

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

**Seventy-Eighth Session
April 22, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 9:04 a.m. on Wednesday, April 22, 2015, in Room 4100 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: www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ellison, Chairman
Assemblyman John Moore, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblyman Edgar Flores
Assemblywoman Amber Joiner
Assemblyman Harvey J. Munford
Assemblywoman Dina Neal
Assemblywoman Shelly M. Shelton
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblyman Jim Wheeler
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Pete Goicoechea, Senate District No. 19

Minutes ID: 935



STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Lori McCleary, Committee Secretary
Aubrie Bates, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Jason King, P.E., State Engineer and Administrator, Division of
Water Resources, State Department of Conservation and Natural
Resources
Steve Walker, representing Eureka County
Andrew Zaninovich, representing Great Basin Water Network
Scott Leedom, Senior Management Analyst, Southern Nevada
Water Authority

Chairman Ellison:

[Roll was called. Committee rules and protocol were explained.] Today, Jason King, from the Division of Water Resources of the State Department of Conservation and Natural Resources, will be giving a presentation. We will hear Senate Bill 485 after the presentation.

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

The presentation is made up of two components. One is an overview of our office, and the second is a brief overview of our water law.

Chairman Ellison:

This may help the Committee. Apparently, of the two water bills introduced in the Senate, one died on the floor yesterday, and the other has been sent to the Senate Committee on Finance. Is that correct?

Jason King:

That is correct. Senate Bill 65 is the bill that died yesterday. Senate Bill 81 is currently in the Senate Committee on Finance. Both bills were bills that our office brought forward. So far, we are 50/50. We will also be testifying on Senate Bill 485 after this presentation.

The Division of Water Resources and the State Engineer's office are one and the same. We are a regulatory agency of approximately 90 staff. We have offices

in Las Vegas and Elko, but our main office is here in Carson City. We also have a one-man office in Winnemucca.

The mission of our agency is to conserve, protect, manage, and enhance the state's water resources for Nevada's citizens through the appropriation and reallocation of public waters [page 2, ([Exhibit C](#))].

Some of the tasks our office performs to support that mission are to require water right permits for all beneficial uses of water in the state with the exception of domestic wells. This includes new appropriation and changes of existing rights. To give you some feel of how many applications we receive per year for water rights, it is anywhere between 1,200 and 1,600 applications. Approximately 75 percent of those applications are changes of existing rights. You may ask, Why? It is because where most of the water is being used, those basins are fully appropriated. Our office is not issuing any new appropriations, so people are buying or leasing water rights and moving them to different manners of use and different places of use.

Our office performs a variety of fieldwork, such as conducting crop and pumpage inventories, taking water level measurements, measuring stream and spring flows, and measuring precipitation at a number of sites statewide. We participate in hydrologic studies to better understand how much groundwater is available to appropriate in our 256 groundwater basins. We participate in and oversee numerous monitoring plans statewide to ensure that those water rights being monitored are not developed in violation of the water laws. When I talk about numerous monitoring plans, there are several hundred, if not over a thousand, of those monitoring plans.

Since last session, we have added five staff to our adjudication section. I am very happy to report that we have seen more work done in the past two years to quantify prestatutory rights than I have seen in the 24 years I have worked for the Division of Water Resources. As of 2009, our office now has the ability to assess fines and penalties for violations of the water law. I am also pleased to say that almost without exception, everyone is coming into compliance without being fined. We do not care if we collect \$1; we are just looking for compliance. The regulated community has stepped up and is truly coming into compliance.

Our office is also responsible for dam safety [page 3, ([Exhibit C](#))]. We have 682 dams in our inventory statewide, of which 150 are high hazard dams, 117 are significant hazard dams, and 415 are low hazard dams. I want to be clear, these hazard classifications are based on what would happen should the

dam fail, and not an indictment of its condition. In other words, high hazard dams are dams that, should they fail, there could be loss of life. It does not mean it is in poor condition. Those dams are inspected annually. Significant hazard dams are defined as those dams that, if they were to fail, there would be a low probability of loss of life, but appreciable economic loss. Those dams are inspected every three years. Low hazard dams are those dams that, if they were to fail, would cause no loss of life and the economic damage would be minimal. We inspect those dams once every five years.

We review all the proposed dam designs for structural and hydrologic stability, we inspect the dams during construction and after construction, and we provide emergency response after earthquakes and flood events.

We are also responsible for well drilling statewide [page 4, ([Exhibit C](#))]. We license all water well drillers throughout the state. Every water well drilled in the state must be drilled by a licensed well driller through our office. We perform field investigations to verify that construction standards and well drilling procedures are being followed. We review all well logs for completeness. The logs are scanned after review and then put online. We have over 90,000 scanned well logs online for people to view.

Our division is home to both water planning and floodplain management [page 5, ([Exhibit C](#))]. Our water planning section is responsible for the review of water conservation plans submitted by local governments and purveyors statewide. They also oversee fines and penalties for violations of the water law. Our floodplain management section coordinates flood mitigation grant money for flood mitigation planning and projects. They also manage the Community Assistance Program, which is where our program officers work directly with the floodplain coordinators in each county to ensure compliance with the National Flood Insurance Program. There are currently 34 communities that participate.

Our adjudication section [page 6, ([Exhibit C](#))] now consists of seven staff members. The purpose of adjudication is to identify points of diversion, places of use and manners of use of prestatutory vested claims and reserved rights, and to quantify diversion rates, volumes of water, and assign priorities to those prestatutory vested claims. Ultimately, to know with absolute certainty how much water has been appropriated in a groundwater basin or on the stream system, those prestatutory vested claims have to be adjudicated, and it is a lengthy process.

We are proud of our website and all the information our information technology group has made available to the public [page 7, ([Exhibit C](#))]. We continue to

push as much information online as possible, such as water right information, including scanned permits and maps, water right ownership, dam information, well logs, rulings, and orders. We have hydrographs of depth to water for many groundwater basins statewide. Just recently, we completed the project of digitizing all the points of diversion and places of use of water rights statewide. This geographic information system overlay can be used by anyone visiting our website. I can tell you, about ten years ago, a big part of our staff's time was spent with people walking in wanting to research water rights. That has drastically changed as a result of all the information we are able to put on our website. People are now able to do that work from their homes or offices.

Every session I show this bar graph [page 8, ([Exhibit C](#))] as a general update. As you can see, the number of backlog applications is now below 1,000. This is the lowest total it has been since 1977. We are very proud of that. Just ten years ago, it was over 3,000. The majority of the applications remaining to take action on are there for a number of reasons, other than our office not having the time to work them. Many of them are there awaiting adjudications, because the applicant has asked us to hold off moving forward on them, or they have pending litigation preventing them from going forward.

As a general update on this slide, our office has submitted a flat budget, as you can imagine, for this next biennium.

Some of the issues that are front and center in our office currently include drought, surface water/groundwater interconnectivity, and active management areas, such as what we are trying to do in Diamond Valley and Pahrump Valley, where we are trying to work with the stakeholders to come up with groundwater management plans [page 9, ([Exhibit C](#))]. Other program issues include adjudications and interbasin transfers of groundwater, which is always a lightning rod for people in terms of taking groundwater out of one basin and delivering it elsewhere. People are aware of the Southern Nevada Water Authority's interbasin transfers, but there are numerous other applications for interbasin transfers statewide as well.

Our deputy attorneys general are swamped with litigation. As water becomes more precious, it becomes more valuable. Every drop of water can be litigated, and we are seeing a lot of that.

Our office has taken a concerted effort in trying to be more proactive in our public relations. We held a series of listening sessions this last fall where we went to seven locations throughout the state to talk about any and all water-related issues.

This next slide [page 10, ([Exhibit C](#))] lists our water-related bills. As we already discussed, Senate Bill 65 has died. We are still hopeful that Senate Bill 81 can be passed. It deals with active management areas, hoping to give our office some additional tools to deal with those basins that are severely overappropriated. Senate Bill 485 is a bill we will be discussing after this presentation. There are a couple of other bills out there, but I am not clear what made it through as of yesterday and what did not.

With that, I am happy to stop here and take any questions, or I can move into the "Water Law 101" presentation.

Assemblyman Stewart:

Can you tell us a little more about the drought? How serious do you think it is, and what steps are you taking to lessen the effects? In southern Nevada, we have a program where we are using less water than we did 10 or 15 years ago with considerably more people, using xeriscapes and certain watering days. Do you coordinate with the Southern Nevada Water Authority and the Truckee Meadows Water Authority on these programs?

Jason King:

We could talk about drought for a long time. I will tell you that, yes, we talk with all the major purveyors. As I mentioned, water planning is part of our division. We review their water conservation plans. We look to see that they have tiered rates and other conservation measures built into those conservation plans. If they do not, we have a dialog as to why. We do that for purveyors statewide. I believe there are about 320 purveyors who deliver water to 15 hookups or more.

In terms of how bad this drought is, I have seen data and read articles that believe this drought, especially in northern Nevada, is the worst drought in history. Not in every single place, but in many places in northern Nevada, it is even worse than the "Dirty '30s." It is that bad. As you know, the snowpack in the Sierra Nevada Mountains around Lake Tahoe is the lowest it has been in over 110 years of being measured. In some places in the state, I believe it is the worst drought on record. What is more scary to me is whether we are in the fourth year of a five-year drought or in the fourth year of a ten-year drought or longer.

In terms of what our office specifically does in the drought; first of all, we know people are hurting when it comes to wells drying up and needing to move water or obtain water rights from someone else. Our office tries to expedite the movement of those water rights as quickly as possible. You may have heard of our effort to curtail groundwater pumping in Smith Valley and Mason Valley

over this next irrigation season because we have seen unprecedented water level declines. We issued that curtailment order, and I am using my words, not necessarily the judge's words, but it was basically stayed. As a matter of fact, there is a status conference today at noon to talk about that curtailment order. We will see where that goes. If it looks like the drought is going to continue, our office is going to be monitoring the water level declines and pumpage, not only in those basins, but statewide. If we have to, our office will be looking at curtailment in other basins.

Smith Valley and Mason Valley are adjacent to one another and dominated by the Walker River. That is part of the problem. The Walker River has had very little flow. They are not getting any recharge from the river or the canals. The groundwater pumpage is at all-time record amounts. As far as the water level declines, we are seeing 12 to 14 feet per year.

Chairman Ellison:

I have heard that Fernley and Fallon are only going to get one cutting for alfalfa this season.

Jason King:

It is my understanding that Truckee-Carson Irrigation District is hopeful for a 20 percent delivery year, but I have also heard they may only get 15 percent. I have also heard there have been around 30 shallow wells that have dried up recently in the Fallon area. The drought is hitting everyone.

Assemblywoman Neal:

There are certain types of water rights. There are water rights that can become a certificated right and then there is a permitted right. Do people always have to perfect their permitted water rights, or can they keep it unperfected?

Jason King:

The water right process begins with filing an application with our office. If there is a favorable review on that application, a permit is issued to use that water. Once the water is put to beneficial use under that permit, it then becomes a certificate.

To your question, the whole idea is to put the water to beneficial use. It is easiest for me to use a scenario. I might issue you, Assemblywoman Neal, a water right permit. It may take you several years to put the water to beneficial use for a variety of reasons. Prior to you putting the water to beneficial use, it is still a valid right. Someone may approach you to buy your water right and transfer it. A change application would be filed to move your permitted right to his place of use or point of diversion. He now has a permit.

It is still a permit and has not become a certificate. It is possible, through the movement of water rights, that it stays in that permit stage and it may not get to a certificate. Hopefully, it will. We are a use it or lose it state, so ultimately, if the water right holder is not showing a steady application of effort to put that permitted water right to beneficial use, it is going to be cancelled. Otherwise, it will eventually be certificated.

Assemblywoman Spiegel:

When we have groundwater basins that border two states, such as Nevada and California, do we have mechanisms for seeing how much groundwater the other states use? How do those agreements work?

Jason King:

In the case of California, we do not know exactly what they use. Now, with the advent of Google and other abilities to get satellite imagery, we can see how many pivots are on their side of the state line and on that basin. We can estimate how much groundwater they use, but that is about it. Utah is another prior appropriation state, just like Nevada. We speak the same language, unlike California that does not have a groundwater law. It is easy for me to call the Utah state engineer to ask pointed questions. I can pull up their water rights database, just as they can pull up our water rights database. We can query it to see how much water they have committed in the basin. We have better luck with adjacent states that are prior appropriation states. California and Arizona are both a little different. However, we can still guess based on satellite imagery, but in terms of speaking the same prior appropriation language, it is a different animal in California.

Assemblywoman Spiegel:

I know California is also going through their worst drought ever. If California wanted to drain one of the basins, is there anything we could do to stop it?

Jason King:

I believe absolutely there is something we could do. If we felt the water users on our side of the state were being aggrieved by California's pumpage, we would have to get our Attorney General involved to let them know they are having an adverse effect upon our water users. In that case, we would have to go through legal actions.

Chairman Ellison:

I think many of these questions will be answered during the remainder of the presentation. There is more to your presentation, correct?

Jason King:

The next session of the presentation has about 20 slides. I am happy to yield to Senator Goicoechea and follow up with the presentation after we hear the presentation of Senate Bill 485.

Chairman Ellison:

We do have one more question.

Assemblyman Munford:

I was on a community well. We lost our rights because we did not use the water. Those water rights are named on my property deed. I am not using the well at all now. Am I entitled to any of those water rights, or should I have been compensated for those water rights? Those rights were sold to someone because someone has those rights. Why were the community members using this well not individually compensated for those water rights?

Jason King:

I do get that question frequently. The water in Nevada belongs to the public. It is a state asset. Your use of that water is called a usufructuary right. That property right is just for the use of that water. You do not own the water itself, but you get to use the water. The water actually belongs to the state. We are a use it or lose it state, which I will speak to later. The whole idea is if you had two acre-feet and all you needed was one acre-foot, then the one acre-foot you did not use should then be left to the next person in line to use. In your instance, like so many instances statewide, you are allowed to use and benefit from the use of that water. Beyond that, you lose it and it goes to the next person. You do have a property right after you beneficially use the water. If someone approached you and wanted to purchase it or move it, it is a property right and you could sell it. However, the part you lost is not a property right you could do something with, and you are not entitled to any kind of reimbursement.

Assemblyman Munford:

If I wanted to apply to use the well again, would I have an advantage because I once did have a water right?

Jason King:

The short answer is no. The water has gone away because you did not use it. If you want to go back on the well, if it is still in existence and still a valid well, in Las Vegas for artesian groundwater there are what are called nonrevocable water rights that you could purchase. You could transfer a nonrevocable water right to that well and serve your property, but that is the only way it could happen.

Assemblyman Munford:

My neighbor is still using that well. Could I tie onto his water?

Jason King:

Not without a water right.

Chairman Ellison:

Mr. King, if you do not mind, we will go ahead and hear Senate Bill 485, and then we can finish your presentation.

Senate Bill 485: Revises provisions relating to water. (BDR 48-708)

Senator Pete Goicoechea, Senate District No. 19:

I am here today to present Senate Bill 485. This is a committee bill coming out of the Senate Committee on Government Affairs and was brought forward on behalf of the State Engineer. Over the last year, the State Engineer went through a number of listening sessions statewide, including rural Nevada, Clark County, and the Las Vegas area. He had public hearings and met with people. Senate Bill 485 was one of the topics that came out of those listening sessions.

Regarding Assemblyman Stewart's comments on the drought, clearly we are faced with a drought we have never seen before. In the 65-plus years I have been in this state, this is the worst I have ever seen. My father and my grandfather talked about the historic drought in 1936, when they had 70,000 sheep on The Diamonds. I am here to tell you, you would not be able to water that many sheep today, let alone have them there. What we have today, as far as water resources underground, is significantly less than in 1936.

Senate Bill 485 is a simple bill. If we are going to establish a water inventory, we have to understand what water is available, what has been applied for, what has been permitted, and what has been certificated. All of these things come into play. We have prestatutory rights, which are water rights or vested claims that were claimed prior to 1905 and 1913, and/or groundwater in 1939. We have to address those prestatutory claims if we are ever going to know who has what water right.

The intent of S.B. 485 is to give a drop-dead date of December 31, 2025, at which time a claim of proof must be filed on vested rights. If anyone feels they have a vested right for water, they must file a claim of proof with the State Engineer. That does not mean it has to be adjudicated, but it does have to be on file in order to get a handle on how many prestatutory vested rights are in place and what the duty is on those rights. Until we have that number,

we cannot determine whether a basin is overappropriated or underappropriated because we just do not know the demands on the basin.

I do anticipate some of you still being here in this legislative body when we get close to that deadline of 2025. I am not sure ten years is enough time to compile the data to establish a chain of title to prove prestatutory rights, but we at least have to get these claims in place. This issue may end up in the 2023 session because of holes in the chain of title to establish a vested water right. The State Engineer may need additional time and will appeal to this body for an extension. If we do not put the pressure on to get this started, we are never going to get there.

That is the long and short of this simple bill. I will stand for any questions.

Chairman Ellison:

Using the Humboldt River as an example, the ranches in that area have been bought and sold many times, and the water rights have been kept with the ranches. Most of those are surface water rights. How do those individuals prove that the water rights are with the ranches?

Senator Goicoechea:

I want to make it perfectly clear on the record that this does not pertain to the stream systems that have been adjudicated. I will defer that question to Mr. King, the State Engineer.

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

Existing decreed rights, like what is on the Humboldt River, have already gone through adjudication. The Truckee River, the Walker River, and the Carson River have already gone through an adjudication. Those rights that have already been adjudicated and are decreed are off the table and not part of this bill. We are talking about those vested prestatutory rights that have not gone through the adjudication process. As Senator Goicoechea pointed out, we are talking about rights that were put to beneficial use in the case of surface water prior to 1905, artesian ground water in 1913, and percolating groundwater in 1939. The further we get away from those dates, the harder it is to do the research and put forward a vested claim.

We have about 8,800 vested claims on file in our office. I know there are more out there. Our office is required, pursuant to statute, to protect vested claims from impairment. If we do not know what the vested claims are, how can we protect them? As Senator Goicoechea pointed out, in making a decision on a water right application, we have to determine if there is water available at that

source. Again, if those vested claims have not been filed with us, we do not know with absolute certainty what is committed and what is not. Currently, the way the law is written, people do not have to file those claims of vested rights until such time that our office begins an adjudication process. If our office does not begin an adjudication process on Cherry Creek, for example, until 2055, under the current law, they would have until 2055 to file those vested claims. Again, we are getting further and further from the 1905 date, which makes it tougher. Those rights are not protected in the meantime. We believe it is the appropriate thing to do by getting people to file their vested claims. It is in their best interest to do that, and that is what this bill is all about.

You will also see in the bill, between now and ten years from now, we shall place notice in at least four newspapers on an annual basis that there is a deadline looming. Currently, our office deals with 18 newspapers in terms of water rights. If our office has money available, I would like to notify potential claimants in all 18 of those newspapers between now and then.

I also want to be clear, we are talking about collecting vested claims. We are not talking about adjudicating all those vested claims. As many of you know, adjudications can take decades. We are only talking about getting them in our office and inventorying them so we know how much water is on a specific source or in a groundwater basin. [Mr. King also submitted written testimony ([Exhibit D](#)).]

Assemblyman Wheeler:

Actually, I believe Mr. King answered my question. I was going to ask if this would actually start the adjudication process. I see we are just doing vested rights that are not adjudicated. It appears rather simple. This will not start the adjudication process. Is that correct?

Jason King:

No, it will not. However, when we do begin the adjudication process, it will greatly help having that information already in our office. Many times, that becomes a delay. If we were to begin adjudicating a certain source now and ask that the vested claims be filed, we would receive requests for extension. We would then be three or four years down the road before we could get into the meat of the adjudication. It will give us a head start on the adjudication process.

Senator Goicoechea:

I have vested water claims that go back to the 1860s. I am currently trying to bring those forward with a chain of title. I am not sure ten years is enough

time. However, if we did not have a deadline to start this process, I would keep putting it off, and so would everyone else. It costs time and money to perfect a chain of title. This is drawing a line to let folks know we want to get this done by 2025.

Assemblyman Wheeler:

Regarding the notification, do you have any idea how much it would cost to go to all 18 newspapers?

Jason King:

Each newspaper is different. It really is a fairly de minimis amount. I am guessing it is around \$200 per newspaper, or \$3,600 per year. It does not sound like much, but in these lean times, sometimes I question whether we would have that amount. It would certainly be my goal to advertise this in all 18 newspapers. I believe that is only fair.

Chairman Ellison:

Senator Goicoechea mentioned beginning the process to get it moving. Most of the information would be in deeds and titles. The biggest problem would be for those water rights that were inherited or passed through. Is that correct?

Senator Goicoechea:

Typically, most of the chain of title is established through affidavits and personal witnesses and testimony. When you start talking about water rights that were established in the 1860s, it is pretty difficult to find anyone still around who remembers. It becomes a problem, and the records have more and more holes in them. It is something that should have already been done, and those of us who have vested water rights should have been working on perfecting them. There is no doubt, the drought is bringing this back into focus.

Assemblywoman Neal:

The issue that gives me pause and concern is section 1, subsection 1. Typically, in a prestatutory right, meaning it came before statutory law, does the act of filing a proof of the claim then change the vested right to a certificated right, which then brings them under the statute? I see Mr. King shaking his head no. Then how can you extinguish it, based on the language in section 1, subsection 1, lines 6 and 7? The reason I am asking this question is because I was reading *Andersen Family Associates v. Hugh Ricci, P.E., State Engineer, Nevada Division of Water Resources* 179 P.3d 1201 (2008). The courts got deeply into the prestatutory rights, saying they could not be impaired by statutory law. They did not have to file a proof of claim because their rights stem from the original decree. They did not have to walk through the State Engineer's door because their rights accrued from the original decree.

If you, then, have them walk into your office and file a proof of claim, it is my understanding that once a proof of claim has been filed, the State Engineer will issue a certificate.

Senator Goicoechea:

You have to adjudicate that right in the adjudication process. That case was for an application of adjudication in court. Your reference to those rights are decreed and have already been adjudicated. The claimant was saying he had a right and at some point would go through the adjudication process. If it is determined to be a valid vested right, prestatutory, it goes to the top of the list in the adjudication process. That is what adjudication is all about.

Assemblywoman Neal:

Where is the authority derived to extinguish a claim in section 1, subsection 1, line 7? If this bill passes, the right to extinguish the vested right for failure to file a proof of claim within the ten years will be in statute. Could you explain that to me?

Jason King:

You ask a good question requiring a complicated answer. If my memory serves me correctly, the *Andersen* case was a change of a decreed right. I think what happened in that case is our office cancelled a decreed right. In doing so, by statute with appropriative rights, when we cancel a right and it is rescinded, which it can be, it gets a new priority date. Our office assigned a new priority date to a decreed right. The courts indicated we could not do that because it was a decreed right. It goes back to the decree and the claimants did not lose their priority. I hear them loud and clear. When someone files a vested claim, it is not certificated; it sits in our office. People are allowed to use that water, but it does not get a new status. It does not get a permit or a certificate. It sits in our office waiting for an adjudication. That is why it is so important.

I am glad you brought up the point about extinguishing, because that is the substance of this bill. We want to put a sunset on these because the further away we get from these deadlines, the harder it is for any claimant to prove their vested claim. Our office cannot protect them. The substance of this bill is the sunset date, and if it is not filed by then, any potential vested claim becomes abandoned. That is the term we use in water rights, not extinguish. If people do not do their due diligence and file their vested claims, ten years from now their water rights will be deemed to be abandoned. That is the whole purpose for this bill.

Senator Goicoechea:

I understand your question, and where you are going. Whether that right is truly extinguished or not, I believe people are better off trying to go through the process than coming in after the fact, in an adjudication. It behooves them to have their proof of claim in sight. They could argue the point and say they did not submit a proof of claim in the required time frame, but it is still a valid right. They would be looking at a court action, and an adjudication is a court action.

Assemblywoman Neal:

This is an education point for me, and I am just trying to be clear. One thing the *Andersen* case said was a state could never cancel a prestatutory vested right absent a finding of intentional abandonment. You just said, if they fail to file the permit, then you have an intentional abandonment argument. A prestatutory right is not governed by statute, it is governed by common law. What are the mechanisms you use to extinguish under common law, or is it considered abandonment under common law? That is the law, and to me, that applies to the prestatutory right.

Senator Goicoechea:

Again, I will make my point. Are they better off trying to work within the confines of what we are proposing here, or take it to court on a prestatutory percolating vesting right that was pre-1905? We are trying to simplify the process. By complying with this, does that require they abandon all their rights? Clearly, it does not. I think they would be better off playing within the adjudication process than coming to the party after the fact. Again, I will go back to the same point. Without this, if we do not pass it, the bottom line is everyone waits until we decide to adjudicate a basin. The State Engineer calls for proof of claims in a specific basin. There would be a short window of time in which a claimant could bring the proof forward to establish a vested claim because the court is going to adjudicate it. All this does is give them a nudge. I will say for the record, it does not extinguish anyone's rights. A prestatutory right is what it is, but they had better put some paperwork in place if they intend to establish and maintain that right.

Jason King:

I want to tell you, Assemblywoman Neal, in adjudication processes water rights are found to be abandoned. A person may have proof that he used the water right in 1872, but he quit using it in 1912. All the ditches have been filled in, there is no way to get the water to the property anymore, and there is not continued use of the water. When people go through the adjudication process, the courts, along with our work, establishes there is abandonment and they do not show up in a decree as a valid water right. This is another mechanism to show us those rights by 2025, so we can move forward. It does occur.

Senator Goicoechea:

I will let the State Engineer cite this as far as statute, but surface water cannot technically be abandoned. Groundwater can be forfeited for nonuse. Mr. King and I do disagree on this, but I believe the law supports that you cannot abandon surface water.

Jason King:

With all due respect to Senator Goicoechea, I believe surface water can be abandoned. I understand we have a difference of opinion.

Assemblywoman Spiegel:

I think it is good that you will have the notice through the newspaper and by mail annually. However, the newspaper industry has been having a difficult time through the years, and many newspapers are going out of business. What happens if there are no newspapers that meet the qualifications for notice at some point in the next ten years?

Senator Goicoechea:

We do the best we can to notify the involved parties. It also requires that it be posted on the Internet. Except for a few of the old-timers, social media is where most people get their notices. Also, because of word of mouth, I think people will start to focus on this. Again, it is just an effort to get them started on the process. I anticipate that in 2023, some of the freshmen legislators here will probably have to extend the deadline because the proof of claims probably will not be completed. However, if we do not start the process, we will never get the inventory. I understand people saying we have to honor their vested claims, but we need to know they are there.

Jason King:

That is why I would also like to advertise this in all 18 newspapers because that covers the entire state, and outside of Nevada as well. I think that is the fair thing to do. For what it is worth, we have two newsletters we send out annually to water right surveyors, who are the water professionals who do the water rights work in the state. It will be an anchor publication in that newsletter each year. It will be an anchor notification in our annual newsletter to all the well drillers. Our office maintains a listing of water professionals statewide who receive our blast emails. It will also be in those blast emails. I think the noticing will be effective.

Assemblyman Stewart:

I think we need to mention how honored we are to have one of the most distinguished members to ever serve in the Assembly here today, Mr. John Carpenter from Elko. I would like to acknowledge him.

Chairman Ellison:

Thank you, Senator Goicoechea. This is a good bill, and I do not think we will have too many problems. If there are no further questions, we will allow you to go back to your committee.

Senator Goicoechea:

Do not be afraid to amend the bill to fix it. I understand some of the concerns from the Committee, so we can try to fix those if they are valid concerns. That is what this process is all about.

Chairman Ellison:

Is there anyone wishing to testify in favor of the bill?

Steve Walker, representing Eureka County:

Eureka County supports the bill. I would like to bring up another aspect of the bill that has not been discussed. I work in water resources all over the state. Typically, ranches with vested claims tell me they have a valuable water right. They do not have a valuable water right until the vested claim has filed proof and goes through adjudication. It will bring value to their water if we actually go through this process.

Andrew Zaninovich, representing Great Basin Water Network:

We are in support of this bill. The only concern we have, as alluded to earlier, is ensuring there is adequate notice given to the public.

Chairman Ellison:

Are there any questions from the Committee? [There were none.] Is there anyone else wishing to testify in support of the bill? [There was no one.] Is there anyone wishing to testify in opposition? [There was no one.] Is there anyone wishing to testify as neutral?

Scott Leedom, Senior Management Analyst, Southern Nevada Water Authority:

We do support the concept of what Senator Goicoechea is trying to accomplish with this bill. We do have a few concerns we would like to get on the record. One is a constitutional concern we have about requiring the federal government to participate in the process of filing a proof of claim on a vested right. We are aware there are court cases that require them to file proofs as part of the adjudication process, but it is still unclear to us whether they would be compelled to submit proofs of claim absent an adjudication process, as this bill requires.

We also have a due process concern regarding the hard deadline that is outlined in this bill. We have shared these concerns with the sponsor of the bill, and we

are committed to continue working with him as this bill moves forward. However, we do want those concerns on the record.

Chairman Ellison:

Are there any questions? [There were none.] Is there anyone else wishing to testify as neutral to the bill? [There was no one.] I think some of the confusion has been cleared up regarding this bill. Most of the people involved in this issue are already on the list. Is that correct, Mr. King?

Jason King:

As I mentioned, we have over 8,800 vested claims sitting in our office now awaiting an adjudication action. It is hard for me to understand the downside of this bill. If someone has a valuable asset, why would he not want to get that recorded? More than 8,800 people have already done that. If we do not know they have a valuable asset, our office cannot protect it. You are correct. Many people have already filed their vested claims. We need them all filed so once and for all we have an inventory of all the water use, prestatute, in the state of Nevada.

Chairman Ellison:

How do they file the proofs of claim?

Jason King:

It is a form called Proof of Vested Claim. The claimant must fill out all the historical information. Frequently, they will have backup documentation that better explains why they believe their vested claim is from a particular year.

Chairman Ellison:

Are there any questions from the Committee? [There were none.] I will close the hearing on S.B. 485. We will continue with the presentation from the Division of Water Resources of the State Department of Conservation and Natural Resources.

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

If you would like to interrupt me for questions during the slide presentation, please do so. This will be a brief, general overview of our water law. We will talk about the appropriation process, losing a water right, water right ownership, groundwater and surface water, and the criteria used in deciding whether or not to approve an application [page 12, ([Exhibit C](#))].

Our water law is based on the Prior Appropriation Doctrine. In other words, first in time, first in right [page 13, ([Exhibit C](#))]. Another tenet of our water law

is beneficial use, which shall be the basis, the measure, and the limit of the right to the use of the water. We also subscribe to the use it or lose it concept.

You will get no argument from me that the use it or lose it concept does not promote conservation. It is a problem. It is not just a problem for Nevada, but for other states that subscribe to the use it or lose it concept. The idea being that if you have 1,000 acre-feet and you only need 800 acre-feet, then the other 200 acre-feet goes to the next person. As everyone knows, in the driest state in the nation, water is so valuable, people do not want to lose that 200 acre-feet, so they are pushing as much water as they can through a totalizing meter. While I believe in this concept, in the year 2015, it is creating problems, such as people trying to maximize the use of the water, whether they need to or not, in order not to lose the water. That is a component of Senate Bill 81. I think you will see, in upcoming sessions, us talking more about how we deal with the use it or lose it concept.

Chairman Ellison:

I think that has been the fear throughout the state for many years. If you do not show beneficial use, you lose the water rights. People feel they need to pump more water or allocate it somewhere else. I am glad you mentioned that because I think it is important.

Jason King:

I do not want to turn our water law upside down, but as you can imagine, 80 years ago it made sense to use whatever water was needed and the balance went to the next person. When all the water is fully appropriated, we want people to become more efficient and conserve water. People who are willing to spend money to become more efficient and conserve would also like to reap the benefits of what they are investing in. The current water law allows them to lose it. That is problematic. It still has its place in our water law, and I am not trying to say we need to get rid of it, but we will need to develop some tools that help us deal with the use it or lose it concept.

Chairman Ellison:

I appreciate that, and I think it is going to be very important that people can conserve their water but still maintain their water rights. I think that is a great idea. Any questions from the Committee? [There were none.]

Jason King:

Our office commonly uses an acre-foot as the unit of measure in talking about a volume of water [page 14, ([Exhibit C](#))]. An acre-foot is about 326,000 gallons of water. That figure does not give you much perspective for how much water that is, but imagine an acre of ground, approximately the size of a football field,

covered in one foot of water. That is one acre-foot of water. We typically say that is enough water to supply two families of four for one year. However, that also depends on the outside landscaping.

Many people confuse diversion rate and duty. Diversion rate is 50 gallons per minute, or .3 cubic feet per second. A duty of water is a volume of water. The diversion rate is how fast you actually extract water from a well or divert it from a stream. The volume of water is what is put on a crop or used in a business.

Who owns the water [page 15, ([Exhibit C](#))]? All sources of water within the boundaries of the state, whether above or beneath the surface of the ground, belong to the public.

Before I get into the appropriation process in more detail [page 16, ([Exhibit C](#))], I would like to go over the appropriation process itself, which is the application, the permit, and the certificate of the water right. We have the appropriation process, then we have the adjudication process, which is the quantification of prestatutory vested claims and reserved rights. The culmination of that adjudication process is that the court issues a decree on all those prestatutory rights.

To go into more detail, all use of water in the state requires a permit from our office, except for domestic wells [page 17, ([Exhibit C](#))]. A domestic well is one that provides for domestic purposes to culinary and household uses in single-family dwellings, the watering of a family garden, a lawn, and watering of domestic animals [page 18, ([Exhibit C](#))]. The maximum amount of water that may be pumped from domestic wells is limited to two acre-feet per year. That is the only exemption in our water law for obtaining a water right.

To give you some perspective, there are over 49,000 domestic wells statewide, over 11,000 in Pahrump alone. There are about 6,600 domestic wells in Las Vegas, 4,000 in Fallon, 2,000 in the Truckee Meadows, and almost 900 in Carson City.

I would like to give you a quick version of the application process [page 19, ([Exhibit C](#))]. An application is filed in our office along with a supporting map and a fee. It goes through an internal review, what we call a "map table" review, to ensure everything lines up. It is sent out for publication to a newspaper in the local area. There is a protest period following that publication. The application then becomes "ready for action." Sometimes a hearing is required, and then there will be a determination on that application. That is the *Reader's Digest* version. I will get into a little more detail.

One thing I think is important to talk about is the priority [page 20, ([Exhibit C](#))]. The date and time when the original application is filed in our office establishes its priority. A change application retains the priority of the previous right. Today, if a new appropriation were filed in our office, it would have a priority date of April 22, 2015. A change application filed in our office today that changes a right that was originally filed in our office in 1917 retains the priority of 1917 on the change application. You do not lose priority through change processes. It is only new appropriations that establish that priority. It is also important to note that domestic wells have priority. It is in statute, and the priority of domestic wells is the date the well was completed.

As I talked about earlier, when the application is filed, it is sent to publication in a local county newspaper once a week for four weeks to notify any interested parties that the application has been filed. After that four-week period, there is another 30-day protest period that allows anyone to come forward to file a protest to that appropriation. To be clear, you do not have to wait for the 30-day protest period. Once the application is filed in our office, if you think it is going to conflict with your rights, you can file a protest that very day.

Once the publication and the protest periods have been completed, the application will become "ready for action" [page 21, ([Exhibit C](#))]. Many times, when protests are filed, we have to review the protest to see if there is any validity to it. Sometimes, we will conduct a field investigation or hold a hearing. Sometimes we will do both, and sometimes we will do neither, depending on the weight of the protest. After that, the application can either be approved as requested, approved with conditions such as the Division requiring a monitoring plan, a pumpage report, limiting the depth of the well, reducing the rate of flow and volume, or we may deny it.

Going back to losing a water right and the use it or lose it concept, nothing is easy when it comes to water law [page 22, ([Exhibit C](#))]. Water right permits can be cancelled. Permits cannot be forfeited or abandoned; they can only be cancelled. Why would we cancel a permit? Because the person is not pursuing a steady application of effort to put that water to use. Once a groundwater permit is certificated, someone has actually put the water to beneficial use and it becomes a certificate. Five years of nonuse constitutes a forfeiture of that groundwater right in Nevada law. If you have a certificated groundwater right and you fail to use it for five consecutive years, that certificate is subject to forfeiture. Again, it only pertains to groundwater. Senator Goicoechea and I have a difference of opinion, but I feel confident that both surface water rights, groundwater rights, and vested claims can actually be abandoned. It does not happen a lot, except in the adjudication process, but outside the adjudication process, we do not see a lot of abandonment of water rights.

A water right is considered real property and can be owned separate from the property [page 23, ([Exhibit C](#))]. I go back to the point that it is truly not the water itself; it is the use of that water. The term used is a usufructuary right. Water rights are an appurtenance to the property and are passed from seller to buyer unless the rights are specifically excluded or reserved in the deed. Our office does not assign title. We only confirm a Report of Conveyance (ROC) that is filed with our office. It is important that people file those ROCs because it tells us who the new owner is. In all of our notifications, we are required to notify the owner of record as found in our office only. If people are not filing the ROCs, we have no idea who the new owner is and we are sending notifications to the old owner. That is when water rights can be cancelled or forfeited.

I would like to touch on the criteria our office uses when deciding when to approve or deny an application [page 25, ([Exhibit C](#))]. This slide shows the primary criteria found in *Nevada Revised Statutes* (NRS) 533.370. On every water right application filed with our office, we have to make determinations. Is there unappropriated water at the source? Will the issuance of that right conflict with existing rights? Does the use of the water threaten to prove detrimental to the public interest? Does the use conflict with existing domestic wells? The fourth bullet point dealing with domestic wells is there because it is not a right, otherwise it would be covered under the second bullet point.

Antispeculation was added to our statutes in 1993 and 1995. An applicant must show good faith to construct the works necessary to put the water to the intended beneficial use with reasonable diligence, and they must also have the financial ability to construct the project and apply the water to beneficial use, again with reasonable diligence [page 26, ([Exhibit C](#))].

We will jump to interbasin transfers of groundwater and talk about that criteria [page 28, ([Exhibit C](#))]. I would like to discuss why there is a need for interbasin transfers of water. The first interbasin transfer of water in Nevada occurred in 1873, and much of the western United States was established based on the interbasin transfer of water. I have beat this drum all meeting long, but we are the driest state in the nation with an average of 9 to 9.5 inches of precipitation annually. We are the seventh-largest state geographically. We are the third-most urbanized state in the nation. Over 94 percent of our population lives in population clusters of 50,000 people or more. We have a huge, dry state. We have population clusters that use up the water in the area where they are residing. Once that water is fully appropriated, how else are they going to grow? They can file an application to take water from other basins to where they need it. It is allowed for in our water law.

The additional criteria were adopted in the 1999 Legislative Session [page 29, [Exhibit C](#)]. We have to look at whether the applicant has justified the need to import the water. If there is water already in their basin, why should they be allowed to bring water in from another basin? We need to look at whether or not a plan of conservation of water is in place and is being used in the basin where they want to import water. If water is being wasted and there is no conservation plan, again, why should we allow them to bring water in from somewhere else?

We need to determine if the proposed action is environmentally sound as it relates to the basin from which the water is exported [page 30, [Exhibit C](#)]. This is another lightning rod for discussion on what is environmentally sound. There are no sideboards in our statute on what environmentally sound is. It is left up to the evidence and our office's discretion. We need to determine whether the proposed action is an appropriate long-term use which will not unduly limit the future growth in that basin of export. It requires our office to look into a crystal ball to determine how much growth is going to occur in the basin in 100 years. We shall leave enough water in that basin for future growth.

There are two separate NRS Chapters in our water law dealing with these water sources [page 31, [Exhibit C](#)]. *Nevada Revised Statutes* (NRS) Chapter 533 is for surface water and NRS Chapter 534 is for groundwater. Every opportunity I get, such as this one, I want to make it clear that our office understands the science and the hydrology. We understand that in many cases surface water and groundwater are connected. Not 100 percent connected, but in many cases they are connected. Our office has been accused of treating one as groundwater and one as surface water and never shall they meet. That is not true, but they are in two separate chapters.

In terms of volume, very little surface water was not being used prior to the state water laws [page 32, [Exhibit C](#)]. Therefore, most of the surface water, in terms of volume, will be required to be adjudicated. You heard me talk earlier about all the river systems that have been adjudicated and decreed. That is the lion's share in terms of volumes of water that have been decreed. Any surface water that was not claimed as used prior to 1905 now is subject to our appropriative process.

There are about 4.5 million acre-feet of surface water in Nevada, which is our best estimate [page 33, [Exhibit C](#)], and does not include the 300,000 acre-feet appropriation on the Colorado River.

This map shows the various rivers throughout the state [page 34, ([Exhibit C](#))]. When I say rivers, I think you understand what I mean. When you drive over some of these, you are not even sure you have driven over a river.

Very little development of the groundwater occurred prior to the '50s, and most of it happened in the late '50s and '60s [page 35, ([Exhibit C](#))]. Our state is divided into 256 hydrographic basins. You can think of each one of those, generally speaking, as its own watershed, or its own separate source of water. We have designated and nondesignated basins. Designated basins are those where our office has issued an order saying there are things going on in the basin, and we need to avail ourselves of additional tools found in statute.

We regulate our groundwater basins based on the perennial yield concept. The perennial yield is the maximum amount of groundwater that can be salvaged each year over the long term without depleting the groundwater and reservoir. The perennial yield cannot be more than the natural recharge and is usually limited to the natural discharge. What I have just said on perennial yield is important. Our goal is not to mine the groundwater. We do not want to take water out of storage that has been sitting there forever. Our goal is to appropriate the amount of water that replenishes those basins year in and year out, and no more. We have been successful in many, and we have been unsuccessful in some.

This is a map of our state [page 36, ([Exhibit C](#))]. Each one of those squiggly polygons is a groundwater basin. As I mentioned, there are 256 basins statewide. If Carson City wanted to have an interbasin transfer of groundwater, they could not go to Elko and buy water rights in that Elko basin, file a change application to move the point of diversion from the Elko basin, and then drill a well in Carson City to take that basin's water from Elko. The basins do not support it. An interbasin transfer is where you actually have to pump the water from the Elko basin and deliver it, via pipeline or some other method. To be clear, interbasin transfers are not moving well sites from one basin to another. That is not allowed by law. It is pumping the water from the basin and delivering it via some method.

As I mentioned, there are 4.5 million acre-feet of surface water statewide. There are about 2 million acre-feet in groundwater statewide in our 256 basins [page 37, ([Exhibit C](#))]. That does not include geothermal or effluent reuse.

When you add the 4.5 million acre-feet and the 2 million acre-feet, there are 6.5 million acre-feet. I always use this next analogy because it provides perspective as to how much water our state has. On the Columbia River, there is a gauging station at The Dalles, and it averages 200,000 cubic feet per second. Enough water passes that gauging station in 16 days to equal the entire annual surface and groundwater supply in Nevada [page 38, [Exhibit C](#)]. I know it is preaching to the choir, but I think it is very telling when we talk about how little water Nevada has.

Recently, our office, in its under-review, has compiled statewide groundwater use for the 2013 calendar year. In 2013, we used about 1.6 million acre-feet of our 2 million acre-feet that we believe is available. It is shown here in this pie chart by manner of use [page 39, [Exhibit C](#)]. You can see irrigation is responsible for almost 65 percent of all the water use. Municipal water use is almost 10 percent. Mining also shows up as a big water user at 11 percent, but I want to be clear that is the actual water pumped out of the ground. What that slice of pie does not show is the lion's share of that 11 percent is actually reinfiltrated back into the basin.

Our office will be coming out with a publication on groundwater use in the state. You will be able to see by county, manner of use, et cetera, where the groundwater is going.

Thank you for allowing me to speak before you. If there are any questions, I would be happy to answer them.

Chairman Ellison:

I think your presentation was very helpful. It gives us insight as to how much water is out there, or not out there. I received a text from Senator Goicoechea yesterday. He said Lake Mead hit a historically low water level yesterday according to Channel 8 News. That tells us how bad this drought is. Are there any questions from the Committee?

Assemblyman Wheeler:

Mr. King, I was looking at [Senate Bill 485](#) and noticed it would take a two-thirds majority vote. I was wondering why. I only see a \$1,100 fiscal note, so it should not rise to that level.

Jason King:

I would agree with you. That is the only monetary amount I am aware of.

Chairman Ellison:

Are there any further questions? [There were none.] Is there anyone here for public comment? [There was no one.]

This meeting is adjourned [at 10:31 a.m.].

RESPECTFULLY SUBMITTED:

Lori McCleary
Committee Secretary

APPROVED BY:

Assemblyman John Ellison, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Government Affairs

Date: April 22, 2015

Time of Meeting: 9:04 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Jason King, Division of Water Resources	PowerPoint presentation
S.B. 485	D	Jason King, Division of Water Resources	Written testimony