

**MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES**

**Seventy-Seventh Session
March 19, 2013**

The Senate Committee on Natural Resources was called to order by Chair Aaron D. Ford at 1:31 p.m. on Tuesday, March 19, 2013, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Aaron D. Ford, Chair
Senator Mark A. Manendo, Vice Chair
Senator Tick Segerblom
Senator James A. Settelmeyer
Senator Pete Goicoechea

STAFF MEMBERS PRESENT:

Michael J. Stewart, Policy Analyst
Patricia Devereux, Committee Secretary

OTHERS PRESENT:

Edwin D. James, P.E., General Manager, Carson Water Subconservancy District
Jake Tibbitts, Natural Resources Manager, Eureka County Department of Natural Resources
Steve Bradhurst, Executive Director, Central Nevada Regional Water Authority
Jason King, P.E., State Engineer, Office of the State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources
Andy Belanger, Management Services Manager, Southern Nevada Water Authority; Las Vegas Valley Water District
Steve R. Walker, Eureka County
Neena Laxalt, Nevada Cattlemen's Association
R. Michael Turnipseed, P.E., Douglas County Advisory Board to Manage Wildlife
Dennis Wilson, D.M.V., President, Nevada Bighorns, Unlimited
Larry Johnson, President, Coalition for Nevada's Wildlife

Kyle Davis, Political and Policy Director, Nevada Conservation League and Education Fund

Jeremy Drew, Vice Chair, Board of Wildlife Commissioners, Department of Wildlife

Eric D. Petlock, Nevada Field Representative, Theodore Roosevelt Conservation Partnership

Tom Smith, Vice President, Coalition for Nevada's Wildlife, Inc.

Elmer Bull, Chief, Habitat Division, Department of Wildlife

Chair Ford:

We have a presentation on the Carson Water Subconservancy District (CWSD).

Edwin D. James, P.E. (General Manager, Carson Water Subconservancy District):

You have a copy of my presentation ([Exhibit C](#)). I will give an overview of activities occurring on the Carson River watershed (CRW). The CRW starts in Alpine County, California, and then flows into Douglas County, Carson City, Lyon County and finally into Churchill County. A small part of the CRW is in Storey County, where Virginia City is located. The CRW is just under 4,000 square miles, and the Carson River is 184 miles long. The CRW serves about 156,000 people; it is predicted that figure will rise to more than 300,000 by 2050.

The CRW has limited upstream storage capacity. The map on page 3 of [Exhibit C](#), shows Lake Tahoe, which is not in the CRW. Lake Tahoe stores 6 feet of water, which equals 2 years of the annual flow of the Carson River. We constantly deal with flooding or drought, often in the same year.

Chair Ford:

Could you define "watershed"?

Mr. James:

A watershed is where any water would flow down to a given area. The CRW flows into this area shown on the map, [Exhibit C](#). In this other area shown on the map, water flows into the Walker River, and water in this third area flows into the Truckee River.

The East Fork of the Carson River is the largest drainage in the CRW, with an annual flow of about 273,000 acre-feet. On the west side of the CRW, the

water is lower and comes off earlier, resulting in a smaller flow of about 78,000 acre-feet. The Carson River's two forks join in Douglas County to become the main Carson River at the Carson City boundary. It flows into Lyon County before it gets to Lahontan Reservoir and Churchill County. At that point, due to agricultural diversion, the flow is much less.

The CWSD began in 1959 as part of the Washoe Project, a congressionally mandated project dealing with storage in the Upper Carson and Truckee Rivers. The Carson-Truckee Water Conservancy District was formed to deal with both entities before they realized they needed to focus on the Carson River. The CWSD was established by courts as an agency to work with the federal government and ranchers to pay back the debt engendered by construction of the Watasheamu Dam and Reservoir. At that time, only Douglas and Lyon Counties were in the CWSD.

In the 1980s, the federal government withdrew its support for the Watasheamu Dam and Reservoir because a cost-benefit analysis no longer justified its construction. The CWSD continued to work on storage opportunities. In 1989, the Legislature changed the CWSD's role after realizing there was a high demand for limited resources. The CWSD's focus became managing and developing resources of the Upper Carson River, and Carson City joined the CWSD.

In 1997, a huge flood changed the thinking about the CRW. At the 1998 Carson River Conference, community members said that instead of developing a flood and water agency, the CWSD should develop an integrated water process and look at all of the resources. The Carson River Coalition (CRC) was formed, and the CWSD was asked to coordinate its efforts. In 1999, Churchill County joined the CWSD. One of our big projects there was the A.B. No. 380 of the 70th Session, \$15 million "Water Buyout Program." In 2001, Alpine County joined the CWSD; we are now a bistate, multicounty organization.

In 2003, Governor Kenny Guinn designated the CWSD as the planning agency for the Carson River under section 208 of the Federal Clean Water ACT. In 2007, the Stewardship Plan was adopted to make the CWSD comply with the U.S. Environmental Protection Agency's (EPA) section 319(h) grant program. In 2008, we formulated a Regional floodplain Management Plan. In 2009, Storey County became a nonvoting member of the CWSD.

The CWSD Board of Directors has 14 members representing our six counties in two states. Most board members are elected county officials. Our funding comes from property taxes and grants. We have two full-time and three part-time employees. We try to utilize local conservation districts to implement projects, and we give them funding.

The CWSD is not an environmental or agricultural group or a municipality. Our programs are interdependent, analogous to a three-legged stool. We look at how to ensure that water resources meet all stakeholders' needs. We own the rights to some water stored in Alpine County for summer recreation. In the fall, we release that water for in-stream flows to enhance fisheries, and then it is delivered for use in Carson City.

The CRC has no structure per se, but it brings the community together to deal with water issues throughout the CRW. Activities include outreach, education and providing information about projects. Once a project is developed, CRC members go to their respective counties for implementation. The CRC has working groups dealing with flooding, water supply, education, water quality and river corridor projects. The Integrated Watershed Management Plan is a stewardship plan, of which there are only three in the State. This meets the 319(h) grant criteria, allowing us to get EPA funding. The image on page 15 of [Exhibit C](#) shows some of the organizations in the CRC.

The CRW is fully appropriated, with 95 percent of the water used for agriculture. Groundwater basins are overappropriated; however, we do not actually pump the entire appropriation. The CRW has no upstream storage, so we are constantly dealing with what Mother Nature gives us. We are dealing with some water-quality issues and seeing runoff patterns change, probably due to climate change.

Limitations on the CRW include growing municipalities that seek more water supplies. If they use an existing source—the Carson River—that is problematic because it goes dry in the summer in most places. Everyone wants to live close to the Carson River until it floods. We have a couple of developments seeking to build on the floodplain that meet the Federal Emergency Management Agency (FEMA), U.S. Department of Homeland Security, requirement to be elevated. The photo on page 17 of [Exhibit C](#) shows an area that flooded in 1997 that is now elevated. Elevation pinches the Carson River, which has to flow through tighter and faster, causing erosion and other problems.

Noxious-weed control on the CRW is critical. Douglas County has some of the State's largest noxious-free hay areas, which provide huge economic benefits to ranchers, so we work with them to control noxious weeds. The destroyed house shown on page 17 of [Exhibit C](#) is in Dayton. Water from the 1997 flood came through its living room, taking out the piano and other furniture.

The CRW has experienced historic impacts, including mining. The photo on page 18 shows the Carson River choked with logs cut down for mining timbers for the Comstock Lode. The trees were felled in Alpine County, and in spring, they were put into the Carson River to float down to a Carson City mill. The logs tore up the riverbank and caused erosion.

The Leviathan Mine in Alpine County is an EPA Comprehensive Environmental Response, Compensation and Liability Act of 1980—commonly known as Superfund—site. The Carson River water there is red due to sulfur used in the mining process that turned into sulfuric acid when combined with water. The pH level is 1 to 2, on a scale of 0 to 14. The water is red because its minerals are coming out of solution. The CRW has a mercury site in Lyon County due to the Comstock Lode era. In the 1960s, the U.S. Army Corps of Engineers straightened the Carson River channel to facilitate the movement of floodwaters. The problem is that accelerates the water, causing more erosion.

The photo on page 19 of [Exhibit C](#) shows how cut banks impact water quality. The banks can get as high as 20 or 30 feet, which means the Carson River can no longer access its floodplain, and sediment builds up. Some banks can erode 5 to 10 feet in a normal-flow year, taking out structures and agricultural land in the floodplain. The Carson Valley Conservation District has planted vegetation and placed rocks to stabilize banks.

In the 1997 flood, U.S. Highway 395 was underwater at the Sunridge development. In 2004, the CRW held a community conference about dealing with the River's floods. Participants told us they wanted to continue the "Living River Concept" and not channelize the Carson River, like the Los Angeles River is constrained. The CRC developed a scoping work group to create a plan with the goal of reducing flooding hazards through protecting floodplains. In 2008, all five counties in the CWSD adopted that regional floodplain-management plan.

The CWSD and FEMA became technical partners. We are working with FEMA to remap the entire floodplain, so as development occurs, we can see its

cumulative impacts. We use an unsteady-flow model, which looks at time and flow, versus the historical model, which just looks at the Carson River's steady flow. We use floodplains to store water and protect downstream users. The CWSD recently entered into a FEMA Risk MAP charter, of which there are only two or three in the State. The charter requires the CWSD and the affected counties to work with FEMA on a local, watershed-wide basis. Communities can tell FEMA what needs to be done in the CRW, within the Risk MAP guidelines.

The graphic on page 23 of [Exhibit C](#) shows the effect of development encroachment on 100-year floodplains. When the floodplain is filled with buildings, rivers rise, creating what FEMA designates as a 1-foot "floodway." The river flows more quickly there, and even though FEMA is theoretically protecting homes there, the environment is negatively impacted. The CWSD is trying to keep its floodways more open with agricultural allotments, which, unlike structures, recover more successfully after floods.

The CWSD has a 30-year Comprehensive Regional Water Management Plan for how to meet resource demands. We are developing a regional water conservation plan to evaluate current and future water demands and supplies for all major water purveyors and infrastructure needs in the CRW.

Climate change may or may not be impacting the Carson River. The chart on page 25 of [Exhibit C](#) shows temperature changes from 1940 to 2000 at Twin Lakes, California, south of the CRW. Minimum temperatures have steadily increased, which means flows come off the Sierra Nevada Range earlier. The other Twin Lakes charts show that the April to July flows off of the Sierra steadily decreased from 1900 to 2000, with more water flowing down in March. The page 27 maps, produced by the Natural Resources Conservation Service, U.S. Department of Agriculture, show 1990 to 2007 snowfall changes in the Sierra. The dark red areas indicate that more precipitation is falling as snow than as rain. The other map of page 28 and the two on pages 29 and 30 show that 1- to 3-degree increases result in more rain than snow. This makes it harder to meet ranchers' summer irrigation needs.

The chart on page 31 of [Exhibit C](#) shows runoff changes in the monthly stream flow on the East Carson River, which has little upstream storage and few diversions. The blue bar shows 1941 to 1974 flows, and the white bar shows 1975 to 2009 flows. Historically, more flow occurs in March and less in June. This means agricultural producers may get only 2 or 3 alfalfa cuttings before

they run out of irrigation water. Municipalities drawing from the Carson River may run out of water by June, so they must have backup supplies for summer demands.

The CWSD has conservation pilot projects like landscape surveys and audits to convince communities to reduce water use and waste. Every purveyor has a water-conservation plan focused on reducing waste and meeting demand during droughts. We have installed evapotranspiration controllers and have done education outreach. We did demonstration projects of efficient sprinkler heads at the Old Courthouse in Minden and home xeriscape installations in Lyon County.

The CWSD works with communities to promote regional infrastructure. We have pipelines up and down the CRW to move water. We have a lot of problems with naturally occurring arsenic in water. The two ways to deal with it are constructing expensive treatment plants or finding arsenic-free sources. To the latter end, we are working with Douglas County, Minden and Carson City on installing a regional pipeline. We built an intertie between Carson City and Lyon County and upsized the pipeline in Stagecoach. Our ultimate goal is to intertie all of the CRW purveyors. The map of page 34 of [Exhibit C](#) shows our regional infrastructure interties. Minden's arsenic level meets the federal standard, so Johnson Lane is providing water to the Indian Hills General Improvement District. In 2014, that water will go to Carson City to meet peak summer demand. A private entity helped us increase delivery to Dayton in anticipation of growth.

Chair Ford:

We will open the hearing on Senate Bill (S.B.) 133.

SENATE BILL 133: Requires the State Engineer to allow a county to participate in the development and implementation of a plan relating to the appropriation of water for beneficial use under certain circumstances.
(BDR 48-631)

Senator Pete Goicoechea (Senatorial District No. 19):

You have a proposed amendment ([Exhibit D](#)) to S.B. 133. We have worked on the bill's language considerably since it was drafted. Then-State Senator John J. Lee offered a similar bill in the 76th Session. The bill would allow local governments to request that the State Engineer, Office of the State Engineer,

Division of Water Resources, State Department of Conservation and Natural Resources, participate in a monitoring, management and mitigation plan (3M plan). Typically, the state engineer orders 3M plans for larger projects. Local governments are charged with water planning for growth impacts in their respective jurisdictions. Senate Bill 133 would provide a means to avoid litigation which typically occurs after there is a difference of opinion among project creators, the state engineer and local jurisdictions.

In the past and present, state engineers have had good working relationships with local governments; what concerns us is when we change engineers, sometimes policies and programs change. The bill would allow local governments to petition the state engineer to be included, in an advisory capacity, in creating and managing 3M plans.

Chair Ford:

Based on the amendment, [Exhibit D](#), are you seeking to allow an entity to suggest, in an advisory capacity, 3M plans to the state engineer?

Senator Goicoechea:

Yes. Typically, these entities would be cities or counties impacted by development. They would petition the state engineer, who could, within 30 days, approve their advisory-capacity 3M plans. The entities would not have veto power but would be involved in any mitigation efforts. The state engineer would have to consider their comments, but his or her determination cannot be litigated.

Chair Ford:

Does the state engineer have the discretion to turn down an advisory petition?

Senator Goicoechea:

The bill just deals with 3M plans. If there were two in a jurisdiction, that would constitute a tremendous amount of growth.

Senator Settlemeyer:

If an entity submits an advisory opinion that is denied, can it be resubmitted? Would the bill allow entities just one opinion per 3M plan?

Senator Goicoechea:

No. Once it was granted a seat at the table, the entity could continue to comment on the plan. Eureka County is involved in and litigating a 3M plan. In the past, local jurisdictions charged with planning have participated in developing 3M plans, even if just in an advisory capacity. Entities can advise, "This is a terrible plan," and the state engineer can say, "I agree, but we are going to proceed with it."

Chair Ford:

Does that end the opportunity to file petitions on that particular 3M plan?

Senator Goicoechea:

Yes. That would be a comment on a plan, but the entity would still be involved as the plan moved forward. We have discussed both of the proposed amendments with the Southern Nevada Water Authority (SNWA), the state engineer and Eureka County.

Senator Segerblom:

Is the bill a solution to a problem ...

Senator Goicoechea:

The bill is intended to avoid future problems. If an entity does not have a seat at the table, and a 3M plan is created, its only recourse is to protest the decision or appeal to a district court. The bill is all about avoiding litigation.

Senator Segerblom:

Did that happen in Eureka County?

Senator Goicoechea:

It has happened in several counties, but it did not necessarily involve the appeal of 3M plans.

Senator Segerblom:

Would the bill affect southern Nevada as well as Eureka County?

Senator Goicoechea:

It would cover all of the counties in the State.

Senator Segerblom:

I know it would apply to all counties, but is it possible White Pine and Lincoln Counties might use the petition process?

Senator Goicoechea:

I would hope that they would.

Senator Segerblom:

As protectors of southern Nevada's water, do we not own all of the water including and south of White Pine County?

Senator Goicoechea:

The SNWA is charged with creating 3M plans in the region. Is it better to have the SNWA at the table working with you, or in court working against you?

Chair Ford:

Is the bill also intended to ensure this form of legislation does not allow for mere interference designed to slow down opportunities? Once the state engineer accepts a recommendation on a 3M plan, I want to ensure that entities get "one bite of the apple" and cannot repeatedly file objections to plans.

Senator Goicoechea:

The 3M plans are ongoing. In most cases, they are living, working documents. First, water levels are monitored and then measured over time. Ultimately, if litigation is required, it could go on for years with many impacts. The amendment's section 1, subsection 3 states, "... this determination will not be considered a decision by the State Engineer subject to judicial review" He or she can weigh entities' comments and then accept or reject them.

Senator Settlemeyer:

We are indicating that 3M plans have many components. Let us say, at step 1, a county disputes a 3M plan and then the state engineer disagrees and moves on to step 2. Chair Ford is worried that counties could continue to submit paperwork concerning step 1. Would they not have to move on to step 2?

Senator Goicoechea:

Once a county is beyond step 1, there is no reason to go back to it.

Chair Ford:

Under current *Nevada Revised Statutes* (NRS), do not counties have the right to file multiple objections?

Senator Goicoechea:

State engineers have been allowing that, but it is not set in NRS, which is our concern.

Jake Tibbitts (Natural Resources Manager, Eureka County Department of Natural Resources):

You have my written testimony ([Exhibit E](#)). State engineers have allowed Eureka County to participate in formulating 3M plans when it has large appropriations. The state engineer allowed Eureka County to develop a recent ruling on water rights within it. Some 3M plans are being developed for large mining operations in the north part of Eureka County. Although Eureka County is not formally recognized in a ruling or order as a participant, the state engineer has allowed us to attend meetings and provide input in an informal capacity.

We are not litigating that 3M plan in the aforementioned project in which the state engineer allowed Eureka County to participate. We are in litigation regarding the overall water appropriation, but the 3M plan portion of the state engineer's decision is not being litigated.

Senate Bill 133 seeks to set in NRS a requirement that the state engineer allow local governments to participate in 3M plans. It would include input into the development of and throughout the implementation of plans. In [Exhibit D](#), section 1, subsection 1 would only apply after the state engineer has ordered a 3M plan and approved its water applications. Local governments would then have 30 days to ask to participate in the plan process.

Management decisions are best made after input from concerned local people is accounted for. The bill would merely provide an avenue for that accounting. The state engineer would only have to involve local governments after he or she has ordered a 3M plan specifically requested by them and prior to putting water to beneficial use. The bill would allow entities to provide input to the state engineer when critical 3M plans are developed, but he or she can ignore that input. However, at least local governments would have had an opportunity to participate in the process.

Until now, the state engineer has developed 3M plans for certain appropriations with applicants but has sometimes not involved local governments. Senate Bill 133 would not tie the hands or abrogate the authority of the state engineer. Ordered water-appropriation 3M plans submitted by local governments would only be considered by the state engineer. Local government involvement in the state engineer's water-permit process should be strongly supported by all parties, especially those who support local entities.

Senate Bill 133 aims to improve local confidence that impacts caused by rapid water resource development will be properly detected, monitored, addressed and mitigated before they become overly costly and disruptive. Only governments elected by and accountable to local people can legitimize compromises necessary to protect local values and concerns. Local governments must have a channel to voice input on local rights, resources and values that should be monitored as well as how they can be ameliorated.

Nevada Revised Statutes Chapter 278 requires counties to implement and prepare master plans, including portions involving water resources. The State mandates that water planning occur at the local level, and we agree with that. However, it is difficult to implement local plans and policies without a seat at the table in monitoring 3M plans ordered by the state engineer. This is directly at odds with many local appropriation plans that have policies dictating more local participation and input. It is a conflict to mandate water-resource planning at the local level yet not explicitly allow for local government participation in 3M plans.

How can local plans and policies be given a voice without the litigation option? The current method is local governments protest water applications and then negotiate with applicants for participation in 3M plans. If local governments feel there is a failure to monitor and mitigate their concerns adequately, protests continue and litigation ensues while collaborative resource management is cast aside and the resources and people suffer.

We cannot definitively say that S.B. 133 would reduce protests and litigation, but common sense tells us it will, and it surely will not add to litigation. How can improved dialogue and collaboration among all stakeholders not be a good thing in the long run? Exhibit D was brought forward by Eureka County and includes language addressing concerns by other testifiers from whom you will hear today.

Steve Bradhurst (Executive Director, Central Nevada Regional Water Authority):

The Central Nevada Regional Water Authority is a local-government unit comprised of eight member counties and covering 63 percent of the State's land area. We strongly support S.B. 133 and the amendment, [Exhibit D](#), proposed by Eureka County. Local governments are asking for the right to be involved, by statute, in an advisory capacity in a State action. That time has come. Every time the state engineer issues a permit, he or she confronts a water-management challenge: does issuance of that permit harm water users or the environment? If the permit involves moving water between basins, would it harm the economic future of the basin of origin?

Chair Ford:

Would not the state engineer take those elements into consideration when making those determinations?

Mr. Bradhurst:

The determinations would be made when he or she issues a permit, but they are defined during the 3M plan process. When you get down to the nitty-gritty of how the bill's provision would operate, all wisdom and knowledge does not reside in one place. The more input the state engineer gets from other, affected parties, the better.

Senator Segerblom:

If a mining operation or Clark County buys water rights or drills a well, does that entity have to consider the economic effects on a county? Does anyone else have priority over that water, or is it water for mining versus water that will naturally recharge?

Mr. Bradhurst:

That would be an issue if the water from a county is moved between basins. By law, the state engineer must impose additional findings to do so, in order to ensure that enough water is left in the basin of origin to aid its economic future.

Senator Segerblom:

If the water is not removed from the basin, does potential economic harm have to be considered?

Mr. Bradhurst:

No. When you remove water that will adversely impact someone else's rights in the area, is the water in that area unappropriated? Is it in the public's interest? Those are the findings the state engineer has to make.

Senator Segerblom:

Do you want to ensure that local governments' public interests, as they define them, are included in the appropriation decision?

Mr. Bradhurst:

No, the decision has already been made at that point. The bill deals with the period after the state engineer has issued a permit. He or she has now gone to the next step and is working with the applicant on the 3M plan. If the appropriations have an impact, the plan must be effective enough to stop those impacts before the vegetative cover is lost.

Senator Segerblom:

What types of impacts are we looking at? If the permittee uses the water legally, it may impact, but if it impacts vegetation, can the state engineer restrict the amount of water?

Mr. Bradhurst:

Yes. I would expect him or her to do that under a 3M plan. When a permittee takes water, it cannot negatively impact the ecosystem.

After the appropriation decision is made and the details of potential impacts become clear, the 3M plan must adequately address them. If the water table drops 10 to 20 feet and vegetative cover is being lost and dust storms are forming, the permittee cannot wait 3 to 4 years to do something about it. If a 3M plan is in place, potentially the impacted party is at the table. There are no local governments, permittees or a state engineer who know everything; multiple inputs would always be sought.

Nevada Revised Statutes 225.220 defines participatory democracy as " ... the participation of residents of this State in the development of public policy and in the improvement of the operation of government at all levels." Senate Bill 133 would improve State government by involving local governments in developing 3M plans.

Senator Segerblom:

Does your entity qualify as “local government”?

Mr. Bradhurst:

Yes, because the organization is comprised of eight counties.

Jason King, P.E. (State Engineer, Officer of the State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources):

You have my written testimony ([Exhibit F](#)) in response to S.B. 133 as introduced, not to the proposed amendment, [Exhibit D](#).

Chair Ford:

Do you support the bill with the amendment?

Mr. King:

I am neutral on the amendment.

Andy Belanger (Management Services Manager, Southern Nevada Water Authority, Las Vegas Valley Water District):

The SNWA supports due process for counties, which have an absolute role in the appropriation process before the state engineer’s decision is made. Counties have the right to protest applications they believe will aggrieve their residents and to provide to the state engineer all evidence documents, witnesses and testimony that they can to that effect.

Counties also have the specific right to enter into stipulated agreements with applicants prior to hearings before the state engineer. In the case of the SNWA, this has occurred with Lincoln County. In 2003, Lincoln County entered into a stipulated agreement with SNWA regarding existing water. The National Park Service; U.S. Department of the Interior (DOI); the Bureau of Land Management (BLM), DOI; the U.S. Department of Agriculture and the Bureau of Indian Affairs, DOI, have entered into stipulated agreements with White Pine County over the SNWA’s applications in Spring Valley. The federal agencies withdrew their protests over the agreements in favor of participation in 3M plans.

Counties’ participation in 3M plans is currently contingent upon their agreement to abandon protests over applications. That process works because it front-loads the conversation and allows parties to work out their differences

prior to the state engineer's hearing, rather than going through an expensive hearing. The SNWA went through two groundwater applications; the first took 3 weeks and the second took 6 weeks. That was a huge expense for the State and did not include the cost of district court appeals and Nevada Supreme Court hearings. There are opportunities for counties to participate through the protest process, the court process or stipulated agreements with applicants.

Senator Segerblom:

Are you talking about the process when appropriations are first made after the groundwater's existence has been determined? Are you saying counties want to be already at the table when the impacts have been determined?

Mr. Belanger:

Absolutely. In the SNWA's agreements with Lincoln County and the aforementioned federal agencies, they could participate in the 3M plans after the applications had been granted. We meet regularly with all parties to address those issues after the hearings. The parties join to develop agreements, drop their protests and then can participate in 3M plans.

Senator Segerblom:

You should not have to forfeit your right to protest an appropriation in exchange for a seat at the mitigation table. The counties are forced to do either/or and cannot protest impacts after the water is removed. That seems unfair.

Mr. Belanger:

That is the crux of the SNWA's concern. If the bill provides a way to allow parties to continue protests through another process, we are opposed to that. We believe there is a process through the Office of the State Engineer for counties to present evidence and testimony. However, if counties want to continue to protest through 3M plans, that is inappropriate. The SNWA is concerned about the "second-bite-of-the-apple" argument that Chair Ford mentioned. We want to ensure that once a 3M plan has gone through the court process, we will not fight repeated battles.

The SNWA filed appropriations applications in White Pine and Lincoln Counties in 1989. The applications went to hearing in 2006. We activated them in 2004 and then we went to rehearings on some of the applications in 2010. It has been 8 years from when we reactivated them until today. The counties have

had a lot of time to present evidence and gather documents and witnesses. At some point, the state engineer's decision has to be final.

Chair Ford:

Are you concerned that the amended bill would prolong the process?

Mr. Belanger:

Yes. We have worked on S.B. 133 with its sponsors and tried twice to work with the sponsor of a similar bill during the 2011-2012 interim. The SNWA is not opposed to the concept of the bill; we are concerned about the specific items I mentioned. A compromise could be that rather than processing the bill this Session, the Legislative Committee on Public Lands could further study the issue in the 2013-2014 interim to craft a statewide policy to ensure counties can participate in the process.

Chair Ford:

You read my mind over the possibility of compromise. Did you mention that to the bill's sponsors?

Mr. Belanger:

Yes, the sponsors would like the bill to be processed.

Chair Ford:

If that happens, is there any language you could add to assuage your concerns over the delayed process?

Mr. Belanger:

I would be worried about the bill's unintended consequences. There is value to having more time to examine the bill and hold open meetings at which people can present more information.

Chair Ford:

Mr. King, are Mr. Belanger's concerns valid? Could the amendment slow the process he described?

Mr. King:

The Office of the State Engineer can live with the proposed amendment; however, I do not know if it would slow the process. Our office fully supports county input on 3M plans, but our nonsupport arises from concerns about

ramifications if we did not accept that input, specifically if we would have to go back to court. The amendment clearly states counties' role would be advisory, and that would not happen. If a permittee—albeit the SNWA or a rancher with an awarded water right—is at the same table with someone who has protested that application trying to craft a 3M plan, even if they all wanted to play nicely, problems and delays could arise. I do not know if that concern is realistic or significant.

Senator Settlemeyer:

Might the bill also speed up the process if all parties were at the table working on a resolution?

Mr. King:

I agree completely. Collaboration is value added; you can agree to disagree as long as you continue to move forward.

Senator Segerblom:

Does not the mitigation occur after the appropriation has been made and water is being taken?

Mr. King:

That is not necessarily the case. Let us say that water rights are issued, and a 3M plan may have to be submitted by our office before one drop can be pumped. The draw-down could propagate toward what might be a sensitive spring, and we might have to put a monitor well between the two springs. A county could say it needs eight monitor wells, but we might say that is overkill.

Senator Segerblom:

Are you saying that the county would then run to court to freeze the water withdrawal?

Mr. King:

That was our concern with the original bill, because it was silent on what would happen in that instance. The original bill states, " ... the State Engineer shall consider ... " counties' input. The amendment has removed and cleaned up that language.

Chair Ford:

I do not understand your concern. If it is entirely advisory and discretionary for the state engineer to entertain municipalities' concerns, and that option already exists in statute, can you restate your concern?

Mr. King:

Our concern is that the bill contains profound policy changes. Water law is a statewide resource regulated at the State level. Local governments have the ability through special acts created by the Legislature to manage water within their communities. Fundamentally, water decisions are the purview of the state engineer, and we are concerned the bill is a way for local governments that might not be opposed to the premises behind applications to keep them moving. White Pine County is opposed to the Spring Valley groundwater-appropriation project, and no matter what the science or arguments supporting it, that opposition is visceral. County officials have told me that they will use every means necessary to stop the project.

Chair Ford:

The original bill's section 2 states, "This act becomes effective upon passage and approval." What if that were changed to, "Current applications pending are not affected by the passage of this act," and that it applies only to contracts going forward?

Mr. King:

In some ways, it would make sense to add something to the effect of, "This act applies only to applications filed after the effective date of this act." That would make it clear the bill was not retroactive.

Senator Goicoechea:

The bill was always intended to be prospective; we cannot go back and fix heated issues. Under existing law, entities have to relinquish their right to protest or appeal to get a seat at the table. That is unfair. The bill addresses the period after applications have been perfected and 3M plans are moving forward. We do not need to make the bill retroactive by statute. It would be a tool to assist in litigation.

Chair Ford:

We will close the hearing on S.B. 133 and open the hearing on S.B. 134.

[SENATE BILL 134](#): Revises provisions governing animals. (BDR 48-249)

Senator Pete Goicoechea (Senatorial District No. 19):

When S.B. 134 came out of drafting, it was inadequate and needed at least two amendments. Section 1 states the bill would add to NRS Chapter 533, "For the purposes of watering livestock, the term 'water' includes snow." A similar bill was heard by this Committee in 2003. The real issue in calling snow "water" is it would expand livestock operations' bases into areas where normally there are no wells or springs in winter. Ranchers could push livestock out farther in winter by using snow as the watering mechanism. Definitions of water were drafted before 1905's statutory rights, when ranchers claimed a vested interest in snow water. I do not know how that diversion right would be quantified, based on how much a cow drinks per day. In the bill's section 5, subsection 3, paragraph (b), the beneficial use is defined as:

The place at which the water is consumed by the livestock, including, without limitation, the place at which the livestock consume [the snow] in situ and without the use of a mechanical method of diverting the water.

The bill's section 7 addresses the fencing of wildlife guzzlers. The Department of Wildlife (NDOW) has developed better fences after livestock and animals were trapped inside of them. The bill would put another agency in charge of ensuring guzzlers are maintained. It would only apply to guzzlers of more than 1,000 gallons.

In the proposed amendment 7834 ([Exhibit G](#)), the bill's section 8, subsections 1 to 4 would be deleted, because guzzler water was never intended to be granted as an appropriation, rather as an application to the site. Mr. King told me he would prefer that "application" was replaced with "notification." If NDOW or an organization wanted to site a guzzler, it would notify the Office of the State Engineer, because that is effectively an impoundment of water. The only requirement would be a legal notice of site of the guzzler, which would go into the state engineer's database.

If someone came upon a dysfunctional or dry guzzler, he or she could notify the state engineer, instead of NDOW. The bill would provide second-party oversight of guzzlers. If they are not regularly maintained, they can choke small vertebrates that have come to rely on consistent water sources. There are more than 1,900 guzzlers in the State. That is a tremendous charge for six NDOW employees to maintain them. The bill would address only the 345 large guzzlers with troughs visible to livestock outside the fence. The bill would give sportsmen or sportswomen and recreationists the ability to notify the state engineer if they came upon a nonfunctional guzzler. He or she could then use the location database to notify NDOW.

Steve R. Walker (President, Walker & Associates, Incorporated):

I represent Eureka County. You have the proposed amendment, [Exhibit G](#), from Senator Goicoechea which would allow for a temporary permit to appropriate groundwater for livestock during drought. Section 1, subsection 1 states:

A person may apply for a temporary permit to appropriate groundwater to water livestock if the point of diversion is located within a county under a declaration of drought, or within a county contiguous to a county under such a declaration, by the: (a) Governor; (b) United States Secretary of Agriculture; or (c) President of the United States.

In addition to the information required by NRS 533.335 for the application to appropriate water and NRS 533.340, which designates the number of individual stock that can use water, the amendment's section 1, subsection 2 adds:

... an applicant for a temporary permit to appropriate groundwater shall submit to the State Engineer:

(a) An affidavit stating that, if the temporary permit is for a well, and the holder of the temporary permit will plug and seal the well pursuant to Chapter 554 of NRS upon the expiration of the temporary permit; and (b) any other information required by the State Engineer to determine the necessity of the appropriation. ... [Section 3] (b) ... is in the public interest; (c) the temporary appropriation does not impair water rights held by other persons; and 4. The temporary permit ... must not exceed 1 year in duration.

In the past, if there were a drought declaration and a federal program allowing the drilling of a stock-water well, the State's stock-water-appropriations law was incongruous. If the State issued temporary permits, federal programs could better benefit ranchers. The bill language I read was developed by the Office of the State Engineer.

Chair Ford:

Do you support the bill without the amendment?

Mr. Walker:

Eureka County would support the bill without it, but we feel it improves the bill.

Senator Goicoechea:

We knew the snow water section of the bill would be contentious. Several drought-stricken Nevada counties now qualify for disaster assistance through federal and State designations. In fall 2012, when the assistance money became available, by the time a rancher applied to drill a stock-water well, he or she was 90 to 120 days into the drought. Even though the bill specifies the wells would be temporary and plugged once a temporary permit was issued, ranchers would make a true application. No one wants to waste money by drilling a well, plugging it and then having another drought in 3 years. The process would give people the opportunity to perfect true water-right applications over the year the temporary permits was in place.

Senator Segerblom:

Are you talking about ranchers with grazing rights through the U.S. Forest Service or the BLM? Would not those agencies have to decide if snow is a water resource?

Senator Goicoechea:

Mr. King will address those questions as part of his testimony in opposition to the bill.

Mr. James:

The CWSD supports the bill as amended. During the 2012 drought, we set up a response committee, for which I was chair for the northern part of the State. Most of the municipalities had plenty of water, but agricultural communities were impacted. Ranchers who watered stock out of rivers could not get enough water. Funding was available to drill stock-water wells, but ranchers could not

go through the state engineer's application process. We realized we needed language to allow that. In December, we got a lot of rain, so the idea went away, but minimum precipitation in January and February brought it to the forefront again. This summer, many ranchers will have to take their cows off the field, haul in water or drill temporary stock-water wells.

Neena Laxalt (Nevada Cattlemen's Association):

We support S.B. 134 as amended.

R. Michael Turnipseed, P.E. (Douglas County Advisory Board to Manage Wildlife):

I am a former state engineer and a member of the Douglas County Advisory Board to Manage Wildlife. I have not seen the amendment; has the snow water section been removed? Fifteen or twenty years ago, a Spring Valley rancher in White Pine County asked me if he could file an application to water stock with the snow on his property. Western water-law authorities wrote that until snow melts and percolates into groundwater or becomes a spring or stream, it is not subject to appropriation.

I did a tongue-in-cheek comparison ([Exhibit H](#)) between the water storage capacity of guzzlers and pickup truck beds. The State's 345 big-game guzzlers would capture a total of 148.51 acre-feet if 6 inches of precipitation fell annually. The 1,269 small-game guzzlers would capture 1.5 acre-feet. The guzzler total would be 149.9 acre-feet annually. Assuming 250,000 pickups with 6- by 8-foot beds are registered to State ranchers and farmers, with 6 inches of annual precipitation, the total would be 137.73 acre-feet—or about the same amount as the guzzlers. This is not a huge amount of water.

I do not know why the NDOW would file an application to install a guzzler. It would have to go through public-notice and protest periods, which would be a huge burden on the NDOW. I have been doing consulting since I left the State service in 2004. I charge \$3,000 to \$5,000 to file applications to appropriate water.

Chair Ford:

I believe that part of the bill has been removed.

Mr. King:

You have my written testimony ([Exhibit I](#)). Originally, S.B. 134 had two distinct components. Our office does not support the language of sections 1 through 5 relating to livestock. It proposes to completely change the definition of water available for stock watering purposes by redefining what for more than 100 years has been considered water available for appropriation.

Nevada Revised Statutes 533.025 and 533.030 provide that all water supplies above or beneath the ground within the State belong to the public and, subject to existing rights, may be appropriated for beneficial use. The entire history of State water law is focused on surface and groundwater as the only sources available for appropriation. Our surface water—lakes, streams and springs—is inextricably dependent upon rain and snow. The appropriation of snow could have dire impacts on existing rights.

Chair Ford:

Could you explain the appropriation of snow in laymen's terms?

Mr. King:

Here is what has been represented to me that this bill is about: Ranchers run cattle on public lands. They would like to go to federal land-management agencies and say, "I have a water right for snow, even though there are no springs or wells, to water my cattle. History shows there are 2 months of snow to run my 500 head of cattle; let me run them on my allocation."

Our office believes that S.B. 134 could be better handled between federal land managers and allotment users. We have profound concerns with defining water for appropriation as including snow. Where does that stop? Federal agencies control 86 percent of Nevada land. Will they make claims on the same snow to run wildlife and wild horses or for restoration of U.S. Forest Service lands? The potential unintended consequences of S.B. 134 are countless.

Senator Goicoechea has told me why he wants to delete the guzzler sections he mentioned, and if that happens, our office is neutral on the amendment. We fully support the provision allowing for temporary appropriations for livestock for drought relief.

Senator Segerblom:

Are you saying that during drought conditions, you do not mind drilling temporary wells that fall outside of the permit process?

Mr. King:

No, we fully support that idea during droughts.

Dennis Wilson, D.M.V. (President, Nevada Bighorns, Unlimited):

I have a printout of my slide presentation ([Exhibit J](#)). The Nevada Bighorns, Unlimited (NBU) is a conservation organization with more than 3,000 members of both sexes and all ages. Conservation is what we are all about, and building guzzlers is what we do. We oppose S.B. 134 and its amendment.

Guzzlers are a fantastic way to collect precipitation for yearlong use by wildlife. In this slide in [Exhibit J](#), two mountain lions are utilizing a stainless steel "drinker." Nevada is the driest and most mountainous state in the Nation, so guzzlers are imperative to wildlife's survival and ability to thrive. All species use our guzzlers, as captured by infrared motion-detector cameras: game animals, nongame animals, small mammals, birds, bats. Guzzler placements redirect wildlife from heavy use of springs and disperse species to other areas for fuller utilization.

Guzzler collection is done on "aprons," large, roof-like structures, the largest of which we built 2 weeks ago at the Homesite guzzler south of Gabbs. That structure is 4,000 square feet with less than a tenth of an acre of collection area. The water is stored in tanks; the Homesite unit stores 10,000 gallons. Guzzler storage capacity is designed as per the recommendations of NDOW biologists. The typical tank storage is 7,500 acres, or 0.023 acre-feet. The amount of water under discussion is miniscule.

Chair Ford:

What is your position on S.B. 134?

Dr. Wilson:

The NBU opposes the bill because it adds a layer of administration. The current method by which guzzlers are approved, built, monitored and repaired is entirely acceptable, and further legislation or administration is unnecessary.

Chair Ford:

Are you referring to the portion of the bill that would allow the state engineer to receive reports about faulty guzzlers?

Dr. Wilson:

Correct. The current status by which people can contact the NDOW is acceptable.

Senator Settelmeyer:

What is your group's responsibility if a guzzler or its fence is not maintained? What is the NDOW's authority? If my unmaintained fence is on public property, federal officials can call me and tell me to repair it, or I would lose the allotment.

Dr. Wilson:

Once the NDOW constructs a guzzler it is responsible for maintaining its apron, fencing and entire environment. The NBU is in full cooperation with multiple-use doctrines on public lands in the State, including ranching, sheep producers and cattlemen. We see multiple use as important, and ranching issues are in line with our policies.

Chair Ford:

Do you have an issue with the amendment allowing guzzlers to be used by livestock during drought periods?

Dr. Wilson:

We build guzzlers for wildlife.

Larry Johnson (President, Coalition for Nevada's Wildlife):

You have my information handout ([Exhibit K](#)). I am a director of NBU. I helped build more than one-third of the 345 big-game guzzlers in the State. I oppose S.B. 134 although I thank Senator Goicoechea for amending out sections 2 to 5 that require water-rights applications. In regard to using snow to water livestock, I was raised on a cow camp operation in the Sierra Nevada Range. Snow was a valuable cattle resource in winter. If snow is going to be utilized to extend the viable range for livestock in winter, what happens after the snow melts? Are permittees required to remove the livestock if snow melts in their allotments' valleys? This could lead to an issue currently being litigated whereby

cattle broke into a guzzler because they did not have an adequate water source. The cattle drank the guzzler dry and then died of thirst.

Sections 7 and 8 of S.B. 134 are completely redundant and unnecessary. The NDOW already maintains a publication with U.S. Geological Survey maps showing guzzler locations in the entire State. The book contains global positioning system coordinates and descriptions of every guzzler and numbers to call for maintenance issues.

For 33 years, every guzzler with which the NBU has been involved is inspected annually and volunteers perform necessary repairs in winter. Guzzler design has evolved to where they are as maintenance free as we can make them. There are no moving parts, tanks are set at the same elevations as the drinkers, there are no float controls and fencing is made of pipe-steel rail.

Chair Ford:

I heard a different description of guzzlers, and there are concerns about ...

Mr. Johnson:

Guzzlers built decades ago have different fencing, which is controversial because of the potential to trap animals within it. That threat has now been eliminated; we have photos of calves using guzzlers.

Chair Ford:

What percentage of the 1,900-plus guzzlers are old?

Mr. Johnson:

There are a few dozen of the old ones left. A large proportion of the NDOW's 2013 water-development budget is going toward upgrading the old-style guzzlers. Guzzlers are mandatory because humans have monopolized the State's water sources for mining, urban and ranching uses. There is a mere fraction of the historical level of water for wildlife and their habitat. We place guzzlers in extremely dry mountains to expand habitat.

I will show more of Dr. Wilson's slides, [Exhibit J](#); an image of a desert kit fox and a bobcat using guzzlers; a ring-tailed cat, which few people have seen in the wild. There are pronghorn, mule deer, bighorn sheep, golden eagle and coyotes drinking from guzzlers. Everything from beetles to bats to big game use guzzlers, and the NBU is proud of them.

Senator Settelmeyer:

You said all guzzlers are inspected annually for functionality. Is someone from the NBU charged with checking them?

Mr. Johnson:

Every guzzler the NBU has built is inventoried annually. The NDOW guzzler crew operating out of Winnemucca has an inventory program. The NBU is continually updating old-style guzzlers into maintenance-free, bomb-proof designs. It can be a major undertaking to build one, involving 45 men and backhoes.

Senator Settelmeyer:

What happens if guzzlers are not properly maintained? They can become hazardous to cattle or wildlife if metal parts break or are sticking up.

Mr. Johnson:

I have never seen a tank built into the ground uprooted or overturned like wild horses or livestock do to steel stock tanks. It is the NDOW's ultimate responsibility to maintain guzzlers, whereas NBU members are private cooperators who have provided \$1 million of materials and tens of thousands of volunteer man-hours for the projects.

Kyle Davis (Political and Policy Director, Nevada Conservation League and Education Fund):

I have discussed S.B. 134 with Senator Goicoechea, with whom we will work on new language. We are concerned about the use of snow for stock water. Guzzlers are an important part of ensuring adequate water for wildlife. Mr. Johnson was correct in his comments on the impact humans have had on water supplies in Nevada. However, many other things are done to the landscape by humans, including fences all over the State that have been abandoned or are in disrepair that cause problems for terrestrial wildlife. The NDOW does a good job with its list of guzzler locations.

Jeremy Drew (Vice Chair, Board of Wildlife Commissioners, Department of Wildlife):

The Board of Wildlife Commissioners, NDOW, was opposed to S.B. 134, specifically its sections pertaining to guzzlers, as originally written. We have not reviewed the amendment, but, personally, I would prefer that phone calls and reports about guzzlers go directly to the NDOW. The NDOW does a good job of inventorying and maintaining them, but we can work with Senator Goicoechea

to put other policies in place to ensure that reports are handled in a timely manner.

Senator Settlemeyer:

Why are guzzlers often installed by rivers?

Mr. Drew:

I will defer to the NDOW on that, but it does not often happen.

Eric D. Petlock (Nevada Field Representative, Theodore Roosevelt Conservation Partnership):

The Theodore Roosevelt Conservation Partnership is national wildlife-policy and land-use organization. I have worked on about six guzzler-construction projects, which use mainly donated private dollars collected by organizations like the NBU and the Fraternity of the Desert Bighorn. The labor is all-volunteer and backbreaking, often done with picks and shovels.

This information should give the Committee some perspective on the notion that guzzlers can be built then forgotten as they fall into disrepair. This is a "straw-man argument." The idea is preposterous that volunteers would put that much time, effort and money into the effort of building guzzlers and then not have them function. This is not to say fences are never knocked down, but repairs are quickly made. We should not add another layer of bureaucracy into that mix. If the argument were valid that the NDOW is ignoring guzzler-disrepair reports, having a second agency tell it about the problems will not solve them. That argument is false. Adding another layer of bureaucracy to State government is nonsensical.

Tom Smith (Vice President, Coalition for Nevada's Wildlife, Inc.):

You have a copy of my prepared testimony ([Exhibit L](#)). The riverside guzzler to which Senator Settlemeyer referred is dry. My concern about the snow portion of S.B. 134 is when do officials measure the snow level for allocations? Nevada had 127 percent of its snow level in December; it is now just 70 percent. My other concern is about restrictions on guzzlers, but the bill's amendment seems to eliminate that.

Elmer Bull (Chief, Habitat Division, Department of Wildlife):

You have a copy of the summary of my testimony ([Exhibit M](#)) about the NDOW's neutral position on S.B. 134. The guzzler program is housed within the NDOW Habitat Division.

Chair Ford:

We have heard that some guzzlers need repair. Could you discuss that?

Mr. Bull:

Over time, guzzlers and their fences have gone through an evolutionary process, and we have done a lot to improve them. In the last few years, we had an incident concerning broken fencing around a guzzler, and that has become a legal challenge. In an effort to address the fencing deficiencies described today, we have to use pipe-rail fences, as shown in this [Exhibit J](#) slide, around all guzzlers. In the past, we have used barbed wire, aircraft cable and a variety of other materials. Large animals broke down those fences and drank guzzlers dry. We have installed pipe-rail fences around 16 guzzlers in the last 4 months and have budgeted to replace 32 more fences in 2013. Pipe-rail fence is more expensive and takes longer to install, but it ensures wildlife can access guzzlers and other animals will not be harmed by the fencing.

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Chair Ford:

Abigail Johnson, president of the Great Basin Water Network, submitted a letter ([Exhibit N](#)) of support for S.B. 133 for inclusion into the record. Seeing no more business before the Senate Committee on Natural Resources, I adjourn this meeting at 3:32 p.m.

RESPECTFULLY SUBMITTED:

Patricia Devereux,
Committee Secretary

APPROVED BY:

Senator Aaron D. Ford, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	4		Attendance Roster
	C	35	Edwin James	Slide presentation
S.B. 133	D	1	Senator Pete Goicoechea	Proposed amendment
S.B. 133	E	2	Jake Tibbitts	Written Testimony
S.B. 133	F	2	Jason King	Written Testimony
S.B. 134	G	4	Senator Pete Goicoechea	Proposed amendment 7834
S.B. 134	H	1	R. Michael Turnipseed	Handout: "Guzzlers vs. Pickups"
S.B. 134	I	2	Jason King	Written Testimony
S.B. 134	J	9	Dennis Wilson	Photographs of animals at guzzlers
S.B. 134	K	6	Larry Johnson	Information packet
S.B. 134	L	1	Tom Smith	Written Testimony
S.B. 134	M	9	Elmer Bull	Summary of neutral testimony
S.B. 133	N	1	Abigail Johnson	Letter of support