people to go up to the high-water mark. Is that correct?

Thomas Hall:
Nevada adopted NRS 321.595 that lowered the boundary but California did not do that. As far as the California determination of the public boundary of Lake Tahoe, they use a floating average of five years. They did not relate to the original crest of the dam but rather a five-year average to establish a prescriptive easement for public use.

As far as access, there is another issue. How do you get to this public piece from a public road or space, wherever it is and whether it is high water or low water? We are very concerned about going across private property from high land to low land to get to this place. In California, I am not an expert on how you get there, but I know they have passageways perpendicular to the body of water that get you there, then you go along the shoreline. In Nevada, as long as you are below 6,223 feet, you are in the water and in public property. To answer the Chair's question of how much land is involved, I have a picture

on my cell phone that shows a vertical piece and no gain. There are other places at Incline Village where the shelf is very long, so it could be 100 feet; it could be an extensive piece of property.

Assemblyman Hansen:
The California legislature passed a law that allowed people to have access up to five feet. It is not something that is set in stone at 6,223 feet, assuming you are correct on that. I am in disagreement with the Chair on this, but I think the people who are trespassing may be the people who force the public off that section of the lake land and do not allow them to access it. I think that we as a body have a right, if not a duty, to make sure that the public has reasonable access to what is properly the public's domain. I am just wondering, are you suggesting that we as a legislative body have no right to do what California has done and establish public access to the high-water mark?

Thomas Hall:
As I have said, I am not an expert at what California did legislatively. In their court cases, they established by prescriptive easement that requires the five-year adverse use. They said that when the water fluctuates over a period of five years, that becomes the reach of the public right. That was created by this prescriptive right. They are not bound in California by the lip of the rim of Lake Tahoe. Legislatively, Nevada did that so there is not comparable legislation between the two states.

Assemblyman Hansen:
If legislatively we did it, we can undo it as well then, correct?

Thomas Hall:
I feel you are going to intrude on what has already been done. The rule that is on the books now is NRS 321.595. Whatever you do in addition will be in contravention to that, in my opinion.

Chair Daly:
I would like to hear from legal counsel on that.

Randy Stephenson:
Certainly, I have heard a lot of good testimony on this issue. There are attorneys who are eminently respected and I am not going to gainsay anything they have to say. As far as this bill goes, certainly we try to find other sections of NRS that may conflict. We always try to draft in the sense that if a bill is enacted and does become law, there is no question as to what provisions apply and do not apply. With that said, I am always of the opinion that if there needs to be some tightening up of statements of intent, we can certainly reconsider

any of the sections that have been brought up for inclusion in the bill. That is probably the best I can say at this point. We certainly try to include all other provisions that may conflict. It does not appear to be the case here.

Chair Daly:
Nobody is perfect, but our staff works very hard to make sure we have everything covered as far as conflicts go.

Joseph Guild, representing Union Pacific Railroad:
If you picture a right-of-way that is all private property owned by the Union Pacific Railroad from Wadsworth, Nevada, to the California/Nevada border in Verdi, it is roughly 60 miles of right-of-way, most of which borders the contour of the Truckee River. We have already established today that it is, without a doubt, a navigable river. My concern is relative to the liability issues that could be created by the unintended consequences of the passage of this bill.

Before I get to the specific provision, I have talked to the proponent of this bill about some of these issues and I am willing to work with him to help resolve that. It is difficult, as you know, to try to incorporate a conceptual one-page amendment into the provisions of an existing drafted bill. To the extent that I can help in that regard, I am more than willing to do so.

A provision in the statutes is incidentally not in the bill but is in the digest that Mr. Bobzien pointed out to you when he was giving his overview. That is NRS 41.510, which is a limitation of liability for recreation purposes, as he correctly said. I am not sure that limitation on liability covers the 60 miles of private property that could be attractively used by people who might be getting into the Truckee River, not necessarily for purposes of portage but for use, and later portaging with the permission of the state if this bill passes. There is an attraction problem here, in my opinion. I will quote one sentence from the statute. Subsection 1 of NRS 41.510 states, "an owner of any estate or interest in any premises . . . owes no duty to keep the premises safe for entry or use by others for participating in any recreational activity." That would clearly limit the liability of a private property owner for recreational use of that property. What about access across private property to get to the recreational place? That is my concern.

Chair Daly:
How long did you say the railroads owned this land next to the river?

Joseph Guild:
I believe since 1861 or 1859, somewhere in there.

Chair Daly:
Over a hundred years.

Joseph Guild:
Yes, sir.

Chair Daly:
Are you telling me that you do not think people have been going down to the river recreating? Because you do not own the river; you own land next to it. How many times has the railroad been sued over this type of issue?

Joseph Guild:
I cannot give you the number.

Chair Daly:
Are there any lawsuits that you know of?

Joseph Guild:
There have been lawsuits. This might be a fine point of law but it is certainly not an insignificant point of law. If you look at section 4, subsection 4, on page 3 of the bill, there is a reference that the provisions of the bill do not apply to someone who puts up "no trespassing" signs or other markings as established by NRS 207.200. In the railroad's case, you can put orange paint on tracks. That is the warning. My point is that people cross the railroad tracks every year. In my experience of representing the railroad for a long time, at least one person dies in Nevada every year by crossing that right-of-way. If we are going to create more of an attraction, maybe the railroad should have a little more immunity from liability.

Chair Daly:
I am annoyed with the argument. The attraction has been there for longer than the railroad. The railroad has owned the land since 1859, 1861, whatever it is. The attraction is there. We are talking about people who have accessed at a legal point. If they are crossing your property, I do not think the railroad is going to be liable because they are breaking the law in the first place. If they are coming back out on your property, they are breaking the law. You are supposed to access from a legal point then portage to the extent necessary as close to the edge as possible. I am just not seeing your argument. If you are not satisfied with the liability laws as they exist, you need to come with a different bill and fix those liability laws.

Michael Pagni, representing Truckee Meadows Water Authority:
The Truckee Meadows Water Authority (TMWA) is the largest purveyor of municipal water in the Reno-Sparks area. In the course of providing those services, we have a number of diversion works and a lot of land adjacent to the Truckee River. I echo the same comments that you heard from Mr. DePaoli.

We have the same legal concerns about the potential for confusion and unintended consequences. The Public Trust Doctrine, as you are hearing today, is complicated stuff. It is a nuanced legal doctrine. It is evolving and unfortunately, as you hear today, it does not always lend itself to easy black and white answers. As soon as you start to legislate in this area, it opens a Pandora's box of unintended consequences.

Our primary concern is the reference to unappropriated waters and the possible confusion of tying appropriating waters for beneficial use and using waters for recreational purposes. I am aware of the bill sponsor's potential amendment and we appreciate that effort. I think the intent of that is to address that concern and that is something we will work closely on with him.

The other concern we had is that the bill perpetuates the misunderstanding that the Public Trust Doctrine is based upon federal title principles. Title ownership and Public Trust Doctrine principles are two completely different areas of law. That is the Supreme Court case that Mr. DePaoli referred to. As I said, this is confusing stuff. The Montana Supreme Court got it wrong and that is why the U.S. Supreme Court overturned that. We welcome the opportunity to work with the sponsor on these concerns.

Our final concern is someone construing a new definition of navigability. I know there were some comments about this earlier. There are different definitions. It is a legal term of art that is used in different contexts. You are talking about navigability for purposes of the interstate commerce laws, the Clean Water Act and regulations for the federal government, the Equal Footing Doctrine and title. Whether the state or federal lands own it is a different test. It is very confusing and lawyers love this kind of stuff. Our point is to tread lightly. We want to make sure there are no unintended consequences. While the purpose of the bill is pretty straightforward and does not need to get into these issues, the bill as introduced does. We welcome the opportunity to work with the sponsor and clarify these things.

Chair Daly:
I am expecting that you will get that opportunity and we look forward to hearing back. We hope to address the railroad's concerns as well. I am just not seeing them as clearly as you are.

Neena Laxalt, representing Nevada Cattlemen's Association:
We are concerned about the private property rights. I want to add one thing that has not been mentioned. Permit holders are also part of the private property rights. With permit holdings, you will run into cattlemen's issues. They are also concerned about injuries near the beds where their agricultural practices use heavy equipment. They are concerned about harm to their livestock and injury from the livestock. I have spoken to the sponsor of the bill and we are willing to work our issues out as well.

Mike Hayes, Private Citizen, Minden, Nevada:
I do not think anybody has addressed this. This will allow people to recreate on the waters. I would like you to consider the people who use the waters to make a living, the ranchers and farmers.

The bill sponsor talked about going down to the river and coming across a defunct structure or one that was coming apart. When people in kayaks going down to the river come to an active structure that is used for irrigation, portaging around it is the same as if you had a factory for bottled water and you put a big spigot out in the middle of the playground and had everybody walk around it and use common sense not to fiddle with it. These diversion structures irrigate big chunks of land in the Carson Valley. If you block it and cause irrigation to be interrupted or if you pull boards out, you cause the head of the water height to drop and interrupt the irrigation. It can cause a lot of financial damage. It takes a long time to manifest itself in the water flowing across a field. It does not take very long to pull a board out and drop the head height six or eight inches. You can set back a farmer's irrigation 8 to 12 hours and they are doing this for a living.

There has been a lot of talk about litigation and that it will not be too bad for the property owners if they have to litigate. I suggest that if you have to take time off from work to go and litigate, those costs would be damaging to the farmers.

Chair Daly:
Are you thinking that this bill is going to allow people to pull boards out of irrigation ditches or put new ones in?

Mike Hayes:
They already do, sir.

Chair Daly:
I know, but that is not what this bill is about.

Mike Hayes:
I understand that it is not specific but you are putting people in close proximity to a working piece of equipment that is crucial for properly irrigating large sections of land. If you think it is okay to do that and you trust the public, would you put the water valve to your house in the middle of a playground and just trust that the people are not going to play with it?

Chair Daly:
You believe in multiple use. People have the right to their multiple use. They are out there already. If they are damaging your property or moving the boards, then you have to take action, but people have a right to use the river. The improper use is not addressed in this bill. No one is condoning or suggesting that. Suggesting that this bill is going to aid that means your comments are not relevant.

Mike Hayes:
You need to consider that you are putting people right in the middle of a critical piece of equipment to agriculture and people do play with it.

Doug Busselman, representing Nevada Farm Bureau Federation:
As has been mentioned by others, our concerns with this particular proposal involve dealing with property rights and the prospects of how people coming onto other people's property would be an issue. We know from some of our sister state farm bureaus, in Montana, Utah, and other places, that this type of thing has become a fairly serious problem for them. I do not think we have a problem here now and I do not know that we need to fix anything. On that basis, we are opposed.

Chair Daly:
Do you not think we have a problem now because people are doing it anyway and we just do not know about it? Or do you think people are not doing it because we do not allow it?

Doug Busselman:
I think that what is happening now is not an issue point, but we have seen in other states, where you have a little crack in the process, others looking to exploit that make an issue of different things. Right now, I do not think we have a problem. I know there are issues in different places. The Carson Valley has a river close to a lot of private property so there are contentious situations that develop but for the most part people who start in the river stay there. They are not looking for ways around that. I think if you create the ability to have this systematic approach, you may be opening a can of worms that does not need to be opened.

Chair Daly:
Are there any questions from the Committee? [There were none.] I am going to cut off testimony in opposition. I think we have enough on the record. Is there anybody in the neutral position on A.B. 396?

Steve Walker, representing Eureka County:
Until the legal clouds clear, Eureka County would like to stay neutral. They have concerns on the trespass issue.

Jason King, P.E., State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources:
As originally drafted, we were not in support of the bill. After working with Assemblyman Bobzien and understanding his proposed amendments, we are neutral on the bill.

Chair Daly:
Are there any questions? Seeing none, I will give this instruction again. Some issues I think are relevant. Others are not as relevant. I want you to reach out to the sponsor of the bill and get as much consensus as you can. Knowing Assemblyman Bobzien pretty well, I am sure he wants to find resolution to as many issues as he can, but he also wants to address something that is sometimes a safety or access issue. We also want to address the wading on private property.

The liability issue is covered under another statute, but we may need to expand it a little bit to clearly say that for these issues of portage, the liability, if covered, is not clear. That is what I am asking everyone to do. I am sure Mr. Bobzien will get this testimony so he can look back and see what is going on. If there are any questions on the legal side, we have access to legal staff and will get it all cleared up. With that, we will close the hearing on A.B. 396 and open the hearing on Assembly Bill 157.

Assembly Bill 157: Revises provisions relating to water furnished by a municipal water system for domestic use in certain counties. (BDR 48-565)

Assemblyman Jim Wheeler, Assembly District No. 39:
During my campaign, I knocked on a lot of doors because I was broke and that was the way to do it. I wanted to find out from people what they thought our problems were. The two main things I heard during that campaign were water prices and tax issues, other than federal issues that we all know we cannot do anything about. I thought I would try to address the water issues here with Assembly Bill 157.

When I originally wrote the bill, the idea was to allow people with larger pieces of land in rural counties to go back to an existing well or drill a new one when their water rates got too high. They could only use the same amount of water they were using from the municipality. We have spoken to different counties and Jason King, the State Engineer. We have gutted this bill and put a lot of amendments into it, which significantly changes it.

I have asked for help on this bill because I am by no means a water expert. I have asked a friend of mine, Tom Starrett, who was having a problem with high water rates to come up and present the bill to you.

Tom Starrett, Private Citizen, Gardnerville, Nevada:
I am a resident of Gardnerville in Douglas County. This county has experienced some abnormally high water rates. On the Nevada Electronic Legislative Information System (NELIS) you will see an example of the high water rates (Exhibit I) that I sustained on my property for the calendar year 2012. As you can see, the base rate skips around quite a bit. During the demand months of the summer, the rate increases. It is 614 percent more for that first gallon of water delivered in October than the first gallon of water delivered in January. Bringing municipal water to a home was originally considered to be a good thing. Now, it is a costly burden. In respect to certain cases and certain subsets within a community, it can meet or exceed the amount of a mortgage payment. How did this happen? We have a loophole.

This bill properly chooses to close the loophole and redirect the water providers to where they should be going if they wish to charge laddered rates in order to achieve conservation. The code is very clear. You are not supposed to be able to charge more than the traffic will bear. You can charge more for that same gallon of water if the conservation of this valuable resource is the reason for that laddering of rates and not the lining of the pockets of a county or municipal water department.

As a brief history, I met with most of you about this bill. My advocacy of this bill was as it was originally written. Assemblyman Wheeler and I took all of your comments together with those of Jason King, State Engineer. Mr. King made clear that he does not want any more straws in the ground. According to his testimony on October 5, we have 49,000 wells in Nevada. That is enough for the state water master, and I respect his opinion. I think you all do too.

Assemblyman Wheeler discovered an entirely new method. In the amended bill (Exhibit J), he left the portion where if you originally had a well and then were mandated under *Nevada Revised Statutes* (NRS) 534.120 (Exhibit K), the state water master could regulate the use of that well. By the way, those highlights

were by the state water master and not by me. This bill still says that if you had a well and you were mandated under that code section to connect to the water system and were then subjected to the abnormally excessive water rates that you can go back and use your own well, but nobody else—no more straws in the ground.

As a side note, most of our opposition is from people who are with the municipal water districts or benefit from them directly. I would point out that we have three comments submitted for this bill on the Legislature's website; all of them are for this bill and none of them are against it (Exhibit L).

Let us get back to Assemblyman Wheeler's brilliant idea to delete the new well provision and make the bill only apply to preexisting wells (Exhibit J). All state laws will still apply. All that was added was a provision at section 1, subsection 1, paragraph (b), which says, and this is the key to the bill:

> Subject to the provisions of any plan or joint plan specified in NRS 540.141, all water consumed by a consumer from a municipal water system with respect to a parcel served thereby must be charged at the same rate per gallon or other unit of water provided, except for any amount of water consumed by the consumer with respect to the parcel in excess of 2 acre-feet of water during a fiscal year of the municipal water system.

Thus, those that objected to new straws in the ground were satisfied. Those that objected because they were concerned that this will take away from the pool of payers from the base operating cost to the fund were satisfied. The water purity objectors were satisfied. The fiscal year—as opposed to calendar year—objectors were satisfied. Those who objected because they were afraid that we would not be able to recover our costs were satisfied. The constitutional objectors were satisfied. What was left? Now we get into the nitty-gritty of what this bill is about. It is about closing a loophole that was never meant to exist. It never could have been intended to exist by the original drafters of the bill that required homeowners to connect to municipal water systems but left them at the mercy of that water system.

Nevada Revised Statutes 540.141 is a very important section that really governs laddered rates [referred to (Exhibit M)]. It says that you can ladder rates if you ladder them for conservation purposes, not to line your pockets. It goes on to say that it has to be a detailed plan and it has to show how the plan will maximize water conservation and, pursuant to subsection 3, that plan has to be approved if it is based on the climate and living conditions of the service area. There we have it, folks. All water districts should comply with

this law if they want to continue charging these excessive rates. Would they be excessive if they complied with NRS 540.141? I submit no, but I think they have to comply with this law if they want to charge those rates. Assembly Bill 157 prevents them from charging those confiscatory rates unless they comply with this law.

Any such plan under NRS 540.141 must balance out the true cost of penalizing homeowners. For example, if they take reasonable fire measures in high fire risk areas, the true cost of the hit to the economy caused by a de facto building moratorium resulting from no construction, it the true cost of the increase in unemployment that results from fewer construction and landscaping jobs, fewer plant nurseries, fewer building supplies sold, and less hookup fees is difficult to quantify. What is the value of having a flower to greet you in the morning and when you return in the evening? It is important to some people and apparently not to others.

Now, Nevada has one of the highest unemployment rates in the nation. Douglas County's unemployment rate increased from 10.9 percent in December to 11.8 percent in January. That is from an article in the *The Record-Courier* (Exhibit N). According to a recent article in the *Nevada Appeal* (Exhibit O) one in three counties nationwide are in economic danger. I am not saying that all counties in our state are, but we are suffering from some economic problems. Is it not time that we stop driving our kids out of this state to find work because we cannot find work for them? Assembly Bill 157 will help reverse this trend by encouraging responsible growth.

Under NRS 540.141, it would require the factors set forth in that code section be taken into consideration before you could ladder rates. It would also factor in the economic waste of home destruction due to fires—which excessively high water rates made impossible to defend against—as well as the bland sameness of scraped earth and irresponsible fire-preventive landscaping.

Objecting water districts will say they have done studies. Sure they have. They have studied rates, economics, and how much the traffic will bear. They need to do what is mandated by NRS 540.141 every time they change the rates. If you refer back to my rates for the year of 2012 (Exhibit I), you can see that the base rate skipped all around. It changed up to four times. Under NRS 540.141, the study needed to be done each time unless they were raising the rates to achieve conservation, but they were raising them as a hidden tax.

Simply stated, A.B. 157 would prevent the municipal water districts from circumventing NRS 540.141 because there is no cap right now. The code just

says you have to hook up and not that you have to comply with NRS 540.141. This bill clarifies this.

The presentation by the Southern Nevada Water Authority earlier this session touched on the deleterious effects of building moratoriums. There is no real difference between a flat-out building moratorium to save water and a de facto moratorium, which through exorbitantly high rates achieves the same subject.

Chair Daly:
Are you getting close?

Tom Starrett:
I will skip through some of it for you, sir.

Chair Daly:
I need you to stick to the bill. I do not want to hear about job losses and various things and the stretches of all the negative and positive effects. Stick to the bill.

Assemblyman Wheeler:
I misunderstood. I think I need to present the bill; this is more testimony.

Chair Daly:
Very good, carry on.

Assemblyman Wheeler:
We will let Mr. Starrett finish that on his first testimony. Section 1 of the amended bill (Exhibit J) lays out how much a municipality may raise their rates over a certain time period. It is written in stone that way. If that does not happen, then section 1, subsection 1, paragraph (b), says the customer may go to an alternative water source or may go back to his existing well. Pursuant to that section, they must be under NRS 540.141, which says that the municipality basically has to charge the same rate as they charge anybody else.

[Read section 1, subsection 2 of the amended bill (Exhibit J).] In other words, the consumer is going to have to put a meter on his well at his own cost if he does not have one. If he uses more than two acre-feet, which is normal in this state, he will get charged for that use at the same rate as any other person in the municipality.

In the rurals, we have quite a few general improvement districts (GID). Section 1, subsection 3, of the amended bill cleans that up a little bit by saying that if the GIDs violate this, then the customer can go to a local municipality like

the county and the county may, if they want to, step in and take over the GID's water system and put it to their people.

There was a problem that we had with bonding that actually may have made this bill unconstitutional. I checked with Legislative Counsel, Brenda Erdoes at the Legislative Counsel Bureau and we included language in section 1, subsection 4, to make sure it was not. Apparently, this would have hurt some of the bonding but with this language in there, it does not.

The intent of this bill is to keep water rates somewhere that is livable for everybody and comparable for everyone in a municipal system.

Chair Daly:
I appreciate Mr. Starrett's testimony and we will get back to him in just a second. Please help me try to figure this out. This bill may or may not be the resolution to it. I know you have put a lot of work into it. I said we would have a hearing because I would like to hear more of the story and explore the reasons some of this happened. I do not know if the rest of the Committee knows this, but Douglas County has 42 or 48 GIDs.

Assemblyman Wheeler:
I think 31 or 32. No one seems to actually know for sure.

Chair Daly:
These GIDs cropped up as areas grew.

Assemblyman Wheeler:
That is correct. The way I understand it is that Douglas County is a big county. As pockets of people popped up, they needed water. In the late 1800s and early 1900s, they would drill a well or they would take over existing ranches and use an existing well to feed different homes. There are other reasons as well. That is how I understand that the GIDs popped up all over the place. The county is trying to consolidate their water system. They are doing a great job.

Chair Daly:
Some of these districts, with large or small populations, have their service areas and the people they are trying to service. Elected officials run the water district to provide the water to the people in their area. Those bills get paid in just to run the water service and that is how you have control over your rates. But they do have to comply with the Clean Water Act; do the purifications; build their own infrastructure; maintain their well; provide a system to deliver the water and a system to collect the bills. All of these things have to be met. You can tell me if I am wrong, but I believe there was a GID that was not meeting

the water quality requirement. Somebody took it over at a big increase to capital costs that had to be spread out over a small pool of people, causing high fluctuations in the rates. This creates the situation that bills could be going up wildly and becoming $800. Part of the tier that was originally proposed—and what we are proposing here—is to set a rate according to some of these other laws or let people use an existing well since we do not want to drill more wells. That is where some of the issues are. I am not going to say we are going to get more jobs from that, but that is okay.

Assemblyman Wheeler:
When I walked around Douglas County, and I walked all of the county and not just one part, this particular issue was countywide. It was also an issue in another county that I walked. Since I am a freshman here, I sought out help. My dad used to always say, know what you do not know.

Chair Daly:
Socrates said that.

Assemblyman Wheeler:
Oh! That was not my dad.

I went to one of the biggest complainers and said if you really want to complain, do something about it, and he did. Yes, I would have liked to have had another week or two to put this bill out. That is fine, we were ready. Let us go and see where the chips fall.

Chair Daly:
We will have some questions to try to flesh out how we got here and what the cure is. I was reading the amendment (Exhibit J) again. Of course, I read the bill and I told you that I want to hear the story, but I am not sure this is the cure. I also told Mr. Starrett that as well. I want to figure out what is being done, and hear both sides of the story so we can make a better decision. Consolidation may be a path that would help.

Are these GIDs interconnected? How much infrastructure would be needed so the use can be done?

Assemblyman Wheeler:
I know that they are not interconnected. I am sure it would be a huge job to interconnect them.

Chair Daly:
Mr. Starrett, is that part of the story of where you are getting to and why we brought this bill? Can we hear the other side of the story pretty soon?

Tom Starrett:
To specifically address your question, you have the part of the story that sounds the most beneficial to municipal water districts in this specific instance, to which I believe you are making reference. This bill does not involve itself with the background that you referenced.

The truth is that the developer of that development was required pursuant to a recorded development agreement with the county that each homeowner was required to be subject to, that he would tender to the county a water system in complete accordance with state and federal law. Apparently, he built junk or close to it. The lot owners had already paid for that water system through their exorbitant water prices.

The county has not insisted upon its rights under the development agreement, for reasons that they will not explain. We have asked them to explain for at least three years. Instead, they took over the water system and released the developer scot-free from his legal obligation to deliver the proper water system. He is still selling lots and still has substantial assets. The county was not compelled to take this action but right when they did that, they rounded on the poor people in this development who built in good faith.

They turned on them as something I have never seen before and attacked them with $800-a-month water rates. I have asked the county officials for a legal, moral, or equitable reason why they did this. There has been no answer.

Chair Daly:
I understand and I remember that story. It is not an issue for us to solve. With that, does anyone have any questions?

Assemblyman Livermore:
Again, we had a discussion in my office some weeks ago when you first brought me the bill. You make a lot of accusations about lining pockets, but what you have not said is the volume of water you consume. I think the Committee is worthy of hearing the volume of water you consume compared to what the average would be for that system. Do you have an average user?

Tom Starrett:
I do not know what the average user is. My particular property is at 5,000 feet on a slope of the valley in a high fire rate area. The fire districts strongly

twisted my arm to provide protective green belt areas. Of course, I am going to be using more water in order to protect this asset. The volume that I used in 2012 I believe aggregates to about 2.9 acre-feet, which serves two lots. This averages to 1.5 acre-feet per lot.

Assemblyman Livermore:
When you showed me your water bill (Exhibit I), your consumption in the months that you showed me was something in the neighborhood of 600,000 gallons of water a month. You are probably not paying that same utility bill in January. You have high and low volume consumption. Take your high volume. What would the average be for the other consumers?

Tom Starrett:
Would the example of my water rates answer your question? It shows what I was charged between my usage and the base rate and the cost for 1,000 gallons for each month for the entire year of 2012. [Read statistics from his 2012 water rates (Exhibit I).]

Chair Daly:
To be fair to Mr. Livermore and you, I do not think you can answer his question as to what others' use rates were. We will move on.

Assemblywoman Swank:
I have a couple of questions. In section 1, subsection 1, paragraph (b) on line 22 of the original bill, you talk about an alternative water service. Can you give me a couple of examples of what those alternative water services are?

Assemblyman Wheeler:
In some areas, people have water trucked in. Usually that method is not very cost-efficient but occasionally you can do that.

Assemblywoman Swank:
Putting a meter on a well is an interesting idea. That would need to be monitored by the local water company and thus would require a fee. What are the mechanics of putting the meter on the well? I think it is a good idea, but how do we get it to work out?

Assemblyman Wheeler:
I do not know about the specific mechanics, which would have to be worked out. I think you are right in that it would probably require some kind of fee to have someone come out and read the meter.

Assemblyman Ellison:
I have two questions that I hope you can answer quickly. Is the water system there not regulated by the state and the Public Utilities Commission (PUC)? Do they not have a regular authority that they have to go to in order to say, "I have to raise the rate here, here, and here"?

Tom Starrett:
I do not believe so. I would think that might have some salutary effect. That is not the approach that this bill took. I would think for the sake of the municipal water districts that they would prefer not to have involvement by the PUC, but that certainly is an option in order to achieve equity with respect to this very vital utility.

Assemblyman Ellison:
I think that is important. Somebody mentioned laddering and the cost of the rates. I have never heard of that before. Laddering must be a way to raise the rates as they go up in conservational water resources for the houses.

Tom Starrett:
Yes, laddering is a term that I have just recently learned too. It involves charging more for a gallon of water as you increase your usage. That concept is specifically dealt with by NRS 540.141. It permits the laddering under a specific set of circumstances that are designed to take into consideration conservation, the climate, and the living conditions of the service area.

Clearly, a parcel that is in a high fire rate area that is required to have a protective green belt to prevent it from that inevitable fire is going to use more water than a residence on a smaller lot in a more adequately fire protected area in town. As you get into the forest areas, you need to take into consideration the level of water usage that is reasonable to sustain existing trees.

We have a bark beetle problem in the Sierras. It is a parasitic beast that destroys trees. We also have arbor mistletoe. Both of those parasites attack stressed trees. If you travel throughout the Lake Tahoe area, you will see huge swaths of the forest that have fallen victim to these parasites. If you keep your trees healthy and give them enough water to get them through the demand season, they will use their own individual defenses to fend off these parasites. If you make water too costly for the owner to be able to help those trees fend off those parasites, then you have lost part of the beauty that is the Lake Tahoe watershed. It is a huge economic engine for this state.

Chair Daly:
Does anyone else on the Committee have questions? [There were none.] I appreciate this and want to get more questions and answers, but we have to keep moving. At this time I will take testimony in support of A.B. 157 as amended. [There was none.] We will move into opposition and I am hoping I have someone here from the county; otherwise I will have to drill Mr. Walker.

Jason King, P.E., State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources:
Mr. Chair, I am looking for a little direction from you. I have prepared testimony for the prepared bill draft. I have not seen the amendment. I was taking notes as Mr. Starrett and Assemblyman Wheeler were describing the amendment and I can respond the best that I can, but I want to tell you that I have not seen it.

Chair Daly:
Very good. We understand the issue of drilling more wells. I think we understand the public policy with people on water systems rather than wells. We know that there are statutes that say if you are within so many feet of a water system, you have to get off your well and go on the system. We have all of the GIDs.

When I first read the bill, I told the sponsor that having people come off of the water system and go back onto wells was not a good idea. I do want to hear about how all of this came about. If Douglas County let some developer off the hook, I do not think you can answer for that. We need to stick to why we want to be on water systems, why we are trying to wean off wells, and how that is a better management system. Those issues will be useful to the Committee.

Jason King:
I will try to paraphrase my two pages of testimony (Exhibit P). I sympathize with what Mr. Starrett has represented and understand where he is coming from. I would not like it if I had to pay $1,000 a month for my water bill. Having said that, our water law is not the place to try to remedy that situation. That is going right to the point. There may be other remedies to that situation but it should not be in the water law. There is already contradictory statutory language in a number of places.

When you look at prudent water resource management throughout the West, you do not have this splintered system where some people are on a water system and their neighbor is on a domestic well. He has a meter; he does not have a meter. What kind of contamination is occurring? Obviously, a municipality has the ability to charge tiered rates. We live in a desert, so the more water a person uses, I think it is reasonable that they be able to request

that they pay more for it. Under a municipality, a utility that provides water, it is much better water resource management than to have this kind of splintered system where it is basically everyone for themselves. I know I am mischaracterizing what Mr. Starrett is promoting, but this is what can occur.

In the amendment, Mr. Starrett talked about getting rid of new straws and going with existing wells. The first question that comes to my mind is why is there an existing well that has not been plugged? If you had a domestic well and you hooked up to a service system, then that well should have been plugged, so that gives me a problem. If it is an existing irrigation well and perhaps irrigating the back 40 acres with it, then that is a different story. But again, do you want to have that kind of splintered system inside the utility that is trying to manage the resource to the best of their ability?

Chair Daly:
I think we have spoken on that already. No, we do not.

Jason King:
Another issue I had is this. If someone was already hooked up to a municipality and was pumping water from a domestic or existing well, per our statute, they would have the priority of the date that they began the domestic well use. If this were to move forward, someone would now have a 2013 priority in their domestic well use.

Let us say that our office had to curtail that basin where that water use is. They would be one of the first wells that we would have to cut off because they would have the most junior right. Now what do they do? They come back to the municipality and ask to be served because they were cut off. What if the municipality has already dedicated those water rights to other customers and do not have any water to hook them up? These are extreme cases but some of the pitfalls that I see and worry about as unintended consequences. I would be happy to work with Assemblyman Wheeler if this moves forward on some kind of compromise language.

Chair Daly:
I thank you for that and I am sure Mr. Wheeler thanks you for that. I really am seeing the issue less in your domain and more as wells versus no wells, the public policy, the water policy that the state has already spoken on. We want to have a more consolidated system and fewer wells. We want to be able to meet those uses with the best anticipation. There seems to be another breakdown that has affected several people that is not really that policy's issue. I appreciate your testimony and we will see where we go from here.

Steve Walker, representing Douglas County; Carson City; and Eureka County:
In addition to representing three counties, I am providing written testimony from Kingsbury Grade GID General Manager Cameron McKay (Exhibit Q).

Before I get into my testimony, there was a statement made in the presentation that the bill was gutted to accommodate what has been heard in the halls and the reaction to it. Only 11 words were removed from the three-page bill. With that, I think we can speak to the basic bill and address the parts that were added.

My testimony is from people who could not be here. I will be as brief as I can, but I would like to get a lot of it on the record. John Swendseid provides bond counsel to most of the municipal bonds in Nevada, including large ones, small ones, and would be the Carole Vilardo of bond law in Nevada. [Read from prepared testimony (Exhibit Q).]

The proposed amendment (Exhibit J) deals with the *Nevada Constitution* and *U.S. Constitution*, but with this in place, you cannot get a bond. You cannot issue a bond. Nobody is going to issue a bond where, if your water rates go up 25 percent, they can move off the system. You lose the ratepayer.

I would like to deal with the water quality issue very quickly. Andy Burnham is the Public Works Director for Carson City. He said rates go up lately because of arsenic compliance, a written rate on compliance. If you moved off of the system and your domestic well was put into the same area and you pumped from the same aquifer, you would have to comply with that on an individual well basis instead of a municipal system basis. It would be much more costly. One could ask who would know. Try to sell the house. State law already requires enterprise funds to be nonprofit. That is the 5 percent issue in the bill. Accounting for the "less-than-gallon" provisions, water meters measure a gallon, they click, then they measure another gallon. It is almost impossible to do accounting with anything less than a gallon. [Continued to read from prepared text (Exhibit Q).]

Next are comments from Carl Ruschmeyer, the Public Works Director for Douglas County. This is the rate sheet (Exhibit R) for the water systems that we are talking about. I would like to point out that if you, as a customer, had a three-quarter-inch service and you used 6,000 gallons of water a month, your water bill would be $38.09.

Also, on the bottom, there have been questions. You will see volume charge per 1,000 gallons and it is a tiered rate structure. The more water you use, the more you pay. It is supported by the Division of Environmental Protection,

American Water Works and all rate making, particularly in the arid West. Providing larger amounts of water takes larger pipes and more infrastructure so the user needs to pay for that. If you look at the water bill that was provided (Exhibit I), that is 2.93 acre-feet of water that was used on that water bill. Eight acre-feet is 325,800 gallons. Imagine if everybody on that system used water at that rate how large your wells and your pipes would have to be. What was the water right dedication requirement on that lot?

Cameron McKay is the General Manager of the Kingsbury Grade GID with 2,650 customers. He has comments that are very specific to the bill itself. These parts remain in the bill. [Read second paragraph of page 3 (Exhibit Q).] A minimum rate charged by Kingsbury Grade GID is a base rate; everything else is a usage rate. Because the word "amount" as seen in section 1, subsection 1, paragraph (a), subparagraph (1), is used because of rate here, a high water user can pull out of the system any time; all you have to do is use a bunch of water. It would instantly increase above 25 percent.

The rates talked about in subparagraphs (2) and (3) are based on a minimum rate without counting tiered structure. If you do not account for tiered structure and their system is on a tiered structure, everybody could go over very easily. Everybody who wanted to use a lot of water would go over the 25 percent. The bill says amount and it should be on rates.

You are going to hear this from other people, but there are also sections in the bill that talk about using water from the water system for indoor house water use and the existing well for landscaping. If an existing well does not meet the drinking water standards, you could still use it. That is going to be a problem with cross connection, the kid drinking from hose, and the Division of Environmental Protection.

Governance is provided by these water districts and GIDs with an elected board of directors, or by the county commission in Douglas County. People with water rate cases go there like they go to the Legislature. It is governed by elected officials, so there really is not an issue on governance.

Finally, Ron Damele is Public Works Director for Eureka County, which is a smaller water area that would be affected by this. He states that if you did this, a well user would have to install backflow devices at a considerable expense. They would need to be tested and certified annually. Increasing the numbers of domestic wells in close proximity to municipal wells increases the chance for contamination. The Bureau of Safe Drinking Water would be in opposition because of the contamination.

Mark Gonzales, Manager and Engineer, Gardnerville Water Company:
The Gardnerville Water Company is a small, user-owned public water system in Gardnerville. You have on record a letter of opposition (Exhibit S) from us due to concerns relating to A.B. 157 and its effect on water quality, metered tiered rates, increases in operating costs, and long-range planning.

Small water systems operated by towns, cooperatives, GIDs, and counties are managed at a local, grassroots level. The water system that I manage has a board of directors who live within the water service area of Gardnerville. They are users and owners of the system and set rules, regulations, and rates to ensure that water customers obtain the best quality water at a reasonable cost.

Our water system, like other water systems within the state of Nevada, is regulated by the Bureau of Safe Drinking Water, Division of Water Resources, and in our case as a cooperative to a certain extent, the Public Utilities Commission of Nevada. The proposed legislation creates more administrative costs, erodes existing rate structures, and does not allow utilities to recoup capitalization costs and infrastructure investments.

Chair Daly:
Are there any questions from the Committee? [There were none.] I want to hear from Douglas County about some of the issues that were brought up by Mr. Starrett about the requirement of the water district in this one area being let off the hook. Eventually I want to hear from somebody on that. There seem to be a lot of moving parts. I told the sponsor that you would not be about to fund bonds or get any bonds. Most of the people on the Committee know that we could not put a law into place that would adversely affect existing bonds. You have a lot of problems if people can get off if their rate goes up too much. There are loopholes and issues with that.

I want to find out more about the base problem that started all of this, the connectivity, and how many water districts there are in Douglas County. With that, we just start to scratch the surface on public policy of best management practices, economies of scale without having at least 31 water districts.

Steve Walker:
Most of your answers are in the room. There are people behind us who will be people to speak to those questions. Bruce Scott is here and he is very knowledgeable about water systems in Douglas County.

Chair Daly:
I am willing to hear from anyone who has testimony in opposition. We are running out of time.

Kyle Davis, representing Nevada Conservation League:
Our concerns were primarily talked about by Jason King. We share a lot of those concerns and we are happy to work with him if there is anything we can do to help.

Chair Daly:
Can you tell me how many water districts are in Douglas County?

Bruce R. Scott, P.E., Engineer, Resource Concepts, Inc.:
I am a consulting engineer for Minden and Carson City. I can tell you that it is nowhere close to 31. There are a bunch of GIDs in Douglas County that do not do water. There are a number of districts, however; the Town of Minden, Douglas County, and portions of their system including Indian Hills, and Carson City are in the process and are either connected or about to be as a backbone regional system. I think there are a lot of positive things going on to bring the economies of scale into this equation. The location where Mr. Starrett lives is not part of that immediately, but the potential for benefitting his area is also there. I had some written testimony (Exhibit T).

Chair Daly:
We did not get an exact number of water districts in Douglas County but we are narrowing it down.

Bruce Scott:
Many of those are in Lake Tahoe.

Chair Daly:
That was going to be my next question. If I look at Douglas County's map, you have the valleys, Lake Tahoe, and the south shore. It seems to me that there would be the break if you were to have more than one. I do not know how you integrate over the hill or if you can. You answered the question about connectivity. Is there progress toward economies of scale on the various boards, coordinating and consolidating? Are all of those discussions happening?

Bruce Scott:
Some of those discussions are happening. Minden, in conjunction with Douglas County, Carson City, and Indian Hills, is putting together a common wholesale water rate so that everybody would receive wholesale water at the same price. Varying distribution systems within specific portions of that area are of course subject to their built-in costs, but their source water would all be at the same cost. As you well know, it is politically sensitive but we have said for years that if we can proceed on the track of consolidation and creating connectivity, the long-term idea of who is in charge is less critical than the efficiencies of

scale and the compatibility of everybody getting good-quality water that meets quality standards.

Chair Daly:
Can you talk about the developer that was required to put in a certain type of water system and then not being required to later? Can you shed light on that or is that somebody else's question?

Bruce Scott:
I will not dodge it completely. I review all subdivisions in Minden and have for over 30 years. We have been able to maintain a high-quality water system with new infrastructure meeting current standards and positively adding to the economies of scale. Douglas County, on the other hand, has had the unfortunate position of inheriting a number of old GID systems that were never put together well in the first place. Because the county did not want to take action at the time to create a county system, they allowed developers to put them in at a lower standard. The subdivision that Mr. Starrett referred to is a relatively modern subdivision and I honestly cannot answer what the problems are and why it cannot meet current standards. It is the exception in terms of what Douglas County has inherited.

Chair Daly:
I would like to get more information on that. In Douglas County, we are moving toward more consolidated, integrated governance, whether it is at the county or where there might be two water systems. Is there anything we can do to help? I know we probably cannot this session but that might be a bill for Mr. Wheeler next session.

Bruce Scott:
There are a couple of consolidations going on. Douglas County has acquired a number of systems over time, both at the valley and the lake. They are trying to connect them as Douglas County systems. There is a group at the lake including Kingsbury Grade GID, who you heard from through Mr. Walker, and others. In the valley, Douglas County owns a number of systems in Genoa and the Job's Peak area that Mr. Starrett referred to. They own in East Valley and they are consolidating under Douglas County. They are a wholesale customer of Minden and the town is serving wholesale water to Douglas County and Carson City in the near future and Indian Hills today. There are consolidations going on. They are in two different pieces, but I think it is moving in the right direction. I do not perceive a legislative need. I think the concerns that created this bill are a little different from the consolidation concern.

Assemblyman Aizley:
If you consolidate, will you require meters everywhere, especially on homes and businesses? Will rates go down?

Bruce Scott:
Looking at the second question first, it is very difficult for rates to go down because water quality standards are increasing. You do get economies of scale, but very honestly, the best you can hope for is to try to moderate rates and lower the rate at which they might increase, assuming that water quality standards do not change further along the way. With regard to metering, I think you are seeing a general movement toward metering in all systems. It is becoming more consistent and I am sure it will be a bigger factor in the future.

Assemblyman Livermore:
When a calculation of operating costs is included with the development of rates, is fire protection included in that?

Bruce Scott:
Yes. The ability to store water for fire protection and deliver high volumes of water should be part of a system design.

Assemblyman Livermore:
In this case, if this gentleman were to go off the system, would he be able to be subsidized by the remaining ratepayers for that service?

Bruce Scott:
Yes. If he had fire hydrants in front of his house and he was not on the water system, I think you could make that argument.

Jennifer Carr, P.E., Chief, Bureau of Safe Drinking Water, Division of Environmental Protection, State Department of Conservation and Natural Resources:
I am happy to answer questions that you feel may not have been answered yet.

Chair Daly:
I do not think you can answer the Douglas County questions. I think we hit on a few of the issues. We need to maintain the water quality, whether it is arsenic, radon, or whatever it might be. Mr. King talked to us about wells that need to be capped if they are not capped. Then you need to keep that segregated from drinking water. You can use unclean water for irrigation and some things but not for others. Am I correct on that?

Jennifer Carr:
Yes, there is an overall concern about the protection of public health with regard to ensuring that if these other wells are near the system but on private property that there be proper backflow and cross-connection control protections in place. If they were somehow cross-connected with the system, these wells are not regulated to the extent that the municipal water system is, so it puts the system at risk. In addition, if there are unregulated wells in proximity of municipal wells that are wellhead protection zones, there are additional potential conduits for contamination to get below ground. That can be a concern.

In addition to what has been covered, the idea that large ratepayers can opt out of a municipal water system has been discussed in terms of fiscal integrity of the system, but it can also compromise its physical integrity. Systems are designed for specific flows and capacities. If those larger users are no longer purchasing water from the system, it can affect the overall integrity of the system as well.

Bond counsel was discussed so I will limit my comments to the fiscal regard of the reserve issue. There are few reserves that are covered under the concept of generally accepted accounting principles that are identified in the bill. The Division of Environmental Protection administers the state revolving loan fund program, which requires reserves that are adequate to repay the loan. Under good water management practices, it is very important to have enough reserves in place to address the age of infrastructure and be able to have enough reserves to replace critical equipment.

Chair Daly:
I understand the bond issue and I think most of the Committee members do as well. Are there any questions from the Committee? [There was no response.] Thank you for working with us. Is anybody else in opposition? [There was no one.] Is there anybody else in neutral?

Mike Workman, Director, Public Works, Lyon County:
I have been a water system operator for almost 38 years. I also worked at Incline Village GID. I came to Lyon County in 2004. I am intimately familiar with fairly small water systems. In the Dayton and Mound House areas alone, we had six separate permitted water systems. Those systems came about in the late 1970s and early 1980s. Developers would come in and set up a subdivision out in the middle of Dayton Valley, for instance. In order to put small lots in and allow septic tanks, they said they would build a municipal public system. Those systems met the standards at the time. They were approved by the state and county. We move ahead 30 years and the whole

game has changed. Fire flow requirements, arsenic levels, nitrate levels—you name it, and it has changed.

Expansion also occurred. We have worked closely with the state and with Mr. King's office, Carson City, and other regulators. Now Dayton, Mound House, and Carson City are interconnected. We share storage tanks. We can share the computerized data system. That spreads the user base over a large service area.

We have 919 customers in Mound House. Their rates were quite high. They were paying $150 to $160 a month for the heavy use months. When we were able to connect the Carson City and Lyon County systems together, their rates went down 55 percent and we were able to supply domestic and commercial peak demand flows. Supplying what that industrial area needs for fire flows is very important and we were able to achieve that.

Chair Daly:
Getting to the point, do you want to say that this bill is not going to help you continue doing that even as amended?

Mike Workman:
Yes. There is a very small water system called Crystal Clear out in Poverty Flats near Yerington. Because of regulations, the owner actually got up and walked out. It was regulated by the Public Utilities Commission and they were not allowed to set aside reserves for replacement. We stepped in and worked out a deal with the state and U.S. Department of Agriculture. We rebuilt that system completely and connected it to the City of Yerington. Those people, if they would have had to put up their own treatment, they would have been paying $200 to $300 a month. Their average bill right now is about $45.

Chair Daly:
Are you saying that the opt-out provisions are not going to work and people have to go through the regular governance problem in order to fix the rates if that is how we are going to try to address this?

Mike Workman:
Yes.

Chair Daly:
Is there anybody else in neutral? [There was no one.]

Assemblyman Wheeler:
You can see that we have some work to do. We are willing to talk to anybody at any time. I will continue this discussion with you and let you know how it works out before our work session.

[Greg Reed of the Round Hill GID submitted a letter (Exhibit U).]

Chair Daly:
I believe that there may be exhibits (Exhibit U) that were submitted to NELIS but not directly referenced during the meeting. They will be made part of the record as well. Does anybody have public comment? Seeing none, we close the hearing on A.B. 157 first. Then we will close the meeting. [Meeting was adjourned at 2:56 p.m.]

RESPECTFULLY SUBMITTED:

Cheryl Williams
Recording Secretary

RESPECTFULLY SUBMITTED:

Mistia Zuckerman
Transcribing Secretary

APPROVED BY:

Assemblyman Skip Daly, Chair

DATE: _____

EXHIBITS

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

Date: March 28, 2013 **Time of Meeting: 12:34 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 121	C	Amelie Welden, Committee Policy Analyst	Work Session Document
A.B. 125	D	Amelie Welden, Committee Policy Analyst	Work Session Document
A.B. 396	E	Assemblyman Bobzien	Conceptual Amendment
A.B. 396	F	Assemblyman Bobzien	Presentation
A.B. 396	G	Josh Hicks, American Whitewater	Support Letter
A.B. 396	H	Gordon DePaoli	Prepared Testimony
A.B. 157	I	Tom Starrett	Starrett Personal Property Water Consumption
A.B. 157	J	Assemblyman Wheeler	Amendment
A.B. 157	K	Tom Starrett	NRS 534.120 Reference
A.B. 157	L	Tom Starrett	Nevada Legislature Website Opinions
A.B. 157	M	Tom Starrett	NRS 540.141 Reference
A.B. 157	N	Tom Starrett	*The Record-Courier* Mar. 20 Article
A.B. 157	O	Tom Starrett	*Nevada Appeal* Mar. 17 Article
A.B. 157	P	Jason King	Prepared Testimony
A.B. 157	Q	Steve Walker	Prepared Testimony
A.B. 157	R	Steve Walker	Douglas County Rates
A.B. 157	S	Mark Gonzales	Gardnerville Water Co. Letter
A.B. 157	T	Bruce Scott	Testimony
A.B. 157	U	Round Hill GID	Letter