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

Seventy-Eighth Session
February 24, 2015

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Robin L. Titus at 1:31 p.m. on Tuesday, February 24, 2015, in Room 3138 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 record 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:

Assemblywoman Robin L. Titus, Chair
Assemblyman Jim Wheeler, Vice Chair
Assemblyman Nelson Araujo
Assemblywoman Maggie Carlton
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblyman Chris Edwards
Assemblyman John Ellison
Assemblyman David M. Gardner
Assemblyman Ira Hansen
Assemblyman James Oscarson
Assemblywoman Heidi Swank

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Irene Bustamante Adams, Assembly District No. 42
Senator Pete Goicoechea, Senate District No. 19

STAFF MEMBERS PRESENT:

Carol M. Stonefield, Managing Principal Policy Analyst
Susan Scholley, Committee Policy Analyst
Jim Penrose, Committee Counsel
Donna J. Ruiz, Committee Secretary
Cheryl L. Williams, Committee Assistant

OTHERS PRESENT:

Charles Donohue, Administrator, Division of State Lands, and State Land Registrar, 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

Chair Titus:
[Roll was called. Committee rules and protocol were explained.] I will open the hearing on Assembly Bill 144.

Assembly Bill 144: Makes various changes relating to the Land Use Planning Advisory Council. (BDR 26-554)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:
I had the honor of being the chair of the Sunset Subcommittee of the Legislative Commission during the last interim. With me today is Carol Stonefield, who was the legislative staff person for the subcommittee. I am here to introduce Assembly Bill 144.

For those of you who have not heard of the Sunset Subcommittee, I would like to state for the record the mission and the background for the subcommittee before I explain the provisions of the bill. There are roughly 200 boards, commissions, and committee councils that have been created by the Nevada Legislature. Some of these boards and commissions had not been reviewed for years. To determine whether they were still relevant for Nevada or if their purpose had changed, this body took it upon itself to look at these boards and commissions.

The task was assigned to the Sunset Subcommittee, which is a permanent subcommittee of the Legislative Commission, and was created by the passage of Senate Bill No. 251 of the 76th Session. It was a bipartisan bill and unanimously passed in both houses. It was codified in *Nevada Revised Statutes* (NRS) Chapter 232B. Our mission is to review these boards and commissions

to determine whether we should continue, modify, consolidate with another entity, or terminate. We are to bring those recommendations before the Legislative Commission, who then determines whether any of those recommendations should come forth to this body during the next legislative session.

Before you are changes we are recommending to the Land Use Planning Advisory Council and its Executive Council. We reviewed this council on March 4, 2014. I will pause here to take any questions regarding the mission of the Sunset Subcommittee.

Chair Titus:
Are there any questions from Committee members? [There were none.]

Assemblywoman Bustamante Adams:
For the record, Assemblyman Hansen had mentioned in another committee that this was a recommendation from the Nevada Spending and Government Efficiency (SAGE) Commission. It drafted some of its recommendations, and this is some of the work being brought forth as well.

The council we are looking at today was created in 1973 as part of a larger bill implementing land use planning. The advisory council has 18 members appointed by the Governor. There is one member from each county who is an elected official or a representative of a local political subdivision, and one nonvoting member to be appointed by the Nevada Association of Counties (NACO). The advisory council advises the Division of State Lands of the State Department of Conservation and Natural Resources on the development and distribution of information useful to land use planning. It also advises the State Land Use Planning Agency on statements of policy regarding lands under federal management.

Four years later, in 1977, the Legislature created the Executive Council of the Land Use Planning Advisory Council for the purpose of deciding planning conflicts between local governments. The Executive Council consists of the Administrator of the Division of State Lands and four members of the advisory council who are elected by the advisory council members.

Existing law in NRS 321.763 provides that when inconsistency in land use plans develop between two or more adjacent or overlapping local governments, the Executive Council can do the following: (1) It can direct the staff of the State Land Use Planning Agency to study the issues and prepare alternative plans; (2) It shall conduct public hearings; and (3) It can decide in favor of

one local government or the other, or it can prescribe its own land use plan. Its decision supersedes the inconsistent plans of the local government involved.

Existing statutes also provide that the Executive Council may make decisions in areas of critical environmental concern. You should be aware, however, that these decisions cannot become effective without the approval of the Governor.

I would like to discuss the provisions of the bill. There are two statutory provisions relating to the Executive Council. One has to do with the membership of the Executive Council, and the other has to do with its authority to make decisions in areas of critical environmental concern.

First, let me discuss the recommendation regarding membership. As I noted earlier, the members of the full advisory council elect four of their members to serve on the Executive Council. Currently, the four members are composed of elected officials from Clark County, Humboldt County, Lyon County, and Storey County.

Sunset Subcommittee members were well aware of the urban rule and north/south diversity in Nevada. In our discussions, members were concerned that at some time whole sections of the state might be subject to decisions made by an Executive Council whose members might not truly understand the issues of that region. Therefore, the recommendation from the Sunset Subcommittee in section 1 of this bill is more of a statement of intent than an actual mandate. However, we are hopeful that to the extent it is feasible, the members of the full advisory council will elect members to the Executive Council who represent the various geographic areas of Nevada.

The second provision from the Sunset Subcommittee relates to the areas of critical environmental concern. You do not have before you in A.B. 144 the definition of "area of critical environmental concern," so I will provide that for you. *Nevada Revised Statutes* 321.655 defines an area of critical environmental concern as "any area in this State where there is or could develop irreversible degradation of more than local significance...."

Currently, either the Governor directs, or one or more local governments may request, that the State Land Use Planning Agency will provide assistance in planning for an area of critical environmental concern. The administrator of the Division of State Lands is to consult with the Executive Council, which shall make recommendations. These recommendations must be submitted to the Governor before they can become effective.

The members of the Sunset Subcommittee propose a revision to the NRS to provide that the Executive Council present its recommendations for land use planning policies in those areas of critical environmental concern to the whole Land Use Planning Advisory Council. Instead of just 4 people adopting a regulation that is submitted to the Governor, all 18 members would be made aware of the proposal and would have a voice in its development before any recommendations go to the Governor.

In conclusion, the Sunset Subcommittee unanimously recommended the continuation of the Land Use Planning Advisory Council as it currently functions. Its only recommendations relate to the Executive Council, which were also passed unanimously. As far as I know, there is no fiscal note on A.B. 144.

I would be happy to answer any questions that relate to the Sunset Subcommittee. I have someone here from the Division of State Lands who could also answer questions. [(Exhibit C) was presented but not discussed and is included as an exhibit for the meeting.]

Chair Titus:
Thank you for all the effort and time that goes into those committees. We definitely appreciate that. Are there any questions from Committee members before we move on? [There were none.] Do you have any other comments, Assemblywoman Bustamante Adams?

Assemblywoman Bustamante Adams:
I have no further comments.

Chair Titus:
Is there anyone in the audience who would like to testify in favor of this bill?

Charles Donohue, Administrator, Division of State Lands, and State Land Registrar, State Department of Conservation and Natural Resources:
I am here in support of A.B. 144, which modifies and clarifies the composition of the state's Land Use Planning Advisory Executive Council, as well as the duties of the state's Land Use Planning Advisory Council, commonly known as SLUPAC, in regards to planning for areas of critical environmental concern.

Nevada Revised Statutes 321.740 sets forth the membership of SLUPAC, as you just heard. The council consists of 18 members: one member from each county appointed by the Governor and a representative from NACO. The Land Use Planning Advisory Council provides advice on land use planning issues, as well as provides a forum for Nevada's counties to share land use planning information. By its composition, the membership of SLUPAC is broad

and represents all the geographic areas of the state, so it makes logical sense to ensure that the makeup of the Executive Council has representatives from the various geographic areas of the state, north, south, east, west, rural, and urban, as specifically called out in section 1 of the bill.

The Division of State Lands participated in the Sunset Subcommittee hearings and provided testimony regarding areas of critical environmental concern. The division also supports the proposed change as called out in section 2 of this bill, expanding any recommendations associated with the designation of the Advisory Council and Executive Council to the larger SLUPAC body. I would be happy to answer any questions.

Assemblywoman Carlton:
Would the full body have the opportunity to override or amend what had just been relayed to them by the Advisory Council? Logistically, how will the process actually go from one to the other? It sounds like you are just informing them, but I am wondering if they will actually be able to adjust or change any recommendations they receive.

Charlie Donohue:
I would imagine the full body would take the recommendation, consider it, and provide a recommendation to me, Administrator of the Division of State Lands, to act on.

Chair Titus:
Are there any further questions from the Committee members? [There were none.] Are there any other members of the audience who would like to testify in favor of the bill? [There was no one.] Are there any members of the audience who would like to testify in opposition to the bill? [There was no one.] Is there anyone in the audience who would like to testify as neutral to the bill? [There was no one.] I will close the hearing on A.B. 144.

I will ask Mr. King to come forward to give us an overview of 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:
It is a privilege for me to be before you this afternoon. My presentation has two components (Exhibit D). The first component is an overview of our agency. The second component is a very broad overview of our water law.

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

Some of the tasks that 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 flavor 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. For basins that are fully appropriated, we are not issuing any new appropriations, so they are moved around within those areas. Also, in basins that are fully appropriated, we issue preferred use and curtailment orders that limit the amount of water that can be appropriated in basins. We perform 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 hydrographic 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.

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 last two years than I have seen since I have been with the division for the past 24 years. As of 2009, our office was given the ability to assess fines and penalties for violations of the water law. I am also pleased to say that almost without exception, we are not having to fine anyone. People are coming into compliance, which is exactly what we wanted all along, so we have not had to go down that road of issuing fines.

Our office is also responsible for dam safety [page 3, (Exhibit D)]. We have almost 700 dams in our inventory, 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 defined as those dams that, if they were to fail, would have a high probability of loss of life or extreme economic loss. Those dams are inspected

annually. Significant hazard dams are defined as those dams that, if they were to fail, would have a low probability of loss of life, but appreciable economic loss. Those dams are inspected every three years. Low hazard dams are those dams, if they were to fail, where there would be no loss of life and the economic damage would be minimal. We inspect those dams once every five years.

Chair Titus:
Do you separate the dam hazards based on what type of dams they are, for example, an earthen dam shown in your picture [page 3, (Exhibit D)]?

Jason King:
We do not separate them out by the type of dam, only by the hazard classification.

Chair Titus:
How many of the dams monitored are earthen dams?

Jason King:
About 99 percent of the dams are earthen dams. I would say in the last 15 years, we have seen a lot of roller compacted concrete on detention facilities, but by and large, they are earthen structures.

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 D)]. We license all water well drillers. Every water well drilled in the state must be drilled by a licensed well driller through our office. We perform field inspections to verify that construction standards and well drilling procedures are being followed. We review all well logs for completeness. The logs are scanned and put online. We have over 90,000 well logs online for people to view and for well drillers to view. We just updated our regulations related to well drilling this past fall. It is a big part of what our office does.

Chair Titus:
Does any citizen have a right to drill a domestic well, or do they have to get a permit from your office?

Jason King:
Domestic well is the only manner of use that is exempt from having to file a water right application with our office. However, a well driller who is drilling

a domestic well has to submit all the necessary paperwork in advance to our office indicating who they are drilling a domestic well for and what lot it is being drilled on. We review the paperwork to make sure the well is not going to be drilled within a service area and we either approve or deny the start card.

Our division is home to both water planning and floodplain management [page 5, (Exhibit D)]. Our water planning section is responsible for the review of water conservation plans submitted by local governments and purveyors statewide. They also oversee our 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.

Our adjudication section [page 6, (Exhibit D)] now consists of seven staff members, which is a large increase from the two staff members we previously had. The purpose of adjudication is to identify points of diversion, places of use and manners of use of pre-statutory vested claims and reserved rights, and to quantify diversion rates, volumes of water, and assign priorities to those pre-statutory vested claims. Ultimately, to know with absolute certainty how much water has been appropriated and committed in a groundwater basin or on the stream system, those pre-statutory vested claims have to be quantified, and that is the purpose of the adjudication section.

We are proud of our website and all the information our information technology group has made available to the public [page 7, (Exhibit D)]. 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, even 15 years ago, much of our everyday work was involved in dealing with the general public who walked into the office and wanted to look at our records, or in talking to them over the phone. Since we have been able to push all this information online, just like every other agency, it has freed up staff time so they can perform other tasks.

Every session I show this bar graph [page 8, (Exhibit D)] 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. I know 998 backlogged applications sounds like a lot, and it is more than I care to have, but it is the lowest in

almost 40 years. The applications that remain in the backlog are not there because we cannot get to them because we do not have the staff. Our staff is plenty busy for sure, but most of these backlog applications are there because they are awaiting adjudication, the applicant has asked us to hold off on action, or litigation may be preventing us from moving forward. Even though the backlog is fairly high, most of them are there for a reason, not because we have not been able to tackle them.

As a general update, for what it is worth, we are requesting 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 [page 9, (Exhibit D)]. 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. It seems every drop of water is being litigated. Our deputy attorneys general are buried in litigation because of Nevada being the driest state in the nation.

We have also been trying to do a better job with public outreach through our agency. This last fall we held seven "listening sessions" throughout the state, where we gained some valuable knowledge.

Regarding the drought issues, I checked our website today and thought I would mention the snow water equivalent percent of normal in some of the regions. The Truckee River is 61 percent, Lake Tahoe is at 56 percent, Carson River is at 53 percent, Walker River is at 52 percent, upper Humboldt River is at 71 percent, and lower Humboldt River is at 78 percent. To many of you, that may not sound too bad, but January and February should be the big months for precipitation. Those two months usually bump up the averages, but clearly, we have not seen that this year. A month from now it will be interesting to see what these numbers look like.

The last slide before "Water Law 101" is a short list of water bills that deal with our water law [page 10, (Exhibit D)]. Senate Bill 65 and Senate Bill 81 are two bills that our office has brought forward this session. They were brought forth to the committees a week and a half ago and Senator Goicoechea, Chairman of the Senate Committee on Government Affairs, has pushed them both into workshops. We held a workshop last Tuesday, and as we speak, we are holding a second workshop in our office at the Richard H. Bryan Building. Senate Bill 65 is what I consider a housekeeping bill, although there are many entities that are finding it more than housekeeping. Senate Bill 81 deals directly

with active management areas, and this goes back to our involvement with Diamond Valley and Pahrump Valley. We are hoping S.B. 81 will provide more tools to our office to help with those basins that are severely overappropriated. There are several other bill draft requests we have not seen the language to yet, but as soon as we do, we will be responding to those.

That was just a very quick overview of our agency. I would be happy to answer any questions you may have before I jump into my second presentation, "Water Law 101."

Assemblywoman Carlton:
You mentioned Senator Goicoechea sent S.B. 65 to a "workshop." Could you explain what that is and what is going on with it? I have not heard that term in conjunction with a legislative session. They are usually in a subcommittee or a work session.

Jason King:
Maybe I should have called it a work session. It is the same as a work session, but it is being held in our office because it was difficult to reserve a room in this building. Senator Goicoechea asked if we would hold it in our hearing room across the street.

Assemblywoman Carlton:
We are having a work session on a legislative measure in an executive building?

Jason King:
Yes.

Chair Titus:
You mentioned the term "overallocation." Will we be hearing a little more about that in your next presentation?

Jason King:
Yes, we will be talking about it. If I do not address it, please remind me.

Assemblyman Hansen:
I have been dealing with Mr. King now for four years on these water issues. I found that agency to be extremely open and extremely helpful. He goes out of his way to answer every question. He is in an extremely difficult and controversial position. I have found him doing everything possible to make the situation better. A lot of it has nothing to do with him, but the overallocation of water, the transfer of water from one basin to another, and the lawsuits involved fall on his shoulders. I have never once seen him try to duck a difficult

decision. I would like to get on the record that Mr. King has done an amazing job as the state's water engineer in some extremely difficult times. I want to thank you for what you have had to do.

Jason King:
I really appreciate that and our office really appreciates it too. We take pride in the fact that when people call they get to talk to a real person and are not passed around.

Assemblyman Ellison:
Is the picture on your presentation Lake Mead [page 10, (Exhibit D)]? How long ago was this picture taken?

Jason King:
Yes, it is Lake Mead. This picture was taken in the summer of 2014.

Assemblyman Ellison:
Is that how far down the water level is in that area?

Jason King:
Yes.

Assemblyman Ellison:
Last year we had late rains that helped quite a bit. Can you tell us how much those rains helped, or was it mostly runoff from last year?

Jason King:
I really cannot speak to that. I know generally the head waters of the Colorado River had a good year last year, but with the reservoirs on the Colorado River and how the various basin states take their water out, I do not remember exactly how much water was delivered to Lake Mead. Generally speaking, the Rocky Mountains did well last year and are currently doing well. However, the last couple of weeks have been a little dry. The Colorado River Commission of Nevada and the Southern Nevada Water Authority could certainly answer many of the questions about what they anticipate the forecast to be this year.

Chair Titus:
We do have a presentation from the Southern Nevada Water Authority this week.

Assemblyman Ellison:
My question was more of a general question for all of Nevada, not just Lake Mead. I know Elko County and Eureka County received a lot of rainfall. We had very little snowpack, but the rains helped us quite a bit as far as the water yield.

Jason King:
Because we are in the fourth year of the drought, we are so dry that the rain we are getting is being sucked up by the soil. That is still good, but it would be much better if we had some snowpack that would be melting in the next couple of months. It is good that the soil can take in the rain, but without a runoff from the snow, it does not bode well for this upcoming season.

Chair Titus:
Are there any further questions from Committee members? [There were none.] We can just go right into "Water Law 101."

Jason King:
An overview of Nevada water law [page 12, (Exhibit D)] talks briefly about the appropriation process and losing a water right. Nevada is a "use it or lose it" state, which is a very hot topic right now. We will talk about water right ownership, groundwater and surface water, and the criteria our office uses when deciding whether to approve or deny an application.

As you may know, Nevada is a prior appropriation state [page 13, (Exhibit D)]. In other words, first in time, first in right, where priority means everything. Beneficial use shall be the basis, the measure, and the limit of the right to the use of the water. That is another cornerstone of our water law. I have said for many years the "use it or lose it" concept does not provide incentive for people to conserve water. It is not only our state dealing with this, but other western states that are also prior appropriation and "use it or lose it" states have the same issues we have in terms of people wanting to pump their water every five years to the maximum so they can save their water. It is a problem, and it is also one of the components of Senate Bill 81 that we are currently working on.

The unit of measure our office commonly uses is the acre-foot [page 14, (Exhibit D)]. 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, like cubic feet per second (CFS), with the volume of water. The diversion rate is how fast you actually take water out of a well, so many cubic feet per second and so many gallons per minute. However, that is not a volume of water like an acre-foot of water.

Who owns the water [page 15, (Exhibit D)]? 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 [page 16, (Exhibit D)] in more detail, I would like to simply explain the various stages of a water right. Typically, the way a water right works is an application for an appropriation is filed with our office and it goes through the review process, which I will touch on later. If it gets a favorable review, that application becomes a water rights permit. Once the water under that permit is put to beneficial use, is actually put on the crops, delivered to the stores, or taken to the mines, then it becomes a certificate. The appropriative process is an application, to a permit, to a certificate. However, there are water rights that were put to beneficial use before the state water law came into effect. We call those vested claims or pre-statutory rights. There are also reserved rights, as well. The adjudication process is that process that identifies those pre-statutory rights, takes it through the adjudication, gets it into the courts, and ultimately at the other end, a decree finalizes these rights.

Chair Titus:
On the previous screen [page 15, (Exhibit D)], you mentioned the public owns the water, but an individual can have a right to water. When an individual purchases a water right, do they then possess that water, and is that one of their possessions, so to speak?

Jason King:
I am going to touch on that again in a few slides, but I will say the water belongs to the public, but the use of the water is called a usufructuary right. That usufructuary right is real property that can be bought and sold.

Moving on to the next slide [page 17, (Exhibit D)] all use of water within the state requires a permit from our office, except for domestic wells. Our office has held lengthy hearings for the Southern Nevada Water Authority and their pipeline project from eastern rural Nevada to Las Vegas. However, there is a similar application process for the gas station owner in Tonopah who needs one acre-foot for his restrooms, as an example. Again, we receive 1,200 to 1,600 applications per year.

A water right application and permit are not required to drill a domestic well [page 18, (Exhibit D)]. Domestic purposes extend to culinary and household purposes in a single-family dwelling, the watering of a family garden or lawn, and the watering of domestic animals. The maximum amount of water that may be pumped from domestic wells is limited to two acre-feet per year. That is the only exempt manner of use.

To give you some perspective, there are over 49,000 domestic wells statewide, over 11,000 in Pahrump alone. If I were to rank the top ten areas of domestic well densities, I think nine out of the top ten would be in Pahrump. In rough numbers, 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 D)]. An application is filed in our office along with a supporting map and a fee. It goes through an internal review that we call a "map table" review. It is sent out for publication. There is a protest period for each of these steps. The application then becomes "ready for action." Sometimes our office holds hearings, but most of the time we have not had to. There will then be some kind of determination.

Moving to the next slide [page 20, (Exhibit D)], the priority of a right is the date and time when the original application is filed. I think it is important for all of you to understand that the change application retains priority. For example, for a change application we receive in 2015 that proposes to change the manner or use of a water right that was filed in 1947, the 1947 right retains priority. It does not have a new priority in 2015. When individuals or entities try to purchase water rights in basins, they look for the old priority dates.

Every application is filed with our office, whether it is a new appropriation or a change. The notice is published in a local county newspaper once a week for four weeks to notify any interested parties that the application has been filed. There is then a 30-day protest period following that publication period during which people can file a protest to the application.

Once the publication and the protest periods have been completed, the application will become "ready for action" [page 21, (Exhibit D)]. If a protest is filed, we may conduct a hearing. We may also conduct a field investigation to gather more information. We could also require a study by the applicant. However, we may not do any one of those. Ultimately, it gets to the point where our office has to make a decision whether we approve it as requested, approve it with conditions, or deny it.

As I mentioned, we are a "use it or lose it" state. Water rights can be lost [page 22, (Exhibit D)]. Only water right permits can be cancelled. Water rights can also be forfeited. It used to be both surface water and groundwater rights could be forfeited, but after 1999, only certificated groundwater rights can be forfeited. All surface water and groundwater rights can be abandoned. The whole idea was, if you were not using your water in the driest state in the nation, you could lose your water so the next person in line can have a chance.

Assemblyman Edwards:
How long do you have to not use your water?

Jason King:
In the case of forfeiture, our water law is five years of nonuse. For cancellation, typically what happens is on every application we issue, there are a couple of deadlines the applicant has to meet. They have to file a proof of completion when their well is drilled, and they have to file a proof of beneficial use when they actually put their water to use. Many times they cannot meet those deadlines, so they are able to file extensions of time with our office to extend them a year at a time. There are statutory criteria that state if they are not showing a steady application of effort to put this water to beneficial use, those water rights can be cancelled. We get about 4,000 extensions of time requests per year indicating the applicant cannot drill the well for one reason or another. We review these extensions of time and we make a decision as to whether or not they are showing a steady application of effort. If they are not, we cancel them. There is no time limit; it is a matter of whether they meet the statutory criteria or not.

In terms of abandonment, it is a much more difficult process to prove. The water rights holder has to stand on the steps of the courthouse and declare they no longer want this water right. It is not quite that difficult, but it is close. It is pretty tough to abandon water rights.

Assemblyman Edwards:
When you say "use it or lose it," does the individual or entity have to use all of the water each year? Is there criteria established for the amount of water they must use?

Jason King:
When an individual or entity files an application, they receive a permit. If the permit is to irrigate 200 acres, but only 160 acres are irrigated for whatever reason, a proof of beneficial use is filed for the 160 acres. Our office will then issue a certificate for those 160 acres only. The 40-acre difference is lost and, in a perfect world, goes back to the aquifer for the next person in line to

appropriate. That was in one of my previous slides [page 13, (Exhibit D)] regarding beneficial use, the measure, and the limit of the right. You use what you need, but no more, and whatever you do not use goes to the next person in line. That is the permit process. In the case of a forfeiture process, it gets a little more difficult. In the previous scenario, a certificate was issued for 160 acres. If, for some reason, for five consecutive years only 100 acres of that 160 acres were irrigated, the way the law is written, our office could process a partial forfeiture and forfeit 60 of those 160 acres that were not put to beneficial use in those five consecutive years. There is some case law that even makes that grayer, but generally speaking, that is how it works.

The next slide [page 23, (Exhibit D)] is water right ownership. As mentioned, water rights are considered real property and can be owned separate from the property. However, if it is owned separate from the property and the owner is not using it, he will be caught in a cancellation or forfeiture issue. If the owner thinks he can just hold on to the water and wait ten years until the market is right, that will not happen; the owner will lose it. He can hold onto it for a certain amount of time until it is sold or put back to use, but ultimately, he could lose it.

Chair Titus:
I would like to ask Senator Goicoechea to come forward to help with the presentation on the work session you are having. Assemblywoman Carlton asked a question about a work session being held on S.B. 65 and S.B. 81.

Senator Pete Goicoechea, Senate District No. 19:
I am here to stand for any questions.

Assemblywoman Carlton:
Thank you, Senator, for being here. I just did a little investigation on my own and found you have put the interested parties on S.B. 65 together at the State Engineer's office. There was a little confusion about a work session or workshop.

Senator Goicoechea:
We heard both bills and determined it was best to send them to a working group. Because they were the State Engineer's bills, it seemed appropriate rather than using an office here. The first meeting went four or five hours. The State Engineer offered his facilities for the working group to meet in, and I think it is working out very well. I can only hope they hold about two more meetings before we have to have it back here in this building.

Assemblywoman Carlton:
I was concerned about the public notice and the transparency having a meeting offsite on such an important issue.

Senator Goicoechea:
It has been agendized and posted. My staff also made sure anyone who signed into the committee hearing was noticed where the meetings were being held. I fail to see the difference between a working group that meets in an agenda-posted meeting in the Bryan Building, compared to meeting in one of the back rooms here.

Assemblywoman Carlton:
I am sorry, I cannot find it posted anywhere.

Senator Goicoechea:
Apparently, you did not attend the hearing or sign in to the hearing, or you would have been noticed.

Assemblywoman Carlton:
Only people who signed in were notified, so the public was not noticed?

Senator Goicoechea:
I would have to defer to the State Engineer. I do not know how far the notice went. Typically, the working group consists of those people involved in the hearing.

Chair Titus:
This is not a work session on these bills, is that correct?

Senator Goicoechea:
No. It is a working group.

Chair Titus:
That is the clarification we needed.

Jason King:
Continuing on with this slide [page 23, (Exhibit D)] regarding water right ownership, 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 or deny a report of conveyance. I also want everyone to understand how important it is for people to bring up ownership. In all of our notifications, we are required to notify the owner of record in our office only. If reports of conveyance are not filed with

our office telling us who the new owner of record is, we have no way of knowing who to notify.

There are four primary criteria in *Nevada Revised Statutes* (NRS) 533.370 used by our office when deciding whether to approve or deny an application [page 25, (Exhibit D)]. The first is whether there is any unappropriated water. If there is not, it is easy; it will be denied. Will it conflict with existing rights? There is pending litigation regarding what "conflict" means. Does the use of the water threaten to prove detrimental to the public interest? This is another criteria that has received a lot of attention and what it means in terms of public interest. Does the use conflict with existing domestic wells? You can probably understand why that is a criteria because there is not a water right associated with a domestic well, but they wanted to make sure the domestic wells are protected.

Chair Titus:
Who established that criteria, and is it in statute?

Jason King:
Yes. It has been in statute since approximately 1939. Additional criteria, however, were added in 1993 and 1995, which was antispeculation language. Any applicant must show good faith and construct the works necessary to put the water to the intended beneficial use with reasonable diligence, and they also must have the financial ability to construct the projects and apply the water to beneficial use with reasonable diligence [page 26, (Exhibit D)].

I want to talk about the approval criteria when dealing with interbasin transfers of groundwater. In preface to that, I would like to discuss why there is a need for interbasin transfers of water. The first interbasin transfer of water for Nevada was in 1873. It was much earlier in other states. We are the driest state in the nation, the seventh largest state geographically, and the third most urbanized state [page 28, (Exhibit D)]. Over 94 percent of our population lives in population clusters of 50,000 or more. Those metropolitan areas appropriate the water in the near vicinity, but when they run out of water, they look elsewhere. Our water law allows for those types of things.

In 1999, the Legislature added some additional statutory criteria to those interbasin transfers of water [page 29, (Exhibit D)], including whether the applicant has justified the need to import the water from another basin. Our office has to determine that a plan for conservation of water is advisable for the basin into which the water is being imported, whether the applicant has demonstrated that a plan exists, and is it being effectively carried out. Our office also needs to determine whether the proposed action is environmentally

sound as it relates to the basin of export [page 30, (Exhibit D)]. As you can imagine, there are arguments as to what "environmentally sound" means. That is the only place it shows up in statute. There are no sideboards. We need to determine whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported. Again, it requires our office to look into a crystal ball to determine what the basin will look like in 100 years and how much water they are going to need. You can imagine what the State Engineer thought about Las Vegas in 1903, what the growth would have been in that area, and how close he would have been to hitting that target.

I will jump to groundwater and surface water [page 31, (Exhibit D)]. They are found in two separate chapters in NRS. Surface water is in NRS Chapter 533, and groundwater is in NRS Chapter 534. Our office has been accused of not acknowledging the fact that surface water and groundwater are related. I always like to take the opportunity to tell people we do understand that, and we do our best to reconcile the water laws with the laws of science. In other words, we do understand surface water and groundwater do connect in most cases.

In terms of volume of surface water in the state [page 32, (Exhibit D)], there was very little surface water not being used prior to the state water law. What that means is that most surface water has been or will need to be adjudicated because those are pre-statutory beneficial uses. Any surface water that was not claimed as used prior to 1905 is now subject to the current appropriation process, or the application permit certificate process.

There are about 4.5 million acre-feet of surface water in the state, which is our best estimate [page 33, (Exhibit D)]. It does not include the 300,000 acre-feet under the Colorado River. To add a frame of reference to that information, this slide [page 34, (Exhibit D)] is of the major rivers in Nevada.

There was very little development of groundwater in the state until about the 1950s, and certainly in the 1960s [page 35, (Exhibit D)]. Our state is divided into hydrographic basins, and each basin, generally speaking, is considered its own watershed or source. There are some exceptions to that rule, but generally speaking, that is how they are viewed. We have designated and nondesignated basins. Simply put, designated basins are basins where there is a lot of activity, and we feel we need to avail ourselves of some of the tools in the statutes to better regulate them.

We regulate our groundwater basins on the perennial yield concept. The perennial yield of the basin is the maximum amount of groundwater that can be salvaged each year in perpetuity without depleting the groundwater reservoir.

Each one of those squiggly lines on the map [page 36, (Exhibit D)] represents a groundwater basin. We have estimates of how much water recharges each one of those basins every year. It is our goal to issue groundwater permits up to the perennial yield of each basin and no more. We have been successful for most of the basins, but we have been unsuccessful in many basins. Of our 256 basins, I would say roughly half of them are fully appropriated. Of that half, or 128, I would guess there are between 15 to 20 that I would call severely overappropriated. Those are basins where we have committed up to three times the perennial yield of the basin. It is those basins we are trying to bring back the balance through an act of management with S.B. 81, which we talked about earlier. The problem is not going to go away. The aquifer cannot sustain that kind of overcommitted pumping in perpetuity. We are trying to adopt some tools that will help us do that. We try to appropriate to the perennial yield, and have been successful for the most part, but we have certainly failed in some, as well.

Chair Titus:
For my local issues regarding the Walker River Basin, which is where I live, are all the valleys connected considered part of Walker River Basin? When we move between the valleys of Mason Valley, Smith Valley, and down to Walker Lake, is that all considered one water basin?

Jason King:
No. You have the Humboldt River drainage, which is all connected through the Humboldt River. However, the individual groundwater basins do have their own individual recharge number. What we call the perennial yield is the natural recharge that occurs in those basins. They are not connected per se, on the groundwater level, but ultimately, the groundwater flows to the river, the river flows through all those basins, and they are connected through that drainage.

There are about 1.7 million acre-feet of groundwater in the state in the 256 basins [page 37, (Exhibit D)]. That does not include our geothermal resources or the use of effluent water.

To put it in perspective, between our surface water and groundwater, how much water does the state have [page 38, (Exhibit D)]? On the Columbia River, there is a gauging station at The Dalles. That gauging station averages about 200,000 cubic feet per second. Enough water passes that gauging station in about 16 days to equal the entire surface water and groundwater supply that

we have in the state of Nevada. That is probably not news to anyone because we understand how dry we are. However, it pales in comparison to what the Columbia River flows.

This slide [page 39, (Exhibit D)] is preliminary data. We looked for the very first time at how much groundwater was pumped statewide. There have been some other estimates by the U.S. Geological Survey over the years. It is preliminary data that is under review, but I believe it is probably the best attempt at putting together how much water we pump in the state. In 2013, we pumped approximately 1.6 million acre-feet. Of that, almost 65 percent was for irrigation. The graph details the different manners of use. We have also broken this down by county. As soon as we finalize this effort and put together this information, we will have some kind of report to publish. I will make sure this Committee gets that information so you can see what is going on in the different counties by manner of use.

I would be happy to take any questions you may have.

Assemblyman Hansen:
Evaporative loss at mining ponds is an issue that will be coming up. The farmers in Lovelock have been struggling. Short of God giving us a great deal of moisture, is there anything we can do upstream? The town of Lovelock is literally facing substantial economic losses and farmers are going out of business because of the drought. Lovelock is at the very end of the Humboldt drainage system. One of the issues that has come up is the evaporative loss at mining ponds. What are your thoughts on that?

Jason King:
When a mine comes in and goes to our sister agency, the State Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP) to get their mining permits, if it looks like they are going to have an open pit at the end of the mine life, they will be required to show upfront, before they get final approval, that they have a water right sufficient to counter that evaporation from the pit lake itself. That bill, Senate Bill 173, will be brought this session, and we will speak in favor of it. You will get no argument from me that that is a consumptive use of water in the state, and it should be accounted for. I have also been on record saying we have actually looked at all the open pit lakes statewide. The numbers that came up statewide for evaporation was somewhere between 6,000 to 10,000 acre-feet. If it is a consumptive use, it is a consumptive use, but in the big picture, it is not a lot of water. I really sympathize with your constituents on the lower end of the Humboldt, and we are working with them. It is a perfect storm for them because they are at the end of a river, they have groundwater that is not

available to use to grow things, and we have had a four-year drought. We are working with them, and we will do everything we can.

Assemblyman Hansen:
Do you have a position on the U.S. Environmental Protection Agency (EPA) and their efforts to convert virtually all water in the state of Nevada to waters in the United States? I believe the state is aggressively fighting that. You did not bring it up in your presentation, but I believe it is something the Committee should have a good understanding of because the potential impact for the state is significant.

Jason King:
Our sister agency, NDEP, took the lead for our department on the comments, but we funneled our comments through NDEP on the issue. If you remember, one of the things I said that is front and center in our office now is surface water/groundwater interconnectivity [page 9, (Exhibit D)]. This issue of how much of the groundwater gets to a surface water source is at the crux of what the EPA is trying to do. We are very concerned that if the waters of the United States expand into this area of surface water/groundwater connection, then all the groundwater that is a state's right to regulate fall within the EPA's waters of the United States. We have very grave concerns about that, and we did funnel our comments into NDEP's much larger comment.

Assemblyman Hansen:
Are you aggressively fighting it?

Jason King:
Yes.

Assemblyman Ellison:
I have a question about the chart on the state groundwater use [page 39, (Exhibit D)]. Most of the water from the mines goes back downstream. Could you expand on that?

Jason King:
That is a very good point and, in fact, I meant to mention that. You can see that mining accounts for over 10 percent of the groundwater pumping based on pumpage records. But you are correct, the majority of the water pumped is actually recharged into the basin. There are substitutive uses in many cases where it is delivered to the farmers rather than the farmers having to pump their well. It is also rerouted to creeks and streams. Even though there is a large portion of water that is pumped, it is not consumptively used, necessarily.

Assemblyman Edwards:
Do you have any updates about the Gold Butte?

Jason King:
I do not have an update on Gold Butte.

Assemblyman Edwards:
Perhaps we can check back with you later.

Jason King:
Yes.

Chair Titus:
Educate me a little on the use of water as it relates to fracking. I am getting questions about that. You do not have to address the fracking issue, but if they were to use water, do they still have to have a permit for the water they purchased from somewhere else?

Jason King:
Yes.

Chair Titus:
The mines have to have their water permits before they can pump that water?

Jason King:
Yes, they do.

Chair Titus:
Are there any further questions from the Committee? [There were none.]

I will open the work session.

Susan Scholley, Committee Policy Analyst:
You have your work session documents before you [(Exhibit E), (Exhibit F), and (Exhibit G)]. They are also on the Nevada Electronic Legislative Information System, and there are some on the table. The first bill is Assembly Bill 78.

Assembly Bill 78: Makes various changes relating to wildlife. (BDR 45-362)

Assembly Bill 78 makes various changes relating to wildlife. It was introduced on behalf of the Department of Wildlife and heard in this Committee on February 17, 2015.

Assembly Bill 78 authorizes the Board of Wildlife Commissioners to increase the maximum fee that may be collected and used for the prevention and mitigation of damage caused by elk or game mammals not native to Nevada. [Continued to read from work session document (Exhibit E).]

Chair Titus:
Do I have a motion in favor of this bill?

> ASSEMBLYMAN WHEELER MOVED TO DO PASS ASSEMBLY BILL 78.
>
> ASSEMBLYMAN GARDNER SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN ARAUJO, CARLTON, CARRILLO, DOOLING, AND SWANK VOTED NO.)

Chair Titus:
I will ask Assemblyman Wheeler to take the floor statement. We will move to Assembly Bill 82.

Assembly Bill 82: Makes various changes relating to wildlife. (BDR 45-365)

Susan Scholley, Committee Policy Analyst:
Assembly Bill 82 makes various changes related to wildlife. It was introduced on behalf of the Department of Wildlife and was heard in this Committee on February 17, 2015.

Assembly Bill 82 revises the names of existing Department of Wildlife accounts. [Continued to read from work session document (Exhibit F).]

Chair Titus:
I will entertain a motion.

> ASSEMBLYMAN GARDNER MOVED TO DO PASS ASSEMBLY BILL 82.
>
> ASSEMBLYMAN WHEELER SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Chair Titus:
I will ask Assemblyman Gardner to take the floor statement. We will move to Assembly Joint Resolution 2.

Assembly Joint Resolution 2: Urges the United States Congress and the United States Fish and Wildlife Service to take certain actions to reduce the impact of common ravens on the greater sage grouse population in this State. (BDR R-33)

Susan Scholley, Committee Policy Analyst:
Assembly Joint Resolution 2 urges the United States Congress and the United States Fish and Wildlife Service to take certain actions related to the impact of ravens on greater sage grouse in this state. It was sponsored by this Committee and heard here on February 17, 2014.

Based on the depredation of sage grouse eggs by the expanding raven population, A.J.R. 2 urges the United States Congress to amend the Migratory Bird Treaty Act of 1918 to remove ravens from the list of protected species and urges the U.S. Fish and Wildlife Service to work with the Nevada Department of Wildlife to reduce the raven population in Nevada. [Continued to read from work session document (Exhibit G).]

Chair Titus:
I will entertain a motion.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS ASSEMBLY JOINT RESOLUTION 2.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Titus:
Assemblyman Hansen will take the floor statement. That will close the work session. I will open the floor to public comment. [There was none.] This meeting is adjourned [at 2:45 p.m.].

RESPECTFULLY SUBMITTED:

_____
Donna J. Ruiz
Recording Secretary

_____
Lori McCleary
Transcribing Secretary

APPROVED BY:

_____
Assemblywoman Robin L. Titus, Chair

DATE: _____

EXHIBITS

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

Date: February 24, 2015 **Time of Meeting: 1:31 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 144	C	Assemblywoman Bustamante Adams	Sunset Subcommittee of the Legislative Commission Bulletin 15-13, January 2015
	D	Jason King, Division of Water Resources	PowerPoint presentation
A.B. 78	E	Susan Scholley, Committee Policy Analyst	Work session document
A.B. 82	F	Susan Scholley, Committee Policy Analyst	Work session document
A.J.R. 2	G	Susan Scholley, Committee Policy Analyst	Work session document