

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

**Eightieth Session  
March 4, 2019**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Heidi Swank at 4:01 p.m. on Monday, March 4, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada and to Room 129, Leonard Center for Student Life, Great Basin College, 1500 College Parkway, Elko, 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](http://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  
Assemblywoman Maggie Carlton  
Assemblywoman Lesley E. Cohen  
Assemblyman John Ellison  
Assemblyman Ozzie Fumo  
Assemblywoman Alexis Hansen  
Assemblywoman Sarah Peters  
Assemblywoman Robin L. Titus  
Assemblyman Howard Watts  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman Michael C. Sprinkle, Assembly District No. 30



**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

James R. Lawrence, Deputy Director, State Department of Conservation and Natural Resources  
Kyle J. Davis, representing the League to Save Lake Tahoe  
Steve K. Walker, representing Eureka County  
Patrick Donnelly, Nevada State Director, Center for Biological Diversity  
Dwight Lilly, President, Private Well Owners Cooperative of Nye County  
Wade Hinden, Vice President, Private Well Owners Cooperative of Nye County  
Joseph DeMonte, Private Citizen, Las Vegas, Nevada  
Norma Jean Opatik, Private Citizen, Pahrump, Nevada  
Mary Ann Polish, Private Citizen, Elko, Nevada  
R. Jeff Williams, Private Citizen, Elko, Nevada  
Roger Adam, Private Citizen, Genoa, Nevada  
Janine Hansen, State President, Nevada Families for Freedom  
Bob Russo, Private Citizen, Gardnerville, Nevada  
Neena Laxalt, representing Central Nevada Regional Water Authority; Humboldt River Basin Water Authority; and the Nevada Cattlemen's Association  
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  
Ralph Allen, Private Citizen, Elko, Nevada

**Chair Swank:**

[Roll was taken. Rules and protocol of the Committee were reviewed.] We will open the hearing for Assembly Bill 93.

**Assembly Bill 93: Revises provisions relating to the Account for License Plates for the Support of the Preservation and Restoration of the Natural Environment of the Lake Tahoe Basin. (BDR 26-437)**

**Assemblyman Michael C. Sprinkle, Assembly District No. 30:**

I was honored to be the Chair of the interim Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System, from which this bill originates. I have chaired this interim committee a few times now over the years, and in the past, people did not always work together for the betterment of the lake and the basin. What I have seen over many years is a conscious effort by different groups to

come together and do what they felt was best in recognizing the issues that face the Lake Tahoe Basin, especially when we talk about those issues within the lake itself. Also, there are other things such as economic development and truly enjoying all the benefits that Lake Tahoe and the Lake Tahoe Basin have to offer. One of the things I have been most impressed with is that there are multiple agencies, which you might think have differing opinions, that have really worked together for the betterment of Tahoe as a whole. I think that gets to the heart of this bill and what this bill does in regard to moving us forward and continuing to preserve what truly is a national, if not world, treasure. That is not just me being biased because I grew up there; it truly is that for all of us. With that I am going to turn over the presentation of the bill. Just know that my interim committee wholeheartedly supported this measure.

**James R. Lawrence, Deputy Director, State Department of Conservation and Natural Resources:**

I appreciate the opportunity to testify in support of Assembly Bill 93. I also would like to thank Assemblyman Sprinkle and the interim Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System for all the time and work they spent dedicated to Lake Tahoe issues over the interim and for supporting this small but important bill.

Assembly Bill 93 proposes a simple change to the Lake Tahoe license plate program by adding nonprofit organizations as an eligible recipient of grants. Currently, the statute only allows for grants to public agencies. This change is important as environmental improvement at Lake Tahoe is all about collaboration. Increasingly, the private sector, through nonprofit organizations, continues to be more active and vital to environmental efforts at Lake Tahoe. Whether it is the Tahoe Fund spearheading a campaign to coordinate and amplify stewardship messages, the League to Save Lake Tahoe initiating innovative transportation solutions, or the Sierra Business Council assisting with the development of the Lake Tahoe Water Trail, the number of projects carried out by nonprofit organizations continues to grow. Excluding nonprofit organizations from participating in our program leaves out a critical piece to the restoration efforts at Lake Tahoe.

I have some information and numbers on the license plate program. It is administered by the Division of State Lands, State Department of Conservation and Natural Resources. The program celebrated its 20th anniversary last year. The program has funded over 150 preservation and restoration projects during that time; after 20 years the Lake Tahoe license plate is more popular than ever. Information we received as recently as last week from the Department of Motor Vehicles (DMV) indicates that there are nearly 21,000 registered Tahoe license plates on the road. This is up from 19,400 this time last year and appears to be the highest amount in the 20-year history of the program.

We believe that by allowing grants to nonprofit organizations, the program becomes more inclusive and stronger in the ability to fund quality projects at Lake Tahoe.

This concludes my testimony. Thank you for your time this afternoon and I would be happy to answer any questions.

**Assemblyman Ellison:**

Where does this rank with the plates that are existing now?

**James Lawrence:**

The Lake Tahoe plate is second. The Las Vegas license plate is No. 1 as far as registered vehicles on the road, and according to DMV, the Lake Tahoe plate is the second highest in specialty plates on the highway.

**Assemblywoman Carlton:**

I want to make sure, when we talk about nonprofit organizations, are we specifying 501(c)(3) organizations? This bill just says nonprofit, and that can get a little squishy sometimes.

**James Lawrence:**

Currently, with our grant programs, we have defined nonprofit organizations as 501(c)(3). I think the most critical aspect is that these folks have the capacity to handle grants and the infrastructure in place to implement the programs. This will also ensure that the nonprofit organizations, per statute, are carrying out projects and programs for the benefit of Lake Tahoe.

**Assemblywoman Carlton:**

Is that done through regulations, or does it have statute to back it up? I do not want to see one of the different nonprofits get involved by saying, since that is not in statute, we want some of the money too.

**James Lawrence:**

In statute, the requirements are that the grants can only be used for the preservation and restoration of the natural environment of the Lake Tahoe Basin. The nonprofit organization definition is not currently in this bill as drafted. The Division of State Lands carries out the license plate program and has done so successfully for the last 20 years through administrative guidelines for the program, which set forth who qualifies, the review process, the times for grants, and who is on the advisory committee.

**Chair Swank:**

Mr. Amburn, will you clarify that for us?

**Allan Amburn, Committee Counsel:**

"Nonprofit organization" is not defined in this bill, nor is it defined for the group of sections dealing with this program. "Nonprofit organization" is used throughout the *Nevada Revised Statutes* (NRS), and in many situations it is not defined. So in those situations, it would be the general usage of the term as to what "nonprofit organization" would mean. There are certain places in NRS where we do define the term "nonprofit organization," which might help provide clarity. In those situations, they tend to be a 501(c)(3) organization.

**Assemblywoman Titus:**

You are not applying for a new license plate; this license plate has already been out there for 20 years, correct?

**James Lawrence:**

Yes, that is correct. This is a modification to expand the allocations.

**Assemblywoman Titus:**

You already have 21,000 Lake Tahoe plates on the road. Now you have some accumulated funds, and in the past you could only use those funds in other government agencies. Now you are looking at expanding that to nonprofit organizations for grant purposes. Is that correct?

**James Lawrence:**

Yes, that is correct.

**Assemblywoman Titus:**

During the interim you looked at this, and this bill was discussed. Did you find a void in using the funds? For 20 years we have been giving this money only to other government agencies for the description that is mandated in current statute. What happened that now you feel there needs to be other uses, or other agencies, that could use these funds?

**James Lawrence:**

There are a couple of things. One is, historically, the Division of State Lands has always been approached by nonprofit organizations looking to apply for grants to do good work at Lake Tahoe. They have either been told no, they are not eligible, or to go find a public agency as a sponsor and work through that public agency. In both of those situations, either the project just does not get done, or, if they find a sponsor, there is less money on the ground because of the added administrative layer. You give a grant to a sponsor and they give the subgrant to the nonprofit in order to carry out the project.

I think more important, as Assemblyman Sprinkle stated, Lake Tahoe is all about collaboration. More and more, the nonprofit organizations have been involved in environmental restoration work and not just advocacy regarding policy. The best example I can use is last summer, the League to Save Lake Tahoe, which historically has been an advocacy group, wanted to start solving some of the transportation issues, the congestion, and the problems that the congestion creates. They came to us and said, We have an innovative pilot program and we think it is going to make a difference. But they simply were not eligible for a grant. We feel the Lake Tahoe Environmental Improvement Program is all about the states, the federal government, local government, and the private sector. By having our program exclude the private sector nonprofit organizations, we feel we are missing that collaboration piece.

**Assemblywoman Titus:**

By offering this expanded applicant process to other groups, is there enough money that you are not shortchanging the folks who have already been using this over the last 20 years?

**James Lawrence:**

I do not think so. It is a competitive grant program. The Division of State Lands is very aware that these are individuals purchasing Lake Tahoe license plates. They recognize that a certain portion goes to projects at Lake Tahoe and that the goal of the program is to fund the highest, best, and most important projects. Applications are taken and there is a review committee of restoration experts in the Lake Tahoe Basin, and they fund the highest and best projects. Historically, there has been about \$350,000 annually. Not everyone gets funded, but I could say that over the last 20 years, the most important projects have been funded. I do not see anyone losing out; the more participating, the stronger the program.

**Chair Swank:**

Are there any further questions from the Committee? [There were none.] Is there anyone who would like to testify in support of A.B. 93?

**Kyle J. Davis, representing the League to Save Lake Tahoe:**

We are here in support of this bill. We appreciate Assemblyman Sprinkle, the Chair of the Tahoe Oversight Committee, for bringing it forward for this session. Mr. Lawrence did a great job of explaining why we are here in support. We are encouraged by the level of collaboration that is happening in the Tahoe Basin, especially over the last six or seven years—most recently, regarding transportation issues. We are excited to continue to work on that and to find new and innovative solutions to the environmental issues in the basin.

**Chair Swank:**

Is there anyone else who would like to testify in support? [There was no one.] Is there anyone who would like to testify in opposition? Seeing no one, is there anyone who would like to testify in neutral? [There was no one.] Are there any closing remarks? [There were none.] I will close the hearing on A.B. 93.

[Assemblywoman Bilbray-Axelrod assumed the Chair.]

**Vice Chair Bilbray-Axelrod:**

I will now open the hearing on Assembly Bill 95.

**Assembly Bill 95: Revises provisions relating to water. (BDR 48-504)**

**Assemblywoman Heidi Swank, Assembly District No. 16:**

I am here to present Assembly Bill 95. This bill came out of the Legislative Committee on Public Lands that I chaired during the interim. We had some very good discussions on it and ultimately voted it out of committee as a bill draft request.

Before I start, I am going to talk a little bit about myself. I grew up in rural Wisconsin in a very small town. I grew up on a domestic well. We did not have the same kinds of challenges we have here, but it was a very similar life in many ways to rural Nevada. There was definitely a lot more water. I am hoping folks will hear what I have to say today; that from my perspective, this bill will protect domestic wells. I have a great concern for folks who live in rural Nevada and have domestic wells, and for the way that Nevada has set up the allocation of water to domestic wells. This is something that has worried me since I took office and learned about the issues we have in Nevada, especially for our domestic well owners.

I am going to quote some of the *Nevada Revised Statutes* (NRS). Chapter 533 of the NRS deals with the adjudication of vested water rights and the appropriation of public waters. In this chapter, specifically, NRS 533.024, there is a legislative declaration that in part speaks to domestic wells. I am going to quote from that because this is what is going to frame my bill presentation: "It is the policy of this State . . . to recognize the importance of domestic wells as appurtenances to private homes, to create a protectable interest in such wells and to protect their supply of water from unreasonable adverse effects which are caused by municipal, quasi-municipal or industrial uses and which cannot reasonably be mitigated."

I am going to reread part of that because for me it has been very helpful in forming my thoughts around domestic wells: "It is the policy of this State . . . to protect their supply of water from unreasonable adverse effects." This bill aims to protect the supply of water from unreasonable adverse effects. Currently, under Nevada's water laws, domestic well owners are often the most junior water rights holders. This often means that when curtailment of a basin happens, domestic wells are most often the first left with no water.

I started learning about this when I was a freshman and expressed an interest in water law. I had a visit from someone who had many more years and decades of experience in water law and who talked to me about water in Nevada. She told me that it is not a matter of if we will run out of water, it is a matter of when. All we can do is push out that horizon and ensure we do the best with the resources that we have. It is clear, at some point in the future—not next year, probably not ten years from now, but maybe 50 years from now—curtailment will happen in some of our basins.

I am going to take a little bit of a diversion and talk about homeownership, mainly because NRS 533.024 states that domestic wells are appurtenances to private homes. We know that homeownership has been the main way that American families have accumulated wealth over generations. You buy a house; houses get passed down; the houses appreciate; and they are sold by the subsequent generations. Many American families have been able to move up financially, specifically through homeownership.

I also want to talk a little about community development. Over the many years since Nevada became a state, people have moved here and communities have developed. The state allowed Nevadans to put in wells and allotted them 2 acre-feet of water annually for residential use. The state said, It is OK to come in and put in your well, we gotcha. Over time, in some

places in Nevada, we have ended up with a large number of domestic wells. Going back to NRS 533.024, wells are appurtenances to these homes; homes that most likely represent a good portion of their owner's accumulated wealth. Homes, which under current Nevada law, would be left with no water if our water situation in a given basin became so dire that curtailment had to happen. Again, that is not tomorrow, probably not ten years from now, but it most likely is going to happen. As a state lawmaker and someone who cares about these well owners, I am looking to protect their supply of water from this unreasonable adverse effect that the NRS says is the state policy.

One more time, under current law, if there is curtailment in a basin, domestic well owners will be left with zero acre-feet of water. They will have no water going to their homes that they bought, that they built, and that maybe have lived in for 40 years and are now 70 years old and without water. There goes their home value.

Under this bill, if there is curtailment, domestic well owners will have 0.5 acre-feet of water a year instead of zero acre-feet a year, which is the current law.

I would now like to step you through the bill. Assembly Bill 95 addresses NRS Chapter 534, which deals with groundwater and wells. *Nevada Revised Statutes* 534.110 is specific to rules and regulations of the State Engineer. The main section of the bill is section 1, subsection 9. It states that if the State Engineer orders withdrawals be restricted to conform to priority rights, which means if there is curtailment, the domestic well is allowed to continue to withdraw up to 0.5 acre-feet of water per year. However, I want to be clear, if there is curtailment, things have gone very badly; this is a dire situation. The domestic well owner would have to allow that a meter be put on his well to ensure that only 0.5 acre-feet is taken per year. This would be very bad if this happened. There would be serious water problems in that basin. I will admit, to a certain degree, we are upending prior appropriations. The state will need to ensure that well owners are using only what they are allocated. I know the meter thing is a touchy subject, but this is only when things go very badly in a basin.

Section 1, subsection 6 states that if the annual replenishment of groundwater is not adequate for what the permittees and the vested-right claimants need, the State Engineer can curtail withdrawals, but this is subject to the 0.5 acre-feet of water for the domestic well owners.

Section 1, subsection 7 states that in critical management areas that have been so designated for ten consecutive years, the State Engineer shall, unless a groundwater management plan has been approved for the basin, curtail withdrawals. Under those circumstances, the domestic well owners would still get 0.5 acre-feet.

That is my presentation and I am happy to answer any questions.



**Assemblywoman Carlton:**

I think the biggest concern I have heard in the emails and phone calls is that people think there is going to be a water meter on their well in the immediate future. Would you address that concern?

**Assemblywoman Swank:**

This would only happen in times of curtailment. We are not there—there is no curtailment happening right now—this is only about when the water situation is so dire that curtailment must happen. This is not about now, or even next year. We do not know when this will happen, but we know that it will happen at some point.

**Assemblywoman Titus:**

My question also revolves around the metering aspect of this bill. It is not clear in the bill whether it would be optional or not to have a meter put on. Also, is there a penalty for taking more water? Is this only in the basins where the State Engineer claimed a need for the curtailment? If this happened, would it be basin-specific or statewide?

**Assemblywoman Swank:**

If you would like to get 0.5 acre-feet of water when you would otherwise have zero acre-feet, you will need to put a meter on your well. As far as penalties for taking more water, I will have to look into that. Yes, this is basin-specific, it does not apply across all basins, only to the basin that the State Engineer would say needs to go into curtailment.

**Assemblyman Wheeler:**

The curtailment is what I would like to have clarified. Section 1, subsection 6, says, "the State Engineer may order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted to conform to priority rights." I am wondering, if we reach a dire situation in a basin, why the State Engineer just says, you have to go down to 0.5 acre-feet, which I believe most people would do. I understand that he could restrict it to nothing, but I do not see anything in law that says it has to be restricted, as it stands now.

**Allan Amburn, Committee Counsel:**

Section 1, subsection 6, is a little vague. Basically, if they wanted to have variations with curtailment, assumedly they could, based on the language. Essentially where we are getting the idea that you would lose all access to water rights in a domestic well is on page 3, lines 17–18, where it says, "be restricted to conform to priority rights." If we are in a situation where we are essentially running out of water in a basin, and we are trying to ensure that senior water rights holders still have access to their water, if you are a junior water rights holder, your interest is not as prevalent as a senior water rights holder; as a junior water rights holder, all water rights can be removed in order to preserve the senior water rights holders. That is where we get the idea that, basically, the domestic well owner would lose all access.

**Assemblyman Wheeler:**

There is nothing that says under existing law that the domestic well must be shut off. The State Engineer, in my experience, would have the power to say, right now, that domestic well owners need to cut back to 0.5 acre-feet and the senior water rights holder would still be prevalent.

**Allan Amburn:**

Section 1, subsection 7 says the State Engineer shall "designate as a critical management area any basin in which withdrawals of groundwater consistently exceed the perennial yield." If that happens, and the basin has been designated as a critical management area for at least ten consecutive years, the State Engineer shall order that withdrawals, including withdrawals from domestic wells, be restricted in order to conform to priority rights. In that situation, they have to curtail.

**Assemblyman Wheeler:**

By curtail, do you mean shut off? In the dictionary, curtail means to reduce.

**Allan Amburn:**

It could be a reduction, but if it is a junior water rights holder, unless there is a way to make it work, he could lose access to all of his water.

**Assemblywoman Swank:**

Also, I want to be sure it is very clear in the statute that the domestic well owners cannot go below 0.5 acre-feet. As state legislators, I feel that we need to be sure that we are being protective. Where we can have our most impact is what is in our NRS. I think by putting this explicitly in the statute, this is a way that we can best protect those folks who have domestic wells.

**Assemblywoman Cohen:**

I would like to sum this up to ensure I understand. The State Engineer already has the authority to curtail. If curtailment happens, because domestic well owners are often junior water rights holders, this would ensure that they get at least 0.5 acre-feet. Is that correct?

**Assemblywoman Swank:**

That is correct. Currently under Nevada state law, if the domestic well owner is a junior water rights holder, he will get zero acre-feet a year. Under A.B. 95, he will be given priority rights and get 0.5 acre-feet a year only if there is curtailment in a basin.

**Assemblywoman Cohen:**

Is 0.5 acre-feet a year what most people usually use?

**Assemblywoman Swank:**

I have also heard 0.36 acre-feet a year. It is definitely enough, especially for indoor use.

**Assemblyman Ellison:**

You said there would be no meters installed up until the time of curtailment, is that correct?

**Assemblywoman Swank:**

That is correct. Very few people ever reach the 2 acre-feet a year limit now, so there is no reason for metering. This is only for times of curtailment.

**Assemblyman Ellison:**

There is a pending court case that went through district court and is being appealed right now. Should this bill wait until that decision is made?

**Assemblywoman Swank:**

It is clear in the NRS that the state has oversight over domestic wells. I would also say, not to be glib at all, but we are always adjudicating water law, especially here. To wait for everything to be settled before moving forward would mean not moving forward.

**Assemblyman Ellison:**

There is an amendment that I heard about from Eureka County. Have you seen it?

**Assemblywoman Swank:**

I spoke with Eureka County today and I know they have an amendment coming forward, and we are going to look at it when it comes through.

**Assemblyman Assefa:**

How did you determine 0.5 acre-feet is sufficient?

**Assemblywoman Swank:**

When I started looking at this, we looked at the typical usage, and 0.5 acre-feet was sufficient for indoor use.

**Vice Chair Bilbray-Axelrod:**

Are there any other questions? [There were none.] I will open the testimony, but before we start, I would like to remind everyone that while we may not always agree, we will remain courteous. Also, I will limit each category—support, opposition, and neutral—to 30 minutes each. Each person testifying will be limited to two minutes. I will begin with those in support.

**Steve K. Walker, representing Eureka County:**

We are in support of A.B. 95, but we feel it needs to be amended to also address curtailment by a court, not just the State Engineer. We also feel that maybe in some hydrographic basins where domestic wells are a minor use of the water in the curtailment process, a meter could be exempted. Where the wells dominate, that is probably not true. Also, as I hear the Committee ask the questions, we talk about domestic well water rights. A domestic well water right is not a right in the sense that other water rights are. Actually, the date of the priority is when you drill the well. You are then allowed 2 acre-feet of water, but you do not

have a permit or a certificate; it cannot be sold, so it does not meet the definition of a water right. Also, there are questions on water use. The average household on the Truckee Meadows Water Authority system uses 0.38 acre-feet annually.

**Vice Chair Bilbray-Axelrod:**

Just to confirm, you are in support of A.B. 95?

**Steve Walker:**

Eureka County is in support with the amendment to address that court curtailment could also occur. I think it makes the bill better.

**Patrick Donnelly, Nevada State Director, Center for Biological Diversity:**

We support this bill. Many basins in Nevada are in crisis due to groundwater overdraft, and in at least some of those basins, the preponderance of overdraft is due to domestic wells. We commend the Chair for bringing this bill. This is a challenging bill due to the politics of it, but it is a necessary step in order to bring some of these basins back into balance. Also, to the subject of meters, should we get to a point where curtailment is happening, meters only make sense if we are going to be restricting the amount of pumping people can use. While 0.5 acre-feet is less than 2 acre-feet, it is, as was pointed out, more than average indoor use. While it may not be enough to continue with ornate landscaping, this is only going to be in times of absolute crisis that call for shared sacrifice. I would also add that, on a personal level, I am a domestic well owner and I would support this should my basin ever be brought into curtailment.

**Vice Chair Bilbray-Axelrod:**

Is there anyone else in support? [There was no one.] I will move on to testimony in opposition.

**Dwight Lilly, President, Private Well Owners Cooperative of Nye County:**

The Division of Water Resources, State Department of Conservation and Natural Resources, through this proposed legislation wants to eliminate our ability to provide for our families through the use of our right to 2 acre-feet of water per year if critical management were declared.

Two acre-feet is the amount established by past legislation in NRS 534.180, which allows our families to live the rural life we chose.

This legislation ignores the fact that many domestic well owners use and need the 2 acre-feet of water allowed under NRS 534.180 and in addition to other legislative water acts, land grants, and treaties. The right to water is an inalienable right—not a water right, which is a state-issued privilege. Please do not confuse them.

Two acre-feet per year is 651,702 gallons. On our property for domestic uses, my family has used just over 600,000 gallons of water since March 24 of last year. We have adopted every

means available to conserve water. My family is but one family that would have their lifestyle destroyed if this legislation were to pass.

Is there anything higher in priority than the ability of rural Nevadans to use the water under their land to provide for their families? We do not believe there is. We are about to begin planting our summer gardens. Our domestic wells are needed to nurture the plants, family orchards, and water for the livestock that feed our families. This might sound old-fashioned, even foreign to many of you, but it is a way of life for thousands in rural Nevada.

We believe the priorities of Nevada water management and statutes are in need of changing, not our lifestyle. This legislation would grant the State Engineer authority over domestic wells, a power that he has never been granted under state law in previous water acts and court decisions, even the current court decision before the Nevada Supreme Court.

Domestic wells have been excluded from water law as they are recognized as a requirement of life no different than the air we breathe or the sun overhead.

Domestic wells are a protected right under state law; merging with water law and water rights is wrong and always has been. Thank you.

**Vice Chair Bilbray-Axelrod:**

Is there anyone in Elko who wishes to testify in support? [There was no one.]

**Wade Hinden, Vice President, Private Well Owners Cooperative of Nye County:**

I live on five acres and I have a rural lifestyle. I have 17 fruit trees, I grow blueberries, and I grow a lot of apricots and almonds. I am not selling these products; it is my property and I use it to feed my family. My wife makes jam. We use a lot more than 0.5 acre-feet of water per year—that is enough to flush your toilet, but not enough for my wife to take a shower. I do not know where the State Engineer has the authority; he never did and never should be able to curtail a domestic well. The problems lie in agriculture where they run the water out to the field because of "use it or lose it." They are wasting millions of gallons of water on a corn or alfalfa field in December. That whole field turns into ice. For domestic use, people do need 2 acre-feet of water. I am on a volunteer meter. I know how many gallons of water I need. It is more than 0.5 acre-feet, but less than 2 acre-feet. Many of us have a lot more trees and use over 2 acre-feet. We do conserve and we are very careful about how we use our water. We are totally against A.B. 95. The State Engineer should not be able to curtail a family living on what they grow.

**Joseph DeMonte, Private Citizen, Las Vegas, Nevada:**

Thank you for the time to hear my concerns regarding A.B. 95. This is not the first time this type of bill has come before our Legislature. While I understand and truly appreciate the significant dangers of a water shortage that we currently face in Nevada, I am puzzled as to why the state repeatedly looks to restrict the rights of domestic well users before anyone else. We use less groundwater than any other group, according to the Division of Water Resources' 2016 report.

In a previous legislative session, a similar bill was proposed, but the language was a little more honest in that it stated domestic wells would be limited to 0.5 acre-feet of water when withdrawals are restricted to conform to priority rights, and a meter would be required. This bill has the same purpose but is worded in a friendlier tone. The 0.5 acre-feet of water equates to 446 gallons of water per day. While this sounds like a lot of water, it is not. It is, in fact, a 75 percent reduction in what we are allowed to draw as of today. Overnight, domestic well owners could become criminals as a violation is a misdemeanor punishable by jail and a daily fine of \$10,000.

According to the federal government and the U.S. Geological Survey, U.S. Department of the Interior, the average American currently uses approximately 80 to 100 gallons of water per day. This amount does not include livestock or pets, nor does it take into consideration property size. The federal statistic means that a family of four would barely meet the 0.5 acre-feet restriction, and a family of five would become criminals and bankrupt overnight as they would use 500 gallons of water per day, again not taking into consideration horses or livestock, which is one of the reasons we paid to be on larger lots with well water.

Furthermore, this restriction is arbitrary and capricious, as my neighbor, who is not on a well, can use over 450, 500, or 1,000 gallons in a day and face no danger of fines or criminality. They will just have a slightly higher water bill.

I live in the Las Vegas Valley and paid significantly more money for my home than a similar home that is not on a well would have cost. I paid more for the land per acre, I paid more per square foot, and I paid more to be on a well. These were all conscious decisions to provide a better way of life for my family. I have horses and dogs to teach my child responsibility and make him a better citizen in the long run. I am blessed, but to make my family and the families of those on well water the bad guy because we are an easy target, is just plain wrong.

**Norma Jean Opatik, Private Citizen, Pahrump, Nevada:**

I am a domestic well owner who would not be involved in this; however, I do represent a lot of people who come from the area of Nye County. Under the law, property rights were vested when the property was purchased. We have always been told that you have the right to drill one domestic well for 2 acre-feet of water. Under NRS 534.030, subsection 4, domestic wells are generally exempt from the State Engineer's control. Prior to 2011, the curtailment statute did not apply to domestic wells. Accordingly, any parcels with domestic wells that were created before 2011 are exempt from curtailment. This law should not be applied retroactively. Assembly Bill 95 will be an administrative headache if it were to pass, and as a result costly litigation could occur as well as costly installation. The domestic wells drilled on a parcel created after 2011 would be forced to put a meter on the well and figure out a system to have the meter readings reported and verified. Property owners will be able to challenge all of these decisions in court, which is costly for the state as well as the owners.

There is no need for this bill. If you want to exempt domestic wells from the curtailment, all you need to do is take the language out of NRS 534.110, subsection 6. That states that the

statute applies to domestic wells, where in NRS 534.030, it does not—it states that the state has no control over the domestic wells.

Also, there was not much of a notice for this meeting. Last session, when that bill was brought forward, there were 100 or more people here to testify. I received notice today. The people who have the domestic wells work full-time. They do not have time to take off from work to appear at these meetings to appeal to your common sense and help you to understand what happens with domestic wells. In Nye County, the quasi-public water company that we have has made it so costly to implement their water supply into our neighborhood that no one is doing it.

**Vice Chair Bilbray-Axelrod:**

I will go to Elko and hear those in opposition.

**Mary Ann Polish, Private Citizen, Elko, Nevada:**

Those of us who are attending in Elko are in agreement with everything we have heard in opposition. Most of the subdivision parcels in Elko that are on private wells are 2 1/2 acres or more in size. You would leave us completely defenseless against wildfire if we were limited to 0.5 acre-feet per year. We need some landscaping in order to keep the fire threat down. Most of us, because of where we live, have and maintain some type of livestock or pets that need water. We are not living the same lifestyle as someone on a well in a small subdivision that is close to a larger city. We have gardens, fruit trees, and livestock. In order to protect ourselves from wildfire, which we had much of this year, we need that water.

We are also concerned about the State Engineer having power to decide these issues. He is not an elected official, and we are giving him a lot of power. We would like to know why we must be regulated because of someone else's overappropriation.

**R. Jeff Williams, Private Citizen, Elko, Nevada:**

I am a former county commissioner of Elko County and I understand a little bit about what people in Elko County really need and want. I understand what you are trying to do, trying to protect us from zero water at some point in time in the future, but I think that we need 1 acre-feet of water as we go forward. If you need to restrict it more than that, then come back to the Legislature again to be able to deal with it on that level. Doing what you are doing right now is placing us in a tough situation, because we would like to have more water than just 0.5 acre-feet. In other words, if the State Engineer decides we are at that level, we would like to have them tell us that at 1 acre-feet of water, you are in a critical time and you need to be prepared for what might come if we do not get more water in our basin. I think 1 acre-feet of water is where I am. If you need to restrict it further, then go to 0.5 acre-feet of water through Legislature. I think all of these things should go through the Elko County commissioners, and commissioners in the rest of the counties in the state, before it becomes law. Also, there are hundreds of lots in Elko County that are not occupied yet and do not have wells drilled. I think we need to look at this again.

**Vice Chair Bilbray-Axelrod:**

Is there anyone in opposition in Carson City?

**Roger Adam, Private Citizen, Genoa, Nevada:**

I was here a couple years ago and there was a huge turnout because then we had notice a few days before the meeting. I am sure it was not the intent of anyone here to restrict the input of domestic well owners and others in opposition to this bill, but that is what has happened. I assure you that if there were more notice, you would fill up at least three rooms like you did before. Almost everyone was in opposition to the bill that is very similar to this bill and failed two years ago.

Please vote no on A.B. 95. My opinion is this bill may have a major adverse impact on rural Nevada residents. Currently, 2 acre-feet per year is exempted from the Nevada water law and the control of the State Engineer. Does this bill allow the State Engineer to limit annual water use to 0.5 acre-feet per year, or less, and require water meters which are currently not required? The current law makes no mention of restrictions to 0.5 acre-feet for domestic well owners at all and no requirement that water meters be put on domestic wells. My perception is this bill may be an unconstitutional theft of domestic water use without compensation. Please preserve the property rights of your rural Nevada constituents.

**Vice Chair Bilbray-Axelrod:**

I would like to put on the record that this bill was noticed according to state law.

**Roger Adam:**

Were you here two years ago when hundreds of people showed up and you had to change rooms? Do you think domestic well owners today feel any differently about this legislation than they did two years ago? I would be real interested in your response to that.

**Janine Hansen, State President, Nevada Families for Freedom:**

We concur with the testimony that has been shared so far. We have serious concerns about putting the authority over domestic wells on the State Engineer. I live in Elko. I have a well and 2 1/2 acres of land. I heard someone talking earlier that we do not need ornate landscaping. If you have been to Elko where I live, you know it is not ornate. I have grass for my chickens, turkeys, goats, and horses. I have a big garden that I use to help feed my family. These are not pleasant ornate gardens, these are real-life survival for people who live in rural areas. A couple of years ago I had my son and his nine children living with me. To go down to 0.5 acre-feet of water, we would not have been able to take care of ourselves. We would appreciate your rejection of this bill. There are other things that can be done. We can look at other ways to preserve the water, but it is a natural, basic right for a homeowner to be able to take care of himself with the limited amount of water that the Legislature has seen fit to afford in the past. One thing is for sure: this should not be retroactive. If you are going to do it, it should go forward to those wells that have not been drilled yet. Those who have wells under the authority of the current law would not be penalized in the future.



**Bob Russo, Private Citizen, Gardnerville, Nevada:**

I am here to oppose A.B. 95. From what I gather, this bill would attempt to take 75 percent of domestic well owners' water. Currently, private well owners are allowed 2 acre-feet per year. Reducing this number to 0.5 acre-feet could put a significant strain on rural landowners. I fear that it could potentially force many to give up their rural lifestyle and relocate elsewhere, either to the city or to another state.

I fear, too, that this bill could potentially be used to take water from rural well owners and transfer to developers for high-intensity development, including housing tracts and golf courses.

If water conservation is the issue, which appears to be the case, I would rather see a restriction on high-intensity development without disturbing the lifestyle of so many rural Nevadans who have tended their land, crops, and cattle for so many years.

If this bill were to pass, it seems only fair to me that current well owners be grandfathered in so that they may continue to have the current 2 acre-feet of water available to them per year. That would help prevent the burdensome uprooting of their lives. I urge you all, please vote no on this bill.

**Vice Chair Bilbray-Axelrod:**

I would like to have our legal counsel weigh in to clarify what this bill will be doing. We have heard some things in opposition that are erroneous.

**Allan Amburn:**

Basically, if there is a curtailment that the State Engineer declares, or a mandatory curtailment under Section 1, subsection 6 or subsection 7, the State Engineer must limit the restriction of withdrawals to 0.5 acre-feet. This creates a floor in which the State Engineer cannot go below. Potentially, the State Engineer could provide more than 0.5 acre-feet, but the 0.5 acre-feet is a guarantee, and it only applies during curtailment.

**Vice Chair Bilbray-Axelrod:**

Thank you. Seeing no one here to testify in opposition, I will move on to neutral.

**Neena Laxalt, representing Central Nevada Regional Water Authority; Humboldt River Basin Water Authority; and the Nevada Cattlemen's Association:**

I will start with a statement from the Central Nevada Regional Water Authority and Humboldt River Basin Water Authority; their positions are neutral. Both authorities believe it is important to provide relief to domestic well owners in instances of curtailment and support legislation to provide an exception to the current law that would require complete curtailment of junior priority domestic wells if curtailment by priority was required in a groundwater basin. The authorities are not supporting this bill at this time because there are questions as to how A.B. 95 would be implemented and enforced. We will take some of the comments and concerns that have been brought forward today back to the authorities and continue to work with the sponsor on this bill.

The Nevada Cattlemen's Association has the same beliefs that it is very important to provide relief to the domestic well owners during complete curtailment and we also agree with the Eureka amendment and would like to continue to work with all the parties involved.

**Tim Wilson, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:**

I am here today to testify neutral on A.B. 95. The Division of Water Resources supports the intent of A.B. 95, which would allow, in times of groundwater curtailment, that homes supplied by domestic wells still have access to water. While it is the Division of Water Resources' hope that we are never forced into groundwater curtailment, the potential is very real under current projections in some Nevada groundwater basins. Should groundwater curtailment occur, however, the Division supports proactive efforts, such as A.B. 95, to avoid the mandate that the State Engineer require and then enforce the prohibition of a person or family occupying a home served by a domestic well. The Division of Water Resources is neutral with respect to the quantity of water. It is a modest allowance of water and we believe it is reasonable and appropriate.

**Assemblyman Watts:**

I have a clarifying question. If curtailment were to occur, you would be trying to curtail to get the basin back into balance. You would essentially have a numerical goal of how much water would need to be curtailed. Under this or any similar proposal to set aside water for domestic well owners, by guaranteeing some water is set aside, it would essentially push curtailment farther up the seniority chain. Under current law, that would be borne more heavily by the junior domestic well owners, is that correct?

**Tim Wilson:**

Nevada is a prior appropriation state, which is "first in time, first in rights," so senior water rights holders get all of their water prior to junior water rights holders. There would basically be a line in the sand capping the amount of water within that basin. If a curtailment were to occur, we would look at the priority of all the water rights in the basin, including the priority date of the domestic wells. Anyone who is a junior user would get nothing; anyone who is a senior user would get 100 percent. Under A.B. 95, domestic wells, even if they are junior users, would be allowed 0.5 acre-feet of water. If they were a senior user, they would still get their full use.

**Assemblyman Watts:**

Would that modify the priority date consideration when curtailment was to occur?

**Tim Wilson:**

Depending on how many domestic wells are involved, times that by 0.5 acre-feet, it might adjust the cap.

**Assemblywoman Titus:**

Instead of the State Engineer defining which basin needs curtailment and setting 0.5 acre-feet, would it be wiser to set it up and let the basins decide when there is a crisis and what the

curtailment should be? The concern here is that the State Engineer has this power as opposed to the separate water basins and all of these water authorities that are already in existence. Would it be better to let them decide when and if there is a curtailment, and then how much?

**Tim Wilson:**

We work with the basins that are in serious trouble. We work with the local governments to come up with solutions to their problems, trying to head off curtailment, which is really a last resort. The basin would have to be under dire circumstances and we would have to have monitored significant danger to the aquifer itself. For example, in Eureka County, they are under a critical management area designation. They came together and came up with a groundwater management plan that we recently approved to bring their basin back into alignment with what water is available. That was a local plan. The same thing in Pahrump, they have their own groundwater management plan, for the same reasons, seeking to preemptively avoid a critical management area designation.

**Assemblyman Fumo:**

Is there a certain trigger, guideline, or something you look at before curtailment?

**Tim Wilson:**

There is no one-size-fits-all. Every aquifer is going to be different. We look for the most obvious signs of aquifers in trouble, which is groundwater decline. We look at the recharge available. If there is a severe, ongoing drought and we see dramatic declines in the groundwater table, that is when we know there is a good chance we need to take action.

**Micheline Fairbank, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:**

Additionally, under NRS Chapter 534, we have statutory provisions in which we can designate a critical management area where there is overpumping. For example, if we have a finite perennial yield that we have defined, but the pumping in the basin consistently exceeds the perennial yield, statutorily we are authorized, either at the initiative of the State Engineer or upon petition of the majority of the water rights holders within that basin, to designate that area as a critical management area. As Mr. Wilson was referencing, the groundwater management plan that exists in Nye County was done on the front end to try to prevent getting to that overpumped status. We also have a mechanism in which we find there is inadequate water supply to meet the needs of all the water rights holders—that is the permittees, the vested water rights holders, and, while the statute is silent to domestic wells, that certainly would be part of the consideration—then we have the discretionary authority to order curtailment or to order regulation by priority under that circumstance as well.

**Assemblyman Ellison:**

Has the state ever issued a curtailment order that you are aware of?

**Tim Wilson:**

We attempted to do a partial curtailment in Smith Valley after four years of severe drought. There were massive groundwater declines in and around the basin that contains Yerington.

We tried a curtailment of supplemental irrigation only. That order was appealed and we did not prevail in district court. Part of that judgment was that we have the authority to curtail, but it has to be everybody. We could not do a partial curtailment because that violated the senior priority—first in time, first in rights.

**Assemblyman Assefa:**

Under current law, if curtailment were to happen, you, as the State Engineer, can give zero water to well owners. Am I correct?

**Tim Wilson:**

That is how curtailment works. If you are a junior water rights holder, you receive nothing.

**Assemblyman Assefa:**

Legally, you can go to zero for domestic well owners?

**Tim Wilson:**

Yes.

**Assemblyman Assefa:**

If A.B. 95 were to pass, you could not go lower than 0.5 acre-feet, is that correct?

**Tim Wilson:**

For a domestic well with a junior priority, we would not be able to go to zero. We would have to allow them at least 0.5 acre-feet.

**Assemblyman Assefa:**

So we are going from zero to 0.5 acre-feet?

**Tim Wilson:**

That is correct.

**Ralph Allen, Private Citizen, Elko, Nevada:**

I have had both a domestic well and an irrigation well. My concern is when we talk about priority water rights, are we also talking about point of diversion? Right now, we have a lawsuit dealing with Pershing County water users against people in Elko based on priority water rights. They are entitled to what flows down the river, but are they entitled to what is in our basin, 600 feet below the ground? I do not have an opinion on this right now. While it sounds good, I think there are a few things that are not explained, and I think we may be giving the State Engineer just a little bit too much power.

**Vice Chair Bilbray-Axelrod:**

Is there anyone else here to testify in neutral? [There was no one.] Are there any final remarks?

**Assemblywoman Swank:**

I would like to say that I agree with a lot of the testimony that came up in opposition. I think there are some points that are great. This is going to be a tough situation. It is going to be a significant strain. This is a last resort. It is also someone else's overappropriation. Those are all things that people said that I totally agree with. As legislators, it was the state of Nevada's overappropriation. I would also say that we are not making well owners be the bad guys; we are here to ensure that they do not end up, as one speaker said, with lives destroyed. Zero acre-feet of water a year would have lives destroyed. This is only during tough times. I want to be very clear that this is not about taking anyone's water—this is only about giving it back in a time when the State Engineer can curtail them to zero. The well owner would have to put in a meter because it would be a tough situation and a significant strain when the entire state was under a significant strain. I would also like to address one comment that was made about how this water would be taken elsewhere. This is not about interbasin transfers. This is about a single basin in trouble and how we help to ensure that domestic well owners have at least some water.

I will be meeting with folks from Eureka County and I will take a look at their amendment to see what we can sort out.

**Vice Chair Bilbray-Axelrod:**

With that I will close the hearing on A.B. 95. [Materials provided but not mentioned include [Exhibit C](#) and [Exhibit D](#)].

[Assemblywoman Swank reassumed the Chair.]

**Chair Swank:**

At this time I will open up for public comment. Public comment will be limited to two minutes per person and must be on topics that have not been heard in this meeting.

**Dwight Lilly, President, Private Well Owners Cooperative of Nye County:**

We would appreciate the opportunity to sit down with the people who sponsored this bill.

**Chair Swank:**

I am sorry, sir, public comment is not on items that are on today's agenda. Is there anyone else with public comment? Seeing none, we are adjourned [at 5:27 p.m.].

RESPECTFULLY SUBMITTED:

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Nancy Davis  
Committee Secretary

APPROVED BY:

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Assemblywoman Heidi Swank, Chair

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

## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a letter dated March 4, 2019, to Members of the Assembly Committee on Natural Resources, Agriculture, and Mining signed by Kenny Bent, Private Citizen, Pahrump, Nevada, in opposition to Assembly Bill 95.

[Exhibit D](#) is written testimony submitted by John F. Bosta, Private Citizen, Pahrump, Nevada, in opposition to Assembly Bill 95.