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

Eightieth Session
May 13, 2019

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Heidi Swank at 4:01 p.m. on Monday, May 13, 2019, 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 at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Heidi Swank, Chair
Assemblywoman Shannon Bilbray-Axelrod, Vice Chair
Assemblyman Alex Assefa
Assemblyman John Ellison
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Sarah Peters
Assemblyman Greg Smith
Assemblywoman Robin L. Titus
Assemblyman Howard Watts
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

Assemblywoman Maggie Carlton (excused)

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senate District No. 17
Senator Pete Goicoechea, Senate District No. 19

STAFF MEMBERS PRESENT:

Jann Stinnesbeck, Committee Policy Analyst
Allan Amburn, Committee Counsel
Nancy Davis, Committee Secretary
Alejandra Medina, Committee Assistant

OTHERS PRESENT:

Steve Walker, representing Truckee Meadows Water Authority
Kyle J. Davis, representing Nevada Conservation League
K. Neena Laxalt, representing the Humboldt River Basin Water Authority; and Central Nevada Regional Water Authority
Stephen D. Hartman, Executive Vice President, Corporate Counsel, Vidler Water Company, Inc.
Tim Wilson, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources
Micheline Fairbank, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources
Warren B. Hardy II, representing Moapa Valley Water District
Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
C. Joseph Guild III, representing US Ecology Nevada

Chair Swank:
[Roll was called. Rules and protocol of the Committee were reviewed.] We are going to start with the work session on Senate Bill 56 (1st Reprint).

Senate Bill 56 (1st Reprint): Revises provisions relating to natural resources. (BDR 47-359)

Jann Stinnesbeck, Committee Policy Analyst:
Senate Bill 56 (1st Reprint) was brought forth on behalf of the Division of Forestry of the State Department of Conservation and Natural Resources and was heard in this Committee on May 6, 2019 (Exhibit C). The bill revises provisions related to forestry practices. The bill updates existing law to reflect national fire industry standards and practices. Among other things, the bill does the following:

- Clarifies procedures and permit requirements to remove any flora that has been placed on the list of fully protected species;
- Changes the term "controlled fire" to "prescribed fire";
- Updates postharvest minimum stocking standards;
- Revises the definition of "stream"; and
- Revises other provisions related to logging operations.

There were no amendments for this measure.

Chair Swank:
I will take a motion to do pass Senate Bill 56 (1st Reprint).

> ASSEMBLYMAN WATTS MADE A MOTION TO DO PASS SENATE BILL 56 (1ST REPRINT).
>
> ASSEMBLYMAN SMITH SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Titus:
Unfortunately, I will be voting no on this bill. I have some concerns about private land ownership and some policy statements.

Chair Swank:
Is there any further discussion on the motion? Seeing none, we will vote.

> THE MOTION PASSED. (ASSEMBLYMEN ELLISON, HANSEN, TITUS, AND WHEELER VOTED NO. ASSEMBLYWOMAN CARLTON WAS ABSENT FOR THE VOTE.)

I will assign the floor statement to Assemblyman Smith. I will now open the hearing on Senate Bill 250 (1st Reprint).

Senate Bill 250 (1st Reprint): Revises provisions relating to the dedication of water rights. (BDR 48-664)

Senator James A. Settelmeyer, Senate District No. 17:
Senate Bill 250 (1st Reprint) came about because there are, unfortunately, in my opinion, some unscrupulous communities that are requiring water to be dedicated to a particular project and then selling that water to another contractor. Currently, new subdivisions require 2 acre-feet to be dedicated per home. If a new subdivision consists of 20 homes, 40 acre-feet would be required to dedicate to said municipality or county. The county would then say, we only need 1 acre-foot for each home—we will take the other 20 acre-feet and sell them to a different developer. I feel that helps us get out of whack on our basins, especially on overappropriated basins; I feel we need to stop this. That is the bill in a nutshell. There is an amendment that we have discussed that is still undergoing a couple of revisions. [The amendment was not made available as an exhibit.] I am a little concerned that one section may be so large that you could drive a semitruck through it.

Chair Swank:
I would like you to talk a little about the amendment. I would like to emphasize with everyone that we are still sorting it out and working on the amendment.

Senator Settelmeyer:
Would you like me to speak to the amendment or to the bill as amended out of the Senate?

Chair Swank:
I would like to start with how it came out of the Senate.

Senator Settelmeyer:
The changes that occurred within the Senate had to do with the fact that I put forth a bill to deal with the concept of not being able to sell water once dedicated to a project. I then found out that Truckee Meadows Water Authority (TMWA) pools its water; once their water is dedicated, they use it as a whole in order to ensure that they have water for the entire community. They do not sell it to other contractors; they pool the water for the benefit of all. When we found that out, we had to change the language because the original language had discussed the concept of pinning the water to a particular location and not allowing changes of use. That required us to amend the bill.

One of the things that was pointed out was that *Nevada Revised Statutes* 540.121, unfortunately, would include those that are not a public utility being required to adopt a plan of water conservation. The amendment that we were working on would ensure that those public utilities, even though they are regulated by the Public Utilities Commission of Nevada, would be captured. Originally, we were not as worried about that because permits would have to go through a formal process and actually comply with the Open Meeting Law. What we did not wish to have happen was for a municipality or county to be able to sell water without having to do it plainly, in front of the general public, so that everyone could see that they were taking water from one developer and selling it to another—which is currently, sadly, happening in some communities.

Section 3, subsection 2, paragraph (b), the word "transactions" was also in question. I believe that had come from some settlements in legal dealings that TMWA has had. That is why they use the word "transactions." We have no problem changing "transactions" to "sales."

This bill is put together to ensure that it achieves the objective of not allowing municipalities or individual counties to double-sell water that had been dedicated for one project, thus transferring that water to another. I will work with this Committee to ensure that the intent is preserved. Your conceptual amendment may leave just a little too much of an opening.

Assemblyman Ellison:
I like the bill. I just received the amendment and want to know, is the proposed amendment friendly?

Senator Settelmeyer:
As with all legislation, this is a work in progress. In order to pass out of this Committee, it is going to have to be considered friendly, in that we need to find a compromise. That is part of the process—making sure all the issues are covered. I looked at the amendment very closely

to ensure that we do not accidently allow public utilities out. I think that is a great catch. I understand some of the concerns on transactions. At the end of the day, the final goal, I hope, is that we want to prevent this process from ever occurring again.

Some of the language we started with in the Senate has been modified because, fundamentally, we all agree this should not be happening. Even the representatives of counties that I represent did not really believe this was happening. Upon further investigation, they determined it was happening, and they agree that it needs to be stopped.

It is very hard for a municipality or an entity to turn down free money. Currently, they have the ability to acquire a double dedication and then sell half of the dedication. We are basically asking them to no longer do something that was fairly profitable for them to do. I do consider the amendment friendly, and we will continue to work on it until it is friendly enough to pass, retaining the original objective.

Chair Swank:
Given that we have a big deadline on Friday, we both thought it would be a good idea to get working on this before we lose a bill on a deadline.

Assemblywoman Titus:
You mentioned that one of the reasons you brought this up was because of overappropriation in water basins. Has this occurred in one of those basins that has been overappropriated?

Senator Settelmeyer:
If you look at the state of Nevada, most basins are overappropriated. Specifically, Lyon County has done this, and they are overappropriated.

Assemblywoman Titus:
It is my impression that if I have a set water allotment, I can sell it to someone else in any one water season if I am not going to use it. Would this affect the ability to transfer water in different seasons?

Senator Settelmeyer:
I believe you are discussing the concept of leasing water between agriculturists, which is not the subject of this bill. This bill pertains to when water is dedicated to a project, such as a subdivision. If you subdivide your land and you are going to build homes on it, you are then dedicating water to that project. That dedication, by most counties' rules, is 2 acre-feet per house. Due to water conservation and other practices, such as low-flow shower heads, et cetera, most homes now only use about 0.6 acre-feet. Some counties, unscrupulously, are selling the difference to other developers. I think that is improper. I do not believe this affects the agricultural lease of water in any way.

Assemblywoman Titus:
When a contractor starts a development, he has to document that he has secured a certain amount of water per home being built. Would he then be able to expand the development if he proves he will not be using any additional water?

Senator Settelmeyer:
You are talking about the concept of a modified water service, when the original dedicated community changed the demand site or the water dedication, either more or less. Under those circumstances, it is the dedicator's responsibility to add more water if he did not have enough. If he had enough water, depending on the rules and regulations, he might be able to expand. Additionally, if you have a home with 2 acre-feet and you want to build a mother-in-law house, and your original house was only using 0.6 acre-feet, if zoning allows you to build a mother-in-law house, the remaining water will still be left on that property, or within the pool of water through TMWA, to be able to satisfy that additional requirement of the extra house. That is the idea of dedicating 2 acre-feet; it also allows basins to achieve parity based on the fact that they are overappropriated.

Assemblyman Smith:
When I was working, we had to relocate a well on our property. We filled out all of the paperwork and, lo and behold, I had to give 1 acre-foot to the county just because I relocated my well. A few years later, we had to shift the appropriation between the wells, and I had to give them another 1 acre-foot. Does this affect that at all?

Senator Settelmeyer:
I believe that when you relocated your well, you may have been doing a subdivision map. Did you, at any time, divide up your property?

Assemblyman Smith:
No.

Senator Settelmeyer:
Did you relocate the well based upon the fact that it went dry? [Assemblyman Smith nodded yes.] I would have to look into the specifics of what year the well went into production versus what year it was redrilled. Sometimes that can require a different dedication. I have some water rights that date back to 1861, and the county has different rules based upon the year of dedication and what the levels may have been. Was the well you replaced agricultural or purely domestic?

Assemblyman Smith:
It was industrial. The kicker was, the county told me that every time I change things, they get 1 acre-foot, no matter what.

Senator Settelmeyer:
It sounds like you had primary water rights. I would have to see how the county handles dedication of a primary water right. Generally, a person has the right to transfer a primary

water right without losing priority status as long as you do not change basins. I can follow up with you offline to try to find out why that was done.

Assemblyman Smith:
I am just curious to see if this bill would affect the county. Evidently it does not because I do not see them here.

Senator Settelmeyer:
Hopefully, the county was not taking your water to sell to another developer. If they were, then this bill would affect them. If they were keeping the water for dedication to make sure your project or home was served, then this would not affect them.

Assemblywoman Peters:
My question has to do with both section 1, subsection 1, paragraph (c), and section 3, subsection 1, paragraph (c), which both say "Consider any requirements for a sustainable water supply." What does that mean?

Senator Settelmeyer:
There are some communities that, if they looked at the fact that their basin is overappropriated by 300 percent—which we do have—or even overappropriated by 25 percent, they may feel they need to keep the 2 acre-feet in order to make sure they have a sustainable water supply. Also, certain communities have far more restrictions based upon water conservation versus others. We are allowing a little flexibility with that for each water supplier. This is not allowing them to sell it to another individual, but if they need the access for consideration of a sustainable water supply, they would be allowed to keep the excess in reserve. They would still do a dedication of 2 acre-feet, even though analysis says you only need 0.6 acre-feet. In order to create a sustainable water supply, to help bring things into balance, they would still be allowed to ask for the 2 acre-feet.

Assemblywoman Peters:
Is this at the discretion of the State Engineer or the water supplier? Who would be involved in determining what would be considered a requirement for sustainable water supply?

Senator Settelmeyer:
I believe it would be the supplier of water; however, Mr. Walker may be able to help answer that.

Steve Walker, representing Truckee Meadows Water Authority:
In the 1990s I was the water planner for Washoe County. I will give you a very specific example: In the Warm Springs hydrographic basin, the basin is not only overappropriated, but it is also overpumped; the groundwater is receding. If you had a 40-acre parcel in Warm Springs and divided it into four 10-acre parcels to build a house out there, I would require 3.5 acre-feet for 1 acre-foot of use. What I am trying to do with that water policy is absorb

the overappropriation and the overpumping. The actual decision was made by Washoe County. It was challenged in the courts with the case of *Serpa v. County of Washoe,* 111 Nev. 1081, 901 P.2d 690 (1995), to decide whether the state or the county had jurisdiction. That is why that language is in the bill. To maintain a sustainable water supply, it would be a good idea to ask for an overallocation.

Assemblywoman Peters:
Do we have a definition for "sustainable water supply"? How do we determine what a sustainable water supply looks like and how far into perpetuity do we look?

Senator Settelmeyer:
The short answer to your question, on a statewide level, is no. I believe that each individual supplier is allowed to figure out what is best for his own hydrographical basin. That is necessary because each hydrographical basin is quite different. In Douglas County, we irrigate with flood irrigation—that recharges the aquifer. In other communities that do not have an aquifer to draw from, maybe it would be better to use sprinklers because it is more efficient. I think it is important to leave each hydrographical basin to make that determination for themselves and not do it on a statewide level.

Steve Walker:
I think a sustainable water supply is when you get equilibrium between perennial yield and pumping; the groundwater then stabilizes.

Assemblywoman Bilbray-Axelrod:
My concern is that this is prime for litigation without that definition. I understand that every basin should have its own definition, but I do think that when you do not have a definition, whether in *Nevada Administrative Code* or in *Nevada Revised Statutes*, it does open up for court cases that will determine what sustainability means.

Senator Settelmeyer:
The goal of this bill is to make sure that municipalities are not reselling water. That is the only goal and objective. We could have a one-page bill that says, "You cannot sell water that has been dedicated to you to another subdivision." It is pretty simple; unfortunately, there is no simple thing in this process. Again, the fundamental goal is, "Do not sell water that has been dedicated for one project to build another project." It is a terrible idea. We can have a discussion with the State Engineer and see if he can find that definition, but I think it is going to be very problematic based upon all of the different hydrological basins that we have.

Assemblywoman Bilbray-Axelrod:
I am just pointing out that I think we found a flaw. I know that is not the intent of your bill, but we are a policy committee, and I just wanted that on the record.

Chair Swank:
Are there any more questions from the Committee? Seeing none, is there anyone who would like to testify in support of S.B. 250 (R1)?

Kyle J. Davis, representing Nevada Conservation League:
We are in support of the goals of the bill. I know some things are in flux right now with the language in this bill. I would like to put on the record that certainly the Nevada Conservation League is in favor of legislation that can help get our water basins into a better balance than where we find ourselves today. The practice of requiring a dedication of water rights and then reselling those water rights certainly does not get us toward those goals. We support the goals that Senator Settelmeyer is after with this bill to prevent this type of practice from happening. I look forward to working with Senator Settelmeyer and this Committee in terms of tightening up the language.

Steve Walker:
Truckee Meadows Water Authority has been very much involved in the amendment of the initial bill from the Senate. That is the bill TMWA and I are supporting. We are still involved with the discussion of the new amendment.

K. Neena Laxalt, representing the Humboldt River Basin Water Authority; and Central Nevada Regional Water Authority:
We, too, support the intent of Senator Settelmeyer's bill and supported it as it was introduced. We also have not seen the amendment, but we do support the goal of S.B. 250 (R1).

Stephen D. Hartman, Executive Vice President, Corporate Counsel, Vidler Water Company, Inc.:
I am in support of this bill; it is a continuing effort to try to tie down some of the loose ends, but I think it is an important piece that we need to do. There will be ways in which these future dedication rates are changed when our conservation methods become more refined.

Chair Swank:
Is there anyone else here in support? [There was no one.] Is there anyone here to testify in opposition? [There was no one.] Is there anyone here to testify in neutral?

Tim Wilson, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:
The Division of Water Resources, State Department of Conservation and Natural Resources, is neutral on Senate Bill 250 (1st Reprint). We do agree with the intent as described by Senator Settelmeyer. We believe that the conceptual amendment offered today will take care of some of our concerns. The Division is supportive of the concept that water rights dedicated to one or more parcels remain appurtenant to the parcel being created. This requirement helps ensure that there is enough water to serve the need of the parcel, safeguards against overappropriation of the water resource, and takes into consideration the sustainability of the water supply for the life of the project.

The first reprint of the S.B. 250 (R1) contained language that the Division believed may not be appropriate or sufficiently protective to accomplish the intent of the bill as introduced. The Division believes the conceptual amendment presented today addresses those concerns and appreciates the efforts the language contained within the conceptual amendment.

Assemblywoman Peters:
I want to put on the record, what is your interpretation of "sustainable water supply"?

Tim Wilson:
We manage our water resources currently on a perennial yield basis. We have an estimated perennial yield for each basin in the state. Sometimes they are combined yields, and sometimes we look at combined areas. The basic concept is that there is a perennial yield, which is the amount of water that can be drawn on an annual basis from the basin without any negative effects on the basin, such as groundwater mining. That is the current method used. We have those estimates, we compare them with both water committed and water pumped. We do have a map that shows the status of our basins. As mentioned earlier, many are overappropriated on paper, and some basins are overpumped. Those basins certainly give us the most concern. It is in those basins where we want to ensure there is sustainable water, when I sign off on a subdivision map, that there is physical water available long-term for that subdivision. I take into consideration the dedication rates to that parcel, not just what the parcel will use, but what that parcel represents as part of the groundwater budget. I have to look at sustainability of the resource, potential drought, and climate change. I take all of those factors into consideration, and in some areas overappropriation is appropriate for those parcels. In those cases, we do not want that water being stripped off and moved to build additional houses.

Micheline Fairbank, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:
I would like to expand upon Mr. Wilson's response. We are starting to look at what that sustainability is in the different contexts of the Lower White River Flow System where we have interconnected hydrographic basins. Even though we may have historically used a perennial yield analysis, the amount of water being recharged into the system versus what can be pumped may not be the same. When we start factoring in conjunctive management and those different measures, that is how we are starting to look at what is sustainable. Sustainability is determined to be for the life of the project—what can be sustainable for the duration of what that expected project is, whether it is a subdivision or an irrigation project, for example. They go into the determination factor when the State Engineer is evaluating dedication rates and looking at parcel maps in the context of this legislation.

Assemblywoman Peters:
Then the State Engineer's office does have a check on the determinations by the water suppliers on how they use water in the case of what is being covered under this legislation?

Tim Wilson:
For a subdivision map, we do sign off on the subdivision map—the water purveyor supplies us with what we call a "will serve" letter. That will serve letter calls out the permit numbers and the amount of water they are dedicating to that subdivision. We subtract that amount of water in the accounting of the water right as water committed to that subdivision and not available for other use.

Chair Swank:
Is there anyone else who would like to testify in neutral? [There was no one.] Senator Settelmeyer, would you like to make any closing remarks?

Senator Settelmeyer:
I look forward to working with you on the amendment. I can accept most of the changes in the amendment, but I am a little concerned about one section and leaving it so open. With your assistance, we can stop municipalities from double-selling water. If this bill does not pass, the municipalities will continue to double-sell water.

Chair Swank:
I am going to close the hearing on Senate Bill 250 (1st Reprint) and open the hearing on Senate Bill 236 (1st Reprint).

Senate Bill 236 (1st Reprint): Establishes provisions relating to a change in the place of diversion of water for certain wells. (BDR 48-635)

Senator Pete Goicoechea, Senate District No. 19:
I am bringing you Senate Bill 236 (1st Reprint). This is a fairly simple bill that, presently, under existing law, you are allowed to drill a new well 300 feet from your existing point of diversion, as long as it is on the same quarter-quarter section. The legal description will show exactly where the original point of diversion was. This bill would allow you to cross the lot line, or quarter-quarter section line, as long as you stay within the 300 feet from the original point of diversion. There are times when you might need to place a well across the lot line. Typically on farm agriculture properties we see across the state, they originally started by building a well in the corner. When it comes time to drill a replacement well—they do fail over time—the replacement well has to be within 300 feet, and that may be where your house, corrals, shop, or a parking lot is. This bill would allow you to cross the lot line as long as you own the property and it is within the 300 feet of the original point of diversion. Presently, under existing law, if you have to cross a lot line or a quarter-quarter section, you have to get a survey done, make an application for a change in a point of diversion, and advertise it. This bill states you can dig a replacement well as long as you are within 300 feet. The only change is it allows you to cross a lot line as long as you own the adjacent property. One thing to keep in mind, when you drill a replacement well, that replacement well does not become the new point of diversion so that you could then change and go another 300 feet. The original point of diversion does not change.

[Assemblywoman Bilbray-Axelrod assumed the Chair.]

Assemblywoman Titus:
What happens if you sink your new well 300 feet away, and then someone passes away or the property is sold? Then the property is subdivided into two parcels separate from each other, and the well is now on the other piece of property, not where your house and barns are.

Senator Goicoechea:
You better be very careful because when you sell that other piece of property, you also sell your well.

Assemblywoman Titus:
I wanted to have that documented. Indeed, that well would go with the new owner's purchase of the new section, and the only recourse that the original person would have is to put a new well on their original property.

Senator Goicoechea:
You cannot drill a new well on the same permit; you would have to reapply for water.

Assemblywoman Peters:
Does this allow for a change of use?

Senator Goicoechea:
This does not allow for a change of use. If you were going to change the place and manner of use, that would require a permit.

Assemblywoman Peters:
Does this require any kind of notification to the State Engineer?

Senator Goicoechea:
No, because under existing law, you can change up to 300 feet from the point of diversion without having to give notice. That is the key for this bill; it allows you to drill a new well crossing lot lines or quarter-quarter sections, as long as you own the property.

Assemblywoman Peters:
In an event that a grandchild gets some property with no well, and he does not know where the water rights are, and he does not know the process to look into that, but he wants to sell the adjacent 40 acres where that well was drilled on, is there a disclosure for that? My concern is an inadvertent loss of water rights because it is not documented.

Senator Goicoechea:
Typically, it would be in the deed as far as what water rights were held on that particular piece of property. For example, you have 160 acres, and the point of diversion is on one quarter-quarter section, and sometime down the road you put another well in on another quarter-quarter section, crossing the lot line by 100 feet. If you then do a parcel map and create four 40-acre parcels out of the original piece of property, that would require a notice to parcel the property. Then it would be noticed that the well is here, although the original point of diversion is somewhere else. The point of diversion and the water rights belong to that particular 40-acre parcel.

Assemblywoman Peters:
Would it be more appropriate to put in a written notification to the State Engineer that you moved the well 300 feet, just so it is on record as being moved? My concern is that if you put it on a different piece of property, there are many cases, I can imagine, where it might get lost.

Senator Goicoechea:
I believe that the State Engineer will know. Even though the original point of diversion is there, he will know where the new point of diversion is.

Assemblywoman Peters:
How will he know without notification?

Senator Goicoechea:
You would notify the State Engineer if you made a change to the point of diversion. You do not have to advertise it and apply for it.

Assemblyman Ellison:
If the permits were there correctly, would this bill have fixed the issue in Taylor Canyon?

Senator Goicoechea:
No, it would not have because the adjacent property was owned by someone else, not the person who owned Taylor Canyon. He crossed a lot line but did not own both properties.

Assemblyman Ellison:
I think the issue was crossing the highway. If he owned both pieces of property, he would have been all right. If someone needed a new well, and the 300 feet crossed a road, would he still be able to drill the well?

Senator Goicoechea:
Yes, the intent of the bill is as long as you are within 300 feet and you own both parcels, you can drill a replacement well, and you have to notify the State Engineer.

Vice Chair Bilbray-Axelrod:
Is there anyone here to testify in support of S.B. 236 (R1)?

Warren B. Hardy II, representing Moapa Valley Water District:
We are in support of this. This is not impacting anything currently in the law except the issue of crossing lot lines. There is a well in the Moapa Valley Water District, called the Arrow Canyon Well—it is the well that is being impacted—it needs to be replaced. Current law allows us to go out 300 feet as long as we do not cross the lot line. We have had our engineers do an investigation and research, and the preferred site for the well is crossing the lot line. This is a critical well for serving the citizens of Moapa Valley, and we are getting very concerned about the timing of replacing this well. The bill also says if "the groundwater

has already been appropriated" [section 5, subsection 1, paragraph (a)]. There is virtually no change in the statute other than the fact that we can cross that property line as long as we own that property as well.

Assemblywoman Peters:
I am thinking about a situation in which there is a right-of-way separating the two properties. In that situation, would the property be adjacent or separated? Would you have to notice the right-of-way notice?

Allan Amburn, Committee Counsel:
The way I am reading this bill, there are no adjacent requirements; it is just that both pieces of property have to be owned by the same person. With your scenario, you could assumedly have the well drilled on the other side of the right-of-way.

Vice Chair Bilbray-Axelrod:
Just to be clear, if there was a right-of-way, as long as you owned both properties, and as long as it is within 300 feet of the original point of diversion, you could drill a well there.

Is there anyone else here to speak in support of the bill? [There was no one.] Is there anyone here to testify in opposition? [There was no one.] Is there anyone here to testify in neutral?

Tim Wilson, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:
The Nevada Division of Water Resources, State Department of Conservation and Natural Resources, is neutral on Senate Bill 236 (1st Reprint). The language in the bill refers to "place of diversion," which is synonymous with the term "point of diversion," which is the location of the well. This bill offers comparable language to language contained in the *Nevada Administrative Code* (NAC) Chapter 534, but where the NAC restricts movement of the place of diversion outside a 40-acre subdivision, S.B. 236 (R1) precludes such a restriction, so long as the new point of diversion is not more than 300 feet from the original point of diversion specified in the water right. This is a small change, moving it from regulation to statute, but that is the only difference in how we operate now and what this bill will do.

Vice Chair Bilbray-Axelrod:
Is there anyone else here to speak in neutral? [There was no one.] Senator Goicoechea, would you like to make any closing remarks? [He did not.] I will close the hearing on Senate Bill 236 (1st Reprint) and open the hearing on Senate Bill 442.

Senate Bill 442: Revises provisions relating to the issuance of permits for hazardous waste facilities. (BDR 40-1205)

Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources:
It is a pleasure to be here this afternoon to introduce and testify in support of Senate Bill 442. I will give a bit of background on the permitting of hazardous waste management in Nevada and then explain the change proposed by S.B. 442.

The federal Resource Conservation and Recovery Act (RCRA) and state legal counterparts, including *Nevada Revised Statutes* (NRS) Chapter 459, govern the issuance of permits to hazardous waste facilities. Permits are an essential instrument for assuring compliance with environmental laws. They translate the legal requirements into specific provisions tailored to the facilities' individual operations. The federal law, RCRA, permits provide the owners and operators of facilities that treat, store, or dispose of hazardous waste with the legal authority to do so and ensure that waste is handled in a manner that is protective of human health and the environment.

As a U.S. Environmental Protection Agency-authorized state, the Division of Environmental Protection (NDEP), State Department of Conservation and Natural Resources, ensures that we are no less stringent than federal rules. Authorized state regulations act in lieu of federal regulations. This national regulatory framework ensures consistency between the states and their regulated industries.

Under the *Code of Federal Regulations* Title 40, Part 270, the duration of a permit is a fixed term not to exceed 10 years. Currently, NRS 459.520 requires permits to be issued for a period of not more than 5 years. To be consistent with the federal regulations, we are requesting this revision to NRS 459.520 to make the duration 10 years. This change will also be consistent with other western states.

Moving from a 5-year to a 10-year period will remain protective of human health and the environment. The NDEP will maintain its annual inspection schedule for these facilities. This change will affect six facilities. As these facilities already have their initial permits, the focus of our permitting is generally on permit modifications.

Permittees request changes to their permits to keep pace with evolving business practices, technology, cleanup decisions, and regulations. These modifications help reduce the risk of environmental release, add operational capabilities, maintain current emergency response plans, improve environmental monitoring requirements, address unit closures, increase recycling, reuse and sustainable materials management, and update financial assurance elements.

Looking back at 2014 through 2018, there have been 47 permit modifications issued at hazardous waste facilities processed by NDEP. Throughout the permit modification process, effective and meaningful public participation keeps the local community abreast of ongoing

changes at the facility. Public participation also helps inform facility managers, as well as NDEP, of public concerns.

Assemblywoman Peters:
What is the history of the five-year period?

Greg Lovato:
The law was first enacted in 1981. I do not know the exact reason why we chose five years. I am guessing that the subject of hazardous waste management was relatively new. The facility where we dispose of hazardous waste in Nevada is a commercial hazardous waste facility, US Ecology Nevada, near Beatty. That facility had been the subject of a lot of concern due to low-level waste management at the facility. It actually used to take low-level radioactive waste. I am guessing that in 1981, the state wanted to keep a closer eye on these facilities. Over the past several decades, we have not found that the five-year renewal has resulted in any substantive changes to how we oversee the permit issuance in these facilities. It is quite a burden to recheck all the details that frequently. When a permit application comes in, it is literally in several thick binders. To recheck all of that material every five years to verify that it is still in compliance is a burden that has not had a return on the investment.

Vice Chair Bilbray-Axelrod:
We put that statute in in 1981, and the federal guidelines did not come in until 1985.

Assemblywoman Peters:
What do you look at in the annual report? Also, what is considered a modification that would have to come through your office?

Greg Lovato:
I will try to give a couple of examples to your second question. If a facility is planning on taking a different type of waste; planning to expand the type of treatment for disposal; or planning to permit a new unit, normally those are pretty significant modifications that would go through what we call a Class 3 permit modification. Those would go through a full process almost as if it were a permit renewal. If someone is just changing contact information for emergency response, those types of modifications would be Class 1. Things in between those two extremes would be Class 2. Class 2 permit modifications go through a pretty extensive public involvement process as well. It is normally updates and administrative information that would be part of a Class 1 permit modification.

To answer your question about what happens annually, the facility goes through a full inspection. Any inspections occur as a result of any complaints received as well, or any problems with paperwork. For all of the facilities that are permitted, we have what are called treatment, storage, and disposal facility permits. We have six of those permits. We do receive ongoing reporting information of any incidents that occur. We often get calls from generators who want to know about the compliance history of the facility.

Vice Chair Bilbray-Axelrod:
Are there any other question? Is there anyone here to testify in support?

C. Joseph Guild III, representing US Ecology Nevada:
US Ecology Nevada operates the facility that Mr. Lovato was talking about and they are in full support of this small change to the law.

Vice Chair Bilbray-Axelrod:
Is there anyone else here in support? [There was no one.] Is there anyone here who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in neutral? [There was no one.] Mr. Lovato, do you have any closing remarks? [He did not.] I will close the hearing on S.B. 442. I will invite anyone here for public comment. Seeing no one, this meeting is adjourned [at 5:01 p.m.].

RESPECTFULLY SUBMITTED:

_____
Nancy Davis
Committee Secretary

APPROVED BY:

_____
Assemblywoman Heidi Swank, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is the Work Session Document for Senate Bill 56 (1st Reprint), presented by Jann Stinnesbeck, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.