

**MINUTES OF THE  
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Eighth Session  
February 11, 2015**

The Senate Committee on Government Affairs was called to order by Chair Pete Goicoechea at 1:32 p.m. on Wednesday, February 11, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Pete Goicoechea, Chair  
Senator Joe P. Hardy, Vice Chair  
Senator Mark Lipparelli  
Senator David R. Parks  
Senator Kelvin Atkinson

**STAFF MEMBERS PRESENT:**

Jennifer Ruedy, Policy Analyst  
Heidi Chlarson, Counsel  
Suzanne Efford, Committee Secretary  
Nate Hauger, Committee Secretary

**OTHERS PRESENT:**

Jason King, P.E., State Engineer, Division of Water Resources, State  
Department of Conservation and Natural Resources  
Dwight S. Lilly  
John Bosta  
Frank Maurizio, President, Private Well Owners Cooperative of Nye County  
Andrew Vineyard  
Oscar Wichman  
Gordon DePaoli, Walker River Irrigation District  
Steve Walker, Truckee Meadows Water Authority; Carson City; Douglas  
County; Eureka County  
Allen Biaggi, Nevada Mining Association

Scott Leedom, Southern Nevada Water Authority; Las Vegas Valley Water District  
Andy Belanger, Southern Nevada Water Authority  
Joe Guild, Southern Nevada Water Authority  
Brian McAnallen, City of Las Vegas  
David Cherry, City of Henderson  
Mike Baughman, Executive Director, Humboldt River Basin Water Authority  
John Fudenberg, Clark County  
Susan Lynn, Great Basin Water Network  
Steve Bradhurst, Executive Director, Central Nevada Regional Water Authority  
Neena Laxalt, Nevada Cattlemens' Association; Nevada Association of Land Surveyors  
Vahid Behmaram, Water Rights Manager, Community Services Department, Washoe County  
Susan Joseph-Taylor, Deputy Administrator, State Engineer's Office, Division of Water Resources, State Department of Conservation and Natural Resources  
Kyle Davis, Great Basin Water Network  
Edwin James, General Manager, Carson Water Subconservancy District  
Mike Buschelman, Nevada Association of Land Surveyors

**Chair Goicoechea:**

We start the meeting with Senate Bill (S.B.) 65, submitted by the Division of Conservation and Natural Resources.

**SENATE BILL 65**: Revises provisions relating to the use of water. (BDR 48-366)

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

Much of this bill is dedicated to modernizing sections of Nevada's water law to better reflect how adjudications are conducted. Section 9 of the bill requires the State Engineer's Office to quantify all diversion-rate-only certificates statewide. These certificates were issued with only a rate at which water could be withdrawn but did not provide any information on the actual quantity of water placed to beneficial use or certificated for a total duty or amount of water. I have submitted written testimony that details the effects of this modernization ([Exhibit C](#)).

**Chair Goicoechea:**

Do you have the ability, either in this bill or in statute, to reject a request for a drill card for drilling a domestic well?

**Mr. King:**

Yes, statute contains provisions that allow us to deny the drilling of domestic wells within an area that could be served by a purveyor or municipality. We deny those requests frequently.

**Chair Goicoechea:**

If it is ambiguous whether an area can be served, can you deny the drilling of a well?

**Mr. King:**

We can deny it, but I do not think that situation has ever arisen. The issue of whether we can deny the drilling of a domestic well is a very hot topic now, especially in Pahrump. *Nevada Revised Statute* (NRS) 534.110, subsection 8 states:

In any basin or portion thereof in the State designated by the State Engineer, the State Engineer may restrict drilling of wells in any portion thereof if the State Engineer determines that additional wells would cause an undue interference with existing wells.

**Chair Goicoechea:**

Section 9, subsection 1 of the bill, says:

The State Engineer shall quantify in acre-feet the amount of water that has been beneficially used for the purpose set forth in the certificate of appropriation for any certificate issued pursuant to NRS 533.425 which expresses the amount of the appropriation only in terms of cubic feet per second.

Would you require anybody who has a duty on their well to put it in terms of acre-feet?

**Mr. King:**

We have already begun this. We did this for diversion-rate-only certificates in Basin 212—Las Vegas Valley—about 10 years ago. If we find a certificate for

0.3 cubic feet per second and there is no duty, we would send a letter to that water right holder saying: you have one of those diversion-rate-only certificates. Based on the proof of beneficial use filed at that time, it appears you used 100 acre-feet, do you agree? If you disagree, present more information for us to look at. We will go negotiate with that individual until we come up with the duty. Every time we get an application for a new appropriation of water, we have to make a determination whether water is available to appropriate. If we only have a diversion-rate-only certificate that has not quantified the water right, we cannot determine how much water we have committed in the basin with absolute certainty.

**Chair Goicoechea:**

And there is no time frame. You notify the applicant even if no action is taken on their application?

**Mr. King:**

That is correct. There are probably thousands of applications; hopefully, most of them are for stock water. Stock water applications are slam dunks because their diversion rates expand roughly equal to the number of cattle being raised by the applicants. We spend more time working on the applications that have big diversion rates where not all the water was used.

**Chair Goicoechea:**

In section 13, subsection 1, I need some clarification. You are calling for a date set pursuant to paragraph (c) which gives the date you call for proofs of appropriation to be filed. Subsection 2 says the deadline for the filing of proofs of appropriation must not be less than 60 days, but that seems like a small time frame. I would like to change that to 5 or 10 years.

**Mr. King:**

The language says that we cannot call for proofs of appropriation to be filed in less than 60 days, so it actually has to be longer than 60 days. We have asked for a minimum of 6 months or even more than a year for the last few adjudications on which we have called for proofs. People can ask for extensions of that time, and those are frequently granted.

**Chair Goicoechea:**

I want language that would create a longer time frame; 5 years would be reasonable, depending on the case.

**Mr. King:**

I agree. Although we prefer to do basin-wide adjudications, there are times when we have done source-specific adjudications where we know of only three claimants. In many cases, asking for proofs within a few months is appropriate.

**Chair Goicoechea:**

Section 54, subsection 5 states:

If the water right in question lies within a basin that is an area of active management or has been designated as a critical management area by the State Engineer, the State Engineer may approve or deny an extension of time to effectuate the successful administration of the area of active management or critical management area. As used in this subsection, "area of active management" has the meaning ascribed to it in NRS 534.011.

Does this mean that in an active management or a critical management area you have the right to grant extensions?

**Mr. King:**

Sometimes there could be a groundwater management plan proposed by the stakeholders in a basin. For example, one might suggest that they should all agree to not use their water for a number of years to help out the health of the basin. Or we should only allow two extensions of time per permit and if a person in that basin cannot do anything with that extension, then it should be off the books. Depending on what was brought to our Office from a groundwater management plan, that plan might actually compel us to do one or the other of these. The whole purpose of this section is to be flexible within the confines of the groundwater management plan.

**Chair Goicoechea:**

Under section 67, subsection 1, paragraph (a) of the bill says, "A person controlling surface water or groundwater shall not willfully waste the water except to prevent a greater harm." This is problematic because it is subjective. I would like to tighten up that language.

Section 72 states, "'Perennial yield' means the maximum amount of groundwater available for appropriation from a hydrographic basin on an annual basis for an indefinite period of time, as determined by the State Engineer." That is a lot of power to give to one person. Instead, we should add language

tying that definition to scientific data. We already have “perennial yield” established in some basins, but this gives the State Engineer the power to change the definition and impact water right holders.

Section 73 states:

Before a person may obtain a right to the use of groundwater from a basin, the person must ensure that wildlife which customarily uses spring sources in the basin which could be impaired by any groundwater pumping in the basin will continue to have access to those sources.

If a spring dries up due to a drought, would that mean that a person with access to that spring would need to start pumping water to places where the water has dried up?

**Mr. King:**

I understand the distinction between pulling water from a spring source and impacting potential wildlife versus pumping a mile away and being accused of drying up a spring. I agree with you that this language needs to be revised.

**Chair Goicoechea:**

Section 75, subsection 2, paragraph (b) states, “Waste means misusing water such that it discharges or flows in any canal or ditch conveying water from a well where the loss of water in transit is more than 20 percent of the amount of the water discharged from the well.” In many areas if you are near a small irrigation stream and it loses water, that loss is a major part of your irrigation. We should change this language.

**Mr. King:**

That is existing language. That 20 percent has been there for a long time, so we left it for consistency. However, I agree with you, especially with what we are doing in Smith and Mason Valleys. A lot of that irrigation comes from the recharge of canals and rivers. I am open to changes to that language.

**Chair Goicoechea:**

Paragraph (b) mentions discharge from a well rather than the surface source.

**Mr. King:**

I agree. The 20 percent previously dealt with surface water that we attempted to parallel with groundwater. We could revise that part of the bill.

**Chair Goicoechea:**

Section 78 mentions revocable permits. We have temporary permits all over the board. Some of them have become certificated water rights, and the temporary permits disappeared on a lot of these permits and certificates as we brought them forward. When you make those temporaries revocable, does that give them a higher standing?

**Mr. King:**

This has nothing to do with temporary permits. Our office has only issued revocable water rights to Las Vegas Valley. In 1951, the infrastructure was not in place in Las Vegas Valley to deliver Colorado River water to the citizens and businesses of Las Vegas Valley. At that time, the State came up with the revocable water right idea which would issue these groundwater rights. When the infrastructure was put in place in Las Vegas Valley to serve residents Colorado River water, the permits would be revoked and the residents would hook up to Colorado River water. The revocable permits are different from temporary permits. We do not want to certificate those revocable permits because they will be revoked.

**Chair Goicoechea:**

Section 78, subsection 5 of S.B. 65 talks about a water district or municipality engaged in furnishing water to inhabitants. Does it need to mention public utilities?

**Mr. King:**

Adding public utilities would be great, but it does not need to be included. An entity that serves water to a municipality, businesses, residences and industrial uses with a service area that covers domestic wells is a good water management practice, having fewer straws in the ground, and a municipality in charge of rates hook up those domestic wells.

**Chair Goicoechea:**

I was concerned that the people living on a public utility rather than a municipality or water district would think they are exempt.

The change to 1,000 feet from 180 feet as noted in section 78, subsection 5, paragraph (a) of Senate Bill 65 is a big step. It would be expensive to build a pipe that long.

**Senator Parks:**

Section 73 of the bill mentions wildlife. Would that include wild horses and burros?

**Mr. King:**

Our Office interprets wild horses as wildlife in a herd management area. There are a lot of other definitions of wildlife throughout State government. I want the Legislature to define wildlife to make it clearer for us.

**Dwight S. Lilly:**

I am a resident of Pahrump, and I am opposed to S.B. 65. Our town does not have any access to rivers or lakes. The State issued 60,000 acre-feet of water rights in an area with a perennial recharge rate of about 20,000 acre-feet. We have 11,500 or more private wells in the valley. If you look at how growth took off up until the recession in 2006, we have subdivisions approved for 6,500 additional homes. These homes are now abandoned because of the water shortage in the area. I checked with the State, Nye County and town before moving in, and they said the land was sitting on an ocean of water underneath the valley. What person in their right mind would move into an area with a water shortage? You need food, water and air to live. In addition to the water shortage, most of us have had to plant vegetation to absorb the dust in the air. The Environmental Protection Agency has filed complaints against the area for having dust that exceeds the legal limit.

The State says this cleanup bill alleviates situations that existed in 1919, but we have not seen any active management by the State Engineer's Office. I have seen many subdivisions and housing developments constructed with no opposition by the State Engineer even though there has been a water shortage for years. When we purchased our property under the assumption that water would not be a problem, we invested heavily. We have allowed the State Engineer to become a czar over the groundwater and force us to form our own water co-op. Nevada Supreme Court decisions prohibit anybody from managing the water underneath a person's private property. Percolated water under the soil has been determined to be a part of the property.



I do not know anybody who has wasted water, but when you have vegetation, you have to water the trees. The term "beneficial use" changes. I do not understand why 60,000 acre-feet of water in an area has 20,000 acre-feet of beneficial use available, yet entities like Utilities Inc. of Nevada holds on to thousands of acre-feet of water. Other utility companies hold on to thousands of acre-feet of water, and speculators think they can expand the growth in the area.

A community of people own over 11,000 wells. The 2.1 people who comprise average family size represent a sizeable portion of our County who are dependent upon the actual percolated water under the ground for their survival, and then you have all the speculators. There has been a negligence on the part of the State in dealing with the water shortage and allowing Pahrump Valley to continue to grow. We have 56 more homes going up in Mountain Falls. I object to the cleanup in S.B. 65, and I want my 2 acre-feet of water which came with the property that I bought preserved. I am speaking for a lot of people.

**John Bosta:**

I oppose S.B. 65. Lines 1 through 3 of the Legislative Counsel's Digest are invalid and void. I have filed a lawsuit against the State Engineer wherein he does not have the authority to take our water. This bill is not a cleanup, it is a power grab by the State Engineer. I have submitted written testimony ([Exhibit D](#)).

**Frank Maurizio:**

I am opposed to S.B. 65 and S.B. 81. I have submitted written testimony ([Exhibit E](#)).

**SENATE BILL 81:** Revises provisions relating to the management and appropriation of water. (BDR 48-367)

**Andrew Vineyard:**

I am speaking on behalf of the community of Indian Springs and domestic well owners. While we are sympathetic to the argument for having fewer straws in the ground and for source safety, the proposed change of 180 feet to 1,000 feet would radically increase costs. This change in the distance also changes rural property identity and attendant rural property values. Ultimately, this would render rural water independence back to a form of urban water dependence. I have submitted written testimony ([Exhibit F](#)).

**Oscar Wichman:**

I work for the Nye County Water District. My comments are my own. I support changing the system that has slowed down the adjudication process in the State. This morning, I spoke with an individual in the water business who is trying to clean up and identify all the water rights owned by a large Nevada ranch that covers hundreds of square miles. It involves hundreds of springs, streams, wells and dozens of properties. He has invested himself in this project for 3 years, assembling a large laundry list of underground, stream and vested water rights. I understand Mr. King's comments that if you are going to do one proof by itself, 60 days might be sufficient. However, section 13, subsection 2 of S.B. 65 is vague about the quantity of proofs required in that 60-day time frame. I recommend a time frame of 5 years for all of the proofs in a basin.

Section 73 says:

Before a person may obtain a right to the use of groundwater from a basin, the person must ensure that wildlife which customarily uses spring sources in the basin which could be impaired by any groundwater pumping in the basin will continue to have access to those sources.

I suggest this Committee limit that along the lines of withdrawals greater than 0.5 cubic feet per second (CFS). My justification for 0.5 CFS is that elsewhere in water law statute, under certain conditions, if you file on a water right within 2,500 feet of a domestic well and your diversion rate is greater than 0.5 CFS, you are required to remedy that problem if you dry up the other person's well.

Section 75, subsection 2 discusses wasting water. On my small ranch, we irrigate out of the stream. On the matter of wasting water, there are implications for irrigation districts, like the Truckee-Carson Irrigation District in Fallon, and the common rancher.

Having managed a number of public works projects and worked as a contractor on various municipal water projects, I know you normally calculate the cost of pipe in the ground at \$5 times the pipe diameter in inches, which gives you a cost per foot installed. While I worked for Nye County Public Works, I never knew us to lay anything less than 8-inch pipe which costs \$40 per foot to install. If we increase the length of the pipe to 1,000 feet, as called for in section 78, subsection 5, paragraph (a), of S.B. 65, that comes to a total

of \$40,000. I understand that if you are the first person on the street that runs the line down, you are on the hook for the full amount. It is possible that you would be reimbursed later as others connect to the line, but I do not know how that works.

**Gordon DePaoli (Walker River Irrigation District):**

The Walker River Irrigation District is not opposed to the purpose of S.B. 65 or S.B. 81 in terms of bringing many provisions of the adjudication sections of NRS 533 into the twenty-first century. However, some provisions in the bill cause us concern. It may be that we do not completely understand what is intended with some of those provisions, and we would like to have the opportunity to work with the Committee, the State Engineer and other interested parties to make sure our concerns are addressed.

**Steve Walker (Truckee Meadows Water Authority; Carson City; Douglas County; Eureka County):**

Truckee Meadows Water Authority, Eureka County, Carson City, Douglas County and Lyon County all have some concerns with certain sections in S.B. 65. We would like to be involved in the process to work out these issues. I echo the testimony of Mr. DePaoli.

**Allen Biaggi (Nevada Mining Association):**

Like Mr. DePaoli and Mr. Walker, we applaud the State Engineer in his attempts to modernize State water law. We would strongly suggest that this discussion be moved to another venue to work out the details of the bill.

**Scott Leedom (Southern Nevada Water Authority; Las Vegas Valley Water District):**

I am testifying in the neutral position on behalf of Southern Nevada Water Authority (SNWA) and Las Vegas Valley Water District. We met with the State Engineer and came up with a proposed amendment which is intended to be a starting point for any potential working group.

**Chair Goicoechea:**

Would you be opposed to us discussing your amendment today?

**Andy Belanger (Southern Nevada Water Authority):**

We want to address concerns in our working group with many of the same sections that you do: section 9, which has to do with diversion-rate-only

permits; section 15; and section 73, which deals with stream rights for wildlife and the definition of “perennial yield.”

A question you asked regarding public utilities related to the groundwater management program in Las Vegas is answered in section 78, which discusses Las Vegas Valley. No public utility in Las Vegas Valley has access to Colorado River water. Public utilities would still use a groundwater source. Section 78 allows people to build using a revocable permit; then as municipal water from an alternate source becomes available, they may connect to that alternate source.

We did not make provisions in our amendment regarding the section that makes the change from 180 to 1,000 feet. Our groundwater management program assists well owners who have to connect to the municipal system by providing up to 85 percent of the cost of connection up to 180 feet of pipe because it is tied to this section. Therefore, if this bill went through as is, there would be a gap of about 820 feet of pipe that a well owner would have to pay to connect, and our system would not provide assistance for that. That is a concern we would like to address in the working group.

**Joe Guild (Southern Nevada Water Authority):**

I would also like to be involved in the working group.

**Brian McAnallen (City of Las Vegas):**

We support the amendments as discussed by SNWA. We would like to be involved in the working group.

**David Cherry (City of Henderson):**

The City of Henderson also supports SNWA’s amendment as proposed today. We would like to participate in a working group.

**Mike Baughman (Executive Director, Humboldt River Basin Water Authority):**

Humboldt River Basin Water Authority supports the intent of the amendment, and we would like to participate in the working group. Section 76, subsection 2 discusses the State Engineer’s ability to levy assessments. The State Engineer already has the authority to levy assessments, but section 76, subsection 2 of this bill would expand that to allow:

... for any services required in the area designated by the State Engineer to come under the provisions of this chapter, including,

without limitation, the implementation of a groundwater management plan and oversight of an area of active management or an area designated as a critical management area by the State Engineer.

That is pretty open-ended; it could end up meaning millions of dollars. We need more limitations in the bill.

**John Fudenberg (Clark County):**

We echo the concerns of the SNWA and support the amendments. We would like to be involved in a working group.

**Susan Lynn (Great Basin Water Network):**

We hope there will be further discussion in working sessions. We have three major concerns. One is the definition, or lack thereof, of perennial yield. We feel limitations and sustainability issues need to be addressed. Changes to the triggers for interbasin transfers are the second concern. The third concern is about the one-size-fits-all domestic well proposals because various communities have different systems, and it is difficult to apply one policy across the board. We would like to participate in a working group.

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

I support the amendment and would like to be involved in the working group.

**Neena Laxalt (Nevada Cattlemens' Association; Association of Nevada Land Surveyors):**

Both of the groups I represent would like to be part of the working group.

**Vahid Behmaram (Water Rights Manager, Community Services Department, Washoe County):**

We would like to participate in a working group on both S.B. 65 and S.B. 81.

**Chair Goicoechea:**

I will close the hearing on S.B. 65 and open the hearing on S.B. 81.

**Mr. King:**

Senate Bill 81 is the second bill that the State Engineer's Office submitted. When Chair Goicoechea was in the Assembly, he introduced a bill in the 2011 Session that provided another tool for our Office to manage those groundwater

basins that are severely overappropriated. That bill allowed for the designation of a particular area as a critical management area. It provided that in an area designated as a critical management area, the majority of the holders of water rights could propose a groundwater management plan that would lay out a basin-specific recipe on how to bring a basin back into balance, or at least stop the rate of groundwater-level decline, resulting in removal of the basin's designation as a critical management area.

Since 2011, our Office has been working diligently with water right holders and domestic well owners in Diamond and Pahrump Valleys, which are both severely overappropriated basins with declining water levels. What we have proposed in S.B. 81 is a direct result of our staff working with the water users in those basins and responding to their concerns. Our Office is completely within the law should it designate those basins as critical management areas, but we have not done so yet because of the local citizens' concerns that the designation would stigmatize their communities. Even though we were not required to do this, our Office agreed to work on a groundwater management plan with the local stakeholders in those two basins without actually designating Diamond Valley and Pahrump Valley as critical management areas. I have submitted written testimony ([Exhibit G](#)).

**Chair Goicoechea:**

I note a couple of points that have been brought to me. One of them is the 40 percent of the combined total of appropriators. I agree domestic well owners need to be included. I understand this only pertains to a petition process, but you have to consider you might be in a basin, and as you said, we have two poster-child basins, Pahrump and Diamond Valleys, which are vastly different. In Diamond Valley, the majority of those permits would be held probably by ag irrigation.

One person might have 15 or 20 permits and a concern that he or she has equal influence as a person who only has one domestic well and 2 acre-feet of water. I would like to change the language to make it more representative.

In Pahrump Valley, the issue becomes domestic well owners, and they have the voice and the total number of permits. We need to visit that a little bit.

Section 4 of S.B. 81 states that the "State Engineer may, without limitation ... ." We need to have that reflect back to the management plan.

Subsection 6 states that you have the authority to impose or authorize conservation practices that might not otherwise be allowed by statute. However, if you have the ability to designate preferred uses of existing rights, that has to come back to the plan where we recognize this as the preferred right, but have some sideboards without limitation.

I would like to remind the public that if these two bills do not pass, the bottom line is the State Engineer is charged with protecting the water resources of this State, and he has the authority to regulate by priority. If he does that, it will be highly unpopular. I introduced the option for critical management to avoid regulation by priority. We could end up in court on this. Even with the stigma, critical management was a tool. Active management will work to avoid regulation by priority.

**Senator Atkinson:**

I keep hearing of lawsuits filed, and it sounds like things being addressed will clear up some of those legal issues. If we go further with this bill, could it be obstructed by the ongoing litigation?

**Heidi Chlarson (Counsel):**

Pending litigation would not affect the Legislature's ability to act on these bills.

**Senator Atkinson:**

If that is the case, Mr. King, has somebody from your Office had an opportunity to look at filings and litigant requests? Will this legislation alleviate some of the litigant concerns?

**Chair Goicoechea:**

We hope to work wrinkles out of this legislation before that case is heard. This Committee will try not to jam this legislation through before the courts have an opportunity to hear the case.

**Susan Joseph-Taylor (Deputy Administrator, State Engineer's Office, Division of Water Resources, State Department of Conservation and Natural Resources):**

As a lawyer who has followed the lawsuit, I do not believe this proposed legislation has any effect on the assertions in the lawsuit.

**Chair Goicoechea:**

Senate Bill 81 is only mirroring statute in place. If we can clean it up, it should be a simple bill.

**Mr. Wichman:**

My comments are my own, but I assisted the Basin 162 Groundwater Management Plan Advisory Committee in Pahrump with drafting the first groundwater management plan in the State's history. Whenever reference is made to giving an individual power without limitation, it makes people nervous. I would like the Committee to consider some definitions, examples and references to accepted best management practices. Section 8, subsection 1 changes the number of signatures needed for a petition from a majority of the holders of permits or certificates in a basin to not less than 40 percent of the combined total of appropriators and domestic well owners in the basin. This one-size-fits-all policy is not viable because 40 percent is not equal in all basins. I suggest changing the language to reflect a range of requirements: signatures from 40 percent or a majority of the water right holders.

**Mr. Walker:**

Whereas Eureka County supports S.B. 81, Truckee Meadows Water Authority, Carson City and Douglas County are neutral. We would like to participate in a workshop on this bill.

**Kyle Davis (Great Basin Water Network):**

I would like to be included in a working group on both of these bills. I share the Chair's concern about how domestic wells in various valleys are treated.

**Mr. Baughman:**

The Humboldt River Basin Water Authority believes that this bill will provide the State Engineer with useful tools to address problems. There are technical problems with this bill, such as in section 4 which dictates several actions the State Engineer could conceivably take in implementing a management plan. Nothing in S.B. 81 says that the State Engineer puts these out in a draft order or conducts a hearing or chance for appeal on that draft order. The management plan in section 8, subsections 3 through 5 of S.B. 81 is where the rubber meets the road. We should consider providing an opportunity for a draft order to be issued and a public hearing to be held. We do not have an opportunity for administrative appeal. Disputes over decisions must be taken up with district courts. There should be an administrative appeal process in place.



**Mr. DePaoli:**

We would like to participate in a working group on this bill.

**Edwin James (General Manager, Carson Water Subconservancy District):**

We would like to participate in the workshop.

**Mr. Leedom:**

One issue we would change is in our proposed amendment. The percentage when petitioning a state engineer for a designation would be changed from 40 percent of the appropriators to 40 percent of the appropriations.

**Mike Buschelman (Nevada Association of Land Surveyors):**

We support this bill but have concerns about subjugating the priority system under some of the management plans. The priority system is the base that we stand on. Beneficial use and prior appropriations have been the basis of the policies we operate under for 110 years, and my strongest concerns regard doing away with those. Changing the process of declaring a preferred use after the permit is issued would be drastic. Declaring preferred use has always been done prior to the issuing of a permit because it prevents people from arguing that they are more preferred than those who received permits. The system we have does limit us in some ways, but there are opportunities to use the system to satisfy those concerns. We would like to be a part of a working group because there could be some unintended consequences with this bill the way it is now.

Another concern I have is about timing horizons. I understand the need to expedite planning, especially in critical management basins, but it has been my experience working on the Washoe County Regional Water Planning Commission that it takes years to develop these plans and convince groups to cooperate. It is difficult to get it done in 5 years in large communities that have critical management basins. Some of the planning horizons need to be looked at more carefully. Those we have now give the State the flexibility to have a cutoff point. I do not like to have too many things set as definitive dates because it gives us less flexibility to solve problems.

**Mr. McAnallen:**

We support the amendment proposed by SNWA. I would like to be involved in the working group.

**Chair Goicoechea:**

Did SNWA propose an amendment on this bill?

**Mr. Guild:**

Southern Nevada Water Authority did submit an amendment to S.B. 81. We would like to discuss it at a working group.

**Mr. Cherry:**

The City of Henderson supports the amendment to S.B. 81 proposed by SNWA, and I would like to be involved in a working group.

**Mr. Behmaram:**

I would like to participate in a working group.

**Mr. Bosta:**

I oppose S.B. 81. Domestic wells are not a water right issued by the State Engineer. It is the right of a property owner to drill a well and use that water. I do not recall anyone in Basin 162—Pahrump Valley—petitioning to add 40 percent of the water right owners and request Mr. King to enter a critical management program. He came to our community, made a presentation, waited a year or so and then came back and talked about a management plan. In our community, I estimate 800 people own 60,000 acre-feet of water rights. However, we also have 11,200 domestic wells in our community—probably the largest concentration of domestic wells in the State.

The 40 percent who want to protect their water rights have decided the way they will do this is by taking the draft away from the domestic well users. Water management has issued no statement calling for beneficial use. While pointing out that Nevada Supreme Court rulings identify water rights as real property, I asked a question: Since Nye County has a budget problem, why does the county assessor not assess the water rights? People who have water rights now were people who turned their water rights over to the utility company to hold in a banking agreement.

We have chaos in our community where developers pump their wells to the extent that they dry up domestic wells to protect their beneficial use because they have not pumped their property for years. To say that domestic well owners are a part of this mitigation plan is unfair because we have not been represented. The 1939 water law has a definition of a person which includes

state agencies, utilities and corporations, but a natural person is not included in that definition. A domestic well owner is not a person holding water rights; therefore, this mitigation plan does not include the domestic well owners.

The first groundwater act adopted in 1915 was *Statutes of Nevada* 210, section 1 that says:

All underground waters, save and except percolating water, the course and boundaries of which are incapable of determination, are hereby declared to be subject to appropriation under the laws of the state relating to the appropriation and use of water.

Even the first water act said percolating water is not part of the act. The present-day definition of water comes from the federal court which says, the State's comment that they have the water above and below as public water is not permissible, and the State Engineer does not have the authority to appropriate that water. I have submitted written testimony ([Exhibit H](#)).

**Chair Goicoechea:**

This bill does not talk about appropriators of record, it says owners of domestic wells. The State Engineer has included domestic well owners in that 40 percent which is different from statute.

**Mr. Bosta:**

My point is that was not in the original bill, and domestic well owners are not represented in the 40 percent.

**Chair Goicoechea:**

That 40 percent refers to the petition process in a critical management area. When we talk about active management areas, domestic well owners are included.

**Mr. Bosta:**

My point is that nobody has ever come forth with a petition.

**Chair Goicoechea:**

It is not required. The petition is only required if the appropriators and domestic well owners in that basin choose to bring that forward and incorporate an active or critical management area. In statute, the State Engineer does have the ability

to declare a critical or active management area without a petition. There are two segments to the law.

**Mr. Bosta:**

The State Engineer can call for the law on water that he is allowed to appropriate, but domestic percolating water is not in his authority to appropriate. It belongs to the land owner.

**Chair Goicoechea:**

I assume the ruling in your lawsuit will clarify that.

**Mr. Lilly:**

Mr. King wanted to do an active management area rather than a critical management area because people in the community said they did not want to be stigmatized. Those people were not domestic well owners, they were business interests, utility companies and land developers. The 11,200 private well owners are just looking to maintain their perceived right to use 2 acre-feet of water. There is only one domestic well owner on the board of county commissioners. The rest of the board members are the people who are afraid of the area being stigmatized. This does not accurately represent domestic well owners. The board members did not send anybody to this meeting today. Everybody who has testified today that they want to participate in the workshop has been a private well owner; nobody from Nye County has said that. Private well owners have the most to lose. Active management of my well will cause all my vegetation to dry up, and then there would be no way for me to filter the air. I want to participate in the workshop on both S.B. 81 and S.B. 65.

**Chair Goicoechea:**

You may join the working group.

**Frank Maurizio (President, Private Well Owners Cooperative of Nye County):**

We would also like to be included in the workshop on both bills. The reason for so much outcry from Pahrump Valley is because of the makeup of the Nye County Water District Governing Board and the Basin 162 Groundwater Management Plan Advisory Committee. On the Water District Board there are developers, water right holders, mining interests and only one representative from private wells. Basin 162 has three utilities, a mining representative and

developers. I submitted a letter to the County Commission asking for a spot on the Basin 162 Committee and I was denied.

**Chair Goicoechea:**

We do not have any control over board makeup, but you can have the opportunity to join the working group.

**Mr. Maurizio:**

The lawsuit is not a temporary restraining order. It will not obstruct this process.

**Chair Goicoechea:**

Do you have a court date coming up soon?

**Mr. Maurizio:**

Yes, it is March 17 at 9 a.m. at the Fifth Judicial District Court of Pahrump.

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**Chair Goicoechea:**

The meeting is adjourned at 3:33 p.m.

RESPECTFULLY SUBMITTED:

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Nate Hauger,  
Committee Secretary

APPROVED BY:

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Senator Pete Goicoechea, Chair

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

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness or Agency</b>	<b>Description</b>
	A	1		Agenda
	B	8		Attendance Roster
S.B. 65	C	5	Jason King	Written Testimony
S.B. 65	D	4	John Bosta	Written Testimony
S.B. 65 S.B. 81	E	6	Frank Maurizio	Written Testimony
S.B. 65 S.B. 81	F	4	Andrew Vineyard	Written Testimony
S.B. 81	G	5	Jason King	Written Testimony
S.B. 81	H	2	John Bosta	Written Testimony