

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

**Eightieth Session  
March 13, 2019**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Heidi Swank at 4:01 p.m. on Wednesday, March 13, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada and to Room 125, McMullen Hall, 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 Al Kramer, Assembly District No. 40



**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Glen Whorton, President, Nevada State Prison Preservation Society  
Maurice White, Vice President, Nevada State Prison Preservation Society  
Peter D. Barton, Administrator, Division of Museums and History, Department of  
Tourism and Cultural Affairs  
Ernest E. Adler, Private Citizen, Carson City, Nevada  
Steve Walker, representing Carson City; Truckee Meadows Water Authority;  
Douglas County; Lyon County; Eureka County; and Storey County  
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  
Stephen D. Hartman, Executive Vice President, Corporate Counsel, Vidler Water  
Company, Inc.  
Chris C. Mahannah, Owner, Mahannah & Associates, LLC, Reno, Nevada  
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation  
Neena Laxalt, representing Central Nevada Regional Water Authority; and Humboldt  
River Basin Water Authority  
Chaunsey Chau-Duong, Public Affairs, Southern Nevada Water Authority  
Kyle Roerink, Executive Director, Great Basin Water Network  
Warren B. Hardy, II, representing Virgin Valley Water District; and Moapa Valley  
Water District  
Patrick Donnelly, Nevada State Director, Center for Biological Diversity

**Chair Swank:**

[Roll was called. Committee rules and protocol were reviewed.] Today we begin with a bill draft request (BDR) introduction.

**BDR R-511**—Expresses support for the Nevada Greater Sage-Grouse Conservation Plan and the Nevada Conservation Credit System and urges the United States Bureau of Land Management to require compensatory mitigation to offset anthropogenic disturbances in accordance with the Nevada Conservation Credit System. (Later introduced as [Assembly Joint Resolution 3.](#))

I will entertain a motion to introduce BDR R-511.

ASSEMBLYMAN WATTS MOVED FOR COMMITTEE INTRODUCTION  
OF BILL DRAFT REQUEST R-511.

ASSEMBLYWOMAN TITUS SECONDED THE MOTION.

Is there any discussion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

I will now go to a work session on Assembly Bill 58.

**Assembly Bill 58: Revises provisions governing violations of regulations adopted by the Administrator of the Division of State Parks of the State Department of Conservation and Natural Resources. (BDR 35-212)**

**Jann Stinnesbeck, Committee Policy Analyst:**

As Legislative Counsel Bureau staff, I can neither support nor oppose any proposal that comes before the Legislature. Assembly Bill 58 was brought forth on behalf of the Division of State Parks, State Department of Conservation and Natural Resources, and was heard in this Committee on February 25, 2019 (Exhibit C). The bill removes a requirement that a person whose conduct violates a regulation adopted by the Division of State Parks must also have refused to comply with the regulation when requested to do so by a ranger or an employee of the Division who has the powers of a peace officer in order to be guilty of a misdemeanor.

**Chair Swank:**

Are there any questions? Seeing none, I will entertain a motion to do pass A.B. 58.

ASSEMBLYWOMAN BILBRAY-AXELROD MOVED TO DO PASS  
ASSEMBLY BILL 58.

ASSEMBLYWOMAN PETERS SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Peters. I will now move on to Assembly Bill 59.

**Assembly Bill 59: Revises requirements for the issuance of certain permits for entering, camping and boating in state parks and recreational areas. (BDR 35-211)**

**Jann Stinnesbeck, Committee Policy Analyst:**

Assembly Bill 59 was brought forth on behalf of the Division of State Parks, State Department of Conservation and Natural Resources, and was heard in this Committee on February 25, 2019 ([Exhibit D](#)). Assembly Bill 59 eliminates the current requirement that the Division of State Parks issue an annual permit for the free use of all state parks and recreational areas in this state to any person 65 years of age or older who has resided in the state for at least five years. Instead, the Division must issue such a permit to any applicant who is a bona fide resident of the State of Nevada who is 65 years of age or older.

**Chair Swank:**

Are there any questions? Seeing none, I will entertain a motion to do pass A.B. 59.

ASSEMBLYWOMAN CARLTON MADE A MOTION TO DO PASS  
ASSEMBLY BILL 59.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

Is there any discussion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Titus. I will take bills out of order now and begin with Assembly Bill 214.

**Assembly Bill 214: Makes an appropriation for a feasibility study relating to further development of a museum at the Nevada State Prison. (BDR S-535)**

**Assemblyman Al Kramer, Assembly District No. 40:**

I will start by saying that now and again businesses, people, and governments end up with assets where choices have to be made. Either tear down the asset, maintain it, or use it. If the choice is to just ignore the asset, it is going to degrade and cost more to fix later, or at least defer the time when it must be torn down. What we have in Carson City is a prison that lived out its life until it was no longer financially feasible to run as a prison. More modern facilities have been built to house the prisoners of Nevada.

That building still exists and represents a part of history for Nevada of how things were done 50 years ago. To see the prison gives you an idea of what the gas chamber looked like, what the cells looked like, and what solitary confinement looked like. You cannot replicate that by looking at a book. The issue has come about for this particular facility as to where it is and who controls it and how we go forward.

The proposal today is for a feasibility study to see whether this prison could support itself going forward as a museum. It is not about changing it to be something it is not; it is always going to be a prison building. We are not talking about making it compliant with the Americans with Disabilities Act (ADA) in parts of the prison, because that would destroy

what you have for the building. We are talking about how to make this a walk-through museum for tourists. There are parts that are not ADA-compliant. To keep the reality going, I think it is nice to see the history of the building. I like the idea of trying to capture what things looked like. We want to talk about how this will impact Carson City tourist-wise and the idea of having this piece of history right here in our yard.

**Glen Whorton, President, Nevada State Prison Preservation Society:**

We are here in support of Assembly Bill 214. It has been suggested by the Division of Museums and History, Department of Tourism and Cultural Affairs, that a feasibility study be carried out to determine whether it is appropriate to turn this rather complex structure into a museum. We believe that it is important to Nevada history, as the prison property actually predates statehood; it was the site of the first territorial legislative meeting for Nevada. An argument could be made that the origins of the state of Nevada, politically, exist on that property. It is noted for a lot of other pieces of history for the state. There was a very dramatic escape in 1871, the use of gas for execution, and various famous individuals who have been incarcerated out there, including some state officials.

The history of the prison is actually a history of the state. In terms of its use as a museum, if you look through the United States, you will see various examples of institutions that have been turned into museums. They are viable, extremely interesting museums. The most obvious one here on the West Coast is Alcatraz. Nevada State Prison actually predates Alcatraz in terms of its use as a prison. In terms of accessibility, obviously, you do not have to take a boat across the San Francisco Bay to get to the Nevada State Prison. We live in a state where tourism is our major industry and in a community that bases a large portion of its economy on tourism, and we very much welcome the development and this feasibility study.

**Maurice White, Vice President, Nevada State Prison Preservation Society:**

We believe that this feasibility study will formally expose the three-legged approach that we are trying to bring to this facility for the people of the state of Nevada. There is the historical side, the educational side, and, of course, the economic development which is very important. We believe that not just the residents of Carson City will benefit from this project, but all of the world when you consider the available tourist base. We see an ability to educate our students in how the state of Nevada came about and the functioning of this prison throughout its 150 years of operation.

**Chair Swank:**

I would like a little clarification on the feasibility study. Is the feasibility study explicitly to determine if a museum is feasible, or is it to determine what would be the best use of the building? What are you going to do if the feasibility study says that a museum is not a good option?

**Glen Whorton:**

The important predicate here is the feasibility study. We have had some discussions and there are some budget items that relate to maintenance issues and ADA issues, but the reality is this is not going to happen unless the feasibility study indicates it. I believe the Legislature

and the community are going to want the comfort of a positive result from that study. We are very much in support of that as a priority over any other item that may be before the Legislature.

**Chair Swank:**

What is the plan if the feasibility comes back and says that a museum is not feasible?

**Glen Whorton:**

Then we would have to go back to the drawing board and determine what elements of the feasibility study do not support it and whether some adjustments can be made to improve that.

**Chair Swank:**

Is it possible that the feasibility study would determine the best use of the building? It is a very large complex, and I am a little hesitant if it is going to be a yay or nay with respect to the museum. Perhaps the feasibility study could give recommendations for the best use of the building.

**Glen Whorton:**

Assembly Bill 356 of the 77th Legislative Session mandated a study by state officials in terms of potential uses for the institution. Basically, it indicated that there were perhaps opportunities for the historical development: museum, tours, and historic experiences, but there might also be some potential there for the use of the more modern portions of the institution for other activities. Specifically, in Assembly Bill 377 of the 78th Legislative Session, the institution was essentially divided into two parts, the historical element of the institution—which is on the National Register of Historic Places—and the more modern component of the institution, which has been basically designated for Silver State Industries, Department of Corrections. There are some potential uses there for perhaps prison industries, document storage, et cetera. There have been some statements talking about bed and breakfasts, but that is just not practical and requires a different kind of infrastructure than currently exists.

Assembly Bill 377 of the 78th Legislative Session indicated that there are more uses for that complex structure than simply historical. I believe the day after tomorrow a movie is going to be released called *The Mustang*, which was filmed at the prison. We have had several contacts with movie producers since then regarding potential uses of the prison as a site. Several movies have been filmed out there beginning in 1949.

**Chair Swank:**

My question goes to section 1, subsection 3, paragraph (a) that states, "An evaluation of the Nevada State Prison structures and artifact resources available for the museum." I would be more comfortable if the feasibility study were looking to make recommendations for all uses. I feel that this is a pretty narrow yay or nay.

**Assemblyman Ellison:**

Assemblyman Pete Livermore brought in a bill to look at a gift shop, more movie-making opportunities, and the museum. I was surprised to see this. I did not know you need to go back for a feasibility study. Rent the building to me for 30 days in October, and I will show you how to make some money. We can turn it into a spook house. It has so much potential for many different things. I hope this study looks at all options.

**Glen Whorton:**

Peter Barton, Administrator for the Division of Museums and History, is here; perhaps he can talk to the feasibility study.

**Peter D. Barton, Administrator, Division of Museums and History, Department of Tourism and Cultural Affairs:**

We will take into consideration expanding the scope of the feasibility study to include other uses. From our perspective, we were focusing on the viability as a sustainable museum. I would agree with earlier comments; it is a vast site and potential mixed uses could certainly elevate the long-term sustainability.

**Assemblywoman Titus:**

Is there any activity going on at the prison now?

**Glen Whorton:**

Basically, we have been required by the State Public Works Division, Department of Administration, to get a change-of-use permit. This is a complication for us and has really limited the activities that can take place out there. The movie was produced out there about a year ago, which was an initiative that was brought to us by the Department of Corrections. Beyond that, our basic activity is maintenance, trying to keep the place cleared, and closed, to prevent any deterioration. We are not allowed to have public access out there at this point.

**Assemblywoman Titus:**

The bill is very specific on the amount of money you are asking for; if the money is not used, it must be reverted back by a specific date. Is there some guidance on the amount of money requested to ensure it is enough?

**Chair Swank:**

That will be addressed in the Assembly Committee on Ways and Means.

**Assemblywoman Cohen:**

Besides Alcatraz, you mentioned that there are other prison museums. Can you give us some examples of what types of cities those other museums are in?

**Glen Wharton:**

Alcatraz is the most obvious one. Probably the next one in terms of its size and use would be the Eastern State Penitentiary in Philadelphia, Pennsylvania. There is also the Missouri State Penitentiary in Jefferson City, Missouri. There are prison museums in Huntsville, Texas, and

Deer Lodge, Montana. Most of them are in very small communities because prisons have historically been built in relatively small communities. Again, Carson City has an advantage being in a tourist area. You can see the institution from Interstate 580. No one makes a destination trip to Deer Lodge, Montana, or Jefferson City, Missouri.

**Assemblyman Assefa:**

I assume the feasibility study would answer this question, but without having to spend \$250,000, can you forecast how many visitors would show up at a place like this in Nevada without comparing it to San Francisco? If we get visitors there, how much money would they be spending? Would the museum be able to sustain itself or is the state going to have to step in to run it?

**Maurice White:**

In 2018, I conducted a fairly informal survey of operating museums. I called 11 museums throughout the country, all the way from the Sing Correctional Facility to Atlanta to Deer Lodge, Montana. I have a few specifics I can share with you. Deer Lodge, Montana, has a population of 3,000 and the Old Montana Prison receives between 300,000 and 400,000 visitors per year. Boise, Idaho, has a population of 217,000, and the Old Idaho Penitentiary receives about 70,000 visitors per year. Yuma, Arizona has a population of 95,500 and Yuma Territorial Prison State Historic Park receives about 80,000 visitors per year. Rawlins, Wyoming, has a population of 8,900 and the Wyoming Frontier Prison receives about 15,000 visitors per year. Laramie, Wyoming, has a population of 32,800 and Wyoming Territorial Prison receives about 28,000 visitors per year. Sing Correctional Facility in Ossining, New York, is a concept at this point. Ossining has a population of 25,400 and they anticipate approximately 130,000 visitors per year. Mansfield, Ohio, has a population of 48,000, and the Ohio State Reformatory receives 137,000 visitors per year—they report that they have about \$760,000 in yearly revenue. Moundsville, West Virginia, has a population of 8,500, and the West Virginia Penitentiary receives 190,000 visitors per year and approximately \$532,000 in yearly revenue. Jefferson City, Missouri, has a population of 42,900, and Missouri State Penitentiary receives 32,820 visitors per year with about \$87,000 per year in revenue. The other prison, the Old Atlanta Prison Farm, is a very informal situation where the Save the Old Atlanta Prison Farm committee simply squats on the property. They do not have any numbers whatsoever that we can refer to.

**Assemblyman Kramer:**

Assemblyman Ellison referenced Halloween. The Ohio State Reformatory says they get 80,000 visitors during their Halloween project.

**Maurice White:**

Through my informal interviews, it was almost a universal theme that film, paranormal investigation, and Halloween are the mainstays of the museum's income.

**Chair Swank:**

Are there any further questions? Seeing none, I will move on to support of A.B. 214.



**Ernest E. Adler, Private Citizen, Carson City, Nevada:**

I used to be the Chief of the Criminal Division at the Office of the Attorney General. I had occasion to investigate crimes at the prison. It is really one of the most fascinating structures in the state of Nevada. It has a dungeon hole with a solid iron door where they put people as a punishment. It is a fascinating place to tour and is a monument to Nevada history.

**Steve Walker, representing Carson City:**

The Carson City Board of Supervisors voted to support this bill, and I am here to report that.

**Chair Swank:**

Is there anyone else in support of A.B. 214? [There was no one.] Is there anyone here in opposition? [There was no one.] Is there anyone here with testimony in neutral?

**Peter Barton:**

We are in the neutral position on this legislation on account of its fiscal impact on the state while actively supporting what this bill would accomplish.

Since our first meeting in October 2012, with then-Governor Brian Sandoval and proponents of the proposed conversion of the Nevada State Prison into a museum, the Division of Museums and History has advocated for undertaking a comprehensive, multidisciplinary feasibility study of the resource, its proposed conversion to a museum, and its long-term ability to be sustainable.

Museum development is complex; the mere fact that a property is historic and may possess outstanding architectural elements or a concept that is rich in heritage is not alone sufficient to ensure the robust programming and public participation at the levels necessary to sustain a program or a resource for the long term. Taking a lesson from commercial real estate developers, the old adage that "if you build it, they will come" has long been discarded. Yet museums and cultural attractions often do not address the critical impacts of initial interpretive and design decisions. The need to prioritize audience appeal, attendance, and revenue generation can be overshadowed by excitement or a sentimental yearning to see a historic property or topic preserved.

The proposed museum at the Nevada State Prison fits squarely within this consideration set. To better ensure the champions of this effort are rewarded for their support and the community realizes long-term success from it, the development process must be initiated only with a full understanding of the realities that accompany the creation of a facility capable of meeting or exceeding the expectations of all involved.

Over the course of many decades, developers of museums and cultural tourism attractions have established a standard prescription for analyzing resources, interpretive vibrancy, and market conditions to develop business plans for guiding viable development. The Division of Museums and History and the Department of Tourism and Cultural Affairs propose to engage experienced professionals in museum development to prepare a comprehensive study concerning the feasibility for a museum at the former prison site.

A feasibility study would have two principal tracks: The first is a resource evaluation, and the second, a programmatic analysis. We would go through some architectural reviews, looking at what the facility would need to become a publicly accessible site. We would come up with some cost estimates and extrapolate ongoing maintenance costs to inform the business plan. On the programmatic side, we would bring in an interpretative planner who would first determine what the core message is. What is that one element you want every visitor to the state prison museum to walk away understanding? We would look at the interpretative media for delivering that message. When we talk about attendance, it is based upon the story and how it is going to be delivered. Do you have holographic figures of prisoners appear in cell blocks who can talk? Does it get loud and noisy and almost riotous? You have to engage the senses. We have learned over the last 25 years that visitors to museums have much higher expectations than ever before. They are far more sophisticated, they have been engaged on their cell phones. We have to deliver higher experiences. To do that, interpretative exhibits in museums that we are developing today to deliver that kind of content would cost approximately \$1,000 per square foot for exhibits. This would be multimillions of dollars to deliver high-quality experiences.

We would do a market condition analysis, looking at the market today and seeing where the prison is located and how accessible it is to the public. After we have done the interpretative planning, we would do some focus group testing, probably in the Sacramento market because that is a large feeder for our northern Nevada museums. We would test the concept. We would ask, If we create a prison museum and you could come see it, would you? We would use that to form a staffing plan and a business plan. We would extrapolate that data out for three, five, and ten years, so that the decision makers, be they you or the public at large, can make an informed decision about how to invest, how much to invest, whether to phase in development, and whether to consider a mixed use. We certainly are strong proponents of the feasibility study.

There is one technical item that I would like to put on the record. I wish to clarify an error in the Legislative Counsel Digest for A.B. 214. The Division of Museums and History notes that the Legislative Counsel's Digest incorrectly states the role of the Division in the process. The Digest states, "Under existing law, the Division of Museums and History of the Department of Tourism and Cultural Affairs, working with the Nevada State Prison Preservation Society, local government and other state agencies, has been directed to study and develop a museum . . . ." That is factually incorrect. Assembly Bill 377 of the 78th Legislative Session puts that onus on the Division of State Lands, State Department of Conservation and Natural Resources, to bring together this working group. We have been working since 2015 as part of that group.

**Chair Swank:**

I really feel that if we are looking at this building as just a museum, that could leave us at a dead end. If we look at all of the possibilities, in your experience, does that seem like a reasonable thing to ask?

**Peter Barton:**

I would argue that is almost imperative. The historical structures of the prison are very extensive and I think it would be difficult to justify keeping all of that as a museum. I think there is an opportunity there for some mixed use that could help generate some revenue. Not unlike the Mob Museum in Las Vegas with the very popular Speakeasy downstairs that is now feeding revenue back into the nonprofit.

**Chair Swank:**

Is there anyone else here who wishes to speak in neutral? [There was no one.]  
Assemblyman Kramer, do you have any closing remarks?

**Assemblyman Kramer:**

No closing remarks other than to say thank you for hearing this bill.

**Chair Swank:**

With that, I will close the hearing on A.B. 214 and open the hearing on Assembly Bill 62.

**Assembly Bill 62: Revises provisions related to water. (BDR 48-215)**

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

I am here today to present testimony in support of Assembly Bill 62. In its most simple terms, this bill seeks to establish a maximum number of years that a holder of a water right permit may seek before filing proof of completion of work. By way of background, a "proof of completion of work" as established under Nevada water law pursuant to *Nevada Revised Statutes* (NRS) 533.390 is a requirement that a holder of a water right submit documentation demonstrating that the works, or infrastructure necessary to successfully divert water for the permitted use, has been constructed. This is commonly the first step in what is known as the process of "perfecting" a water right.

A fundamental tenet of Nevada water law is the concept of "beneficial use." Beneficial use is defined under NRS 533.035 as "the measure and the limit of the right to the use of water." However, water cannot be beneficially used unless the construction of the physical infrastructure, like a well, pump and meter, or other works of diversion, is completed. The construction of the physical works necessary to divert and place water to a beneficial use is the simplest element to perfect a water right.

Currently, NRS 533.380 allows a water right holder to seek "any number of extensions of time" to file a proof of completion of work. However, the current threshold for granting such a request is unreasonably low; NRS 533.380 subsection 3 establishes that if an applicant has made a showing of "good faith and reasonable diligence" to perfect the water right application, then the State Engineer is authorized to grant the requested extension. In NRS 533.380 subsection 6, "reasonable diligence" is defined as the "steady application of effort to perfect the application in a reasonably expedient and efficient manner under all the facts and circumstances." Additionally, when it is a large water project or integrated system comprised

of many features, work on one feature or system may be considered reasonable diligence for the entire project or system.

However, the "good faith and reasonable diligence" standard has resulted in water right holders delaying the development of a project based upon demonstrating minimal incremental progress. In many instances, this delay has raised legitimate concerns and allegations of water speculation, a practice that is explicitly outlawed in Nevada. Further, the holding of water rights without the construction of works can prevent subsequent applicants who have an immediate need and/or ability to construct the works necessary and place the water to a beneficial use.

The intent of A.B. 62 is not to unreasonably deny the holder of a water right the necessary time to complete a water diversion project. Over time, however, as the demand on Nevada's limited water resources increases, the granting of unlimited extensions of time are undermining the basic statutory premise of beneficial use. As such, there exists an increasing necessity to ensure water projects proceed expeditiously and not unfairly withhold valuable water resources from beneficial use in perpetuity.

In crafting the language for Assembly Bill 62, the Division of Water Resources, State Department of Conservation and Natural Resources, looked to other western states for reasonable and appropriate examples of how extensions of time have been addressed. The related statutes from Idaho offer constructive language and an applicable guideline for Nevada. In large part, Assembly Bill 62 is modeled after the Idaho law, which allows for differing periods of time and standards based upon the type and size of a proposed water project. However, some aspects of the Idaho law were viewed as overly restrictive relative to the conditions and circumstances present in Nevada.

Accordingly, we crafted Assembly Bill 62 to meet the needs of water use and development here in Nevada.

With your indulgence, I will now go over the specific provisions of the bill.

Section 1, subsection 3 deletes language authorizing the Division of Water Resources to grant unlimited extensions of time and adds language establishing defined limits for extensions of time based on the principles of beneficial use and according to the type of water project proposed by the water right holder or holders.

Section 2, subsection 2 amends NRS 533.090 to establish and define three categories of water use or projects and to assign specific limitations on the maximum extension of time that may be granted. Specifically, Assembly Bill 62 establishes the following three categories:

First, municipal use projects: Municipal projects may be granted extensions of time to file a proof of completion of work for not more than 15 years from the date originally established within the water right permit. This means that if a water purveyor has a water right permit

with a deadline to file a proof of completion of work by July 1, 2020, that water purveyor could seek an extension of up to 15 years, or until July 1, 2035, to file the proof of completion of work. Municipal manner of use must demonstrate that the extension of time is necessary to organize the financing and construction of work due to the size and scope of the project, and that at least \$50,000 has been expended on the construction of work.

In establishing the \$50,000 threshold, we again looked at Idaho and tried to determine an appropriate amount for Nevada. In Idaho, for an extremely large water project consisting of a diversion of 25,000 acre-feet in a single irrigation season for a project of not less than 5,000 acres, an extension for a maximum of 12 years may be granted upon a showing that at least \$100,000 has been expended toward the development of the project.

Nevada typically does not have large irrigation projects of such magnitude, but the Division of Water Resources recognizes that municipalities often require an extended period of time to complete the construction of works. Accordingly, compared to Idaho, Assembly Bill 62 provides a longer period of time for the filing of a proof of construction of works, and lowers the financial threshold from \$100,000 to \$50,000.

Second, large nonmunicipal use projects: Assembly Bill 62 proposes a 10-year maximum extension of time for nonmunicipal uses of water that divert 2 cubic feet of water per second or more, or water projects that cultivate 100 acres of land or more. Again, using the prior example, a permit with a deadline to file a proof of completion of works due on July 1, 2020, could be extended to July 1, 2030.

Third, all other manners of use: The final grouping of extensions of time applies to water rights for all other purposes, or manners of use, not otherwise expressly identified in section 2 of A.B. 62. These uses would be eligible for extensions totaling not more than five years. Again, using the same example, a permit under this category with a deadline to file a proof of completion of works on July 1, 2020, could extend the time to July 1, 2025.

This is a good opportunity to explain that these maximum limits on the number of years for extensions of time would only be applied upon passage of the bill. Thus, if a current water right has already received extensions of time, there would not be a retroactive application. Rather, the time limit would be implemented prospectively, meaning that even if a water right permit has received 15 years of extensions of time, that water right, upon passage of this legislation, would still be entitled to an additional 15, 10, or 5 years depending on the type of project.

Finally, the bill includes language that acts as a "tolling" provision. The Division of Water Resources recognizes that certain circumstances are out of the control of the water right holder and may inhibit the ability to complete the construction of works. Accordingly, section 2, subsection 3 would allow for the suspension of the time limit, under two express conditions: First, if an application filed with federal, state, or local government for consent or approval necessary to complete the construction of the project has prohibited the completion of works; and second, if a court action or an adjudication affects the rights

involved and impedes the ability to construct the works. These conditions do not require an application or fee. So long as the water right holder provides the Division of Water Resources with notice and proof of the satisfaction of one or both of these conditions, the time period will be adjusted accordingly.

Section 3 moves the existing language authorizing a water right holder to seek any number of extensions of time to file a proof of beneficial use and limiting any single extension to not more than five years to NRS 533.410.

At this time, I am happy to take any questions from the members of the Committee.

**Assemblywoman Titus:**

In section 2, subsection 2, paragraph (a), you have broken this down into different categories of how you would extend the time, using different timetables. I am curious as to why. It seems that everyone should have equal rights to that. If a homeowner bought undeveloped land where he will retire in 20 years, why would he be treated any differently than a municipality?

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

The simple answer is, it is the construction of works. If you have someone who has acquired a water right, the basis measure of unlimitable water right is the actual use, the beneficial use of that water. Using the example that you have given, where someone purchased a parcel of land with the intention to develop on it at some point in the future, there is no prohibition. Actually the simplest step in moving forward to perfect the water right is the construction of works. In that example, it would be the drilling of the well. By merely drilling the well and installing a meter, in that circumstance because he has a water right, that would satisfy the construction of works component.

The second component, the proof of beneficial use—the final step for perfection of a water right to receive a certificate—is still eligible for any number of extensions of time, which is the current statutory provision. The homeowner completes the work, drills the well today, and 20 years later, the well exists, and he has been filing his extensions of time to put the water to beneficial use. At that point in time when he actually turns it on and applies the water to beneficial use, he can complete the certification of his water right. This is just a threshold level to try to get us to that first point.

The reason that there are different time periods is because a single pivot or small well for a commercial or industrial purpose does not require a large amount of time to put the works in place to put the water to beneficial use. A municipality has to phase out a number of wells, infrastructure, and those different types of things, which is a much larger expenditure. The same goes for a large irrigation project, which may have numerous wells and infrastructure that need to be in place. As Mr. Wilson stated, we looked to Idaho, which has much more stringent requirements, but we used that as a model of reasonableness in terms of identifying

different types of projects and quantities of time to allow for that first step towards the perfection of a water right.

**Assemblywoman Titus:**

What if the homeowner does not put that well in right away? He bought the property and he intended to build a well later. Then 20 years down the road, he puts the well in, with the assumption that perhaps there is water there now, but when he bought the property he never drilled a well. How is that regulated?

**Micheline Fairbank:**

The other component of this relates to the antispeculation doctrine, which has been adopted in Nevada by the Nevada Supreme Court in the case of *Bacher v. Office of State Engineer of State of Nevada*, 122 Nev. 1110 (2006). Essentially what that states is that someone cannot acquire a water right and hold onto it with no immediate intent to apply it to beneficial use to fulfill the statutory requirements towards perfecting that water right. The water rights holder cannot hold it for some speculative purpose. He may intend to construct a house 20 years in the future; that is speculation because different things may happen in the meantime. That is not consistent or fair to individuals—particularly where we have a finite and constrained resource—that are later in time and have the immediate need and ability to place that water to beneficial use. If you purchase a parcel of land and plan to use the water at some point in the future, you need to start working on trying to perfect that right today. There are a lot of different options to assure the availability of that water while securing your water rights, or allow other people who have the immediate need to have access and use the water.

**Assemblywoman Titus:**

Is that current statute?

**Micheline Fairbank:**

That is correct. Just as a point of clarification, this does not apply to domestic wells—those are exempt rights from the permit and appropriation process.

**Chair Swank:**

When you were talking about this, it seems like there were two paths to fix this problem. You could either go about it the way you have in this bill, or you could change the conditions for giving extensions and tighten up those conditions so that it would give the State Engineer more of an option to turn down extensions. Will you talk a little bit about why you chose the path you did?

**Micheline Fairbank:**

The reason is that it is a relatively low bar. That is what this Legislature intended and put forth those standards to receive an extension of time: good faith, reasonable diligence, and a steady application of effort to complete the works to perfect that water right. It seems more complicated to try to establish one standard for an extension of time for the proof of completion of works and a separate standard to assess an extension of time for the proof of beneficial use. Leaving the standards the same for both, but limiting the number of

extensions of time for the proof of completion of works, is a more clean mechanism without having to create further complication, ambiguity, or confusion with regard to two standards for extensions of time. What we try to do is identify the simplest form of perfecting the water rights, the construction of works, and establish those limitations that are reasonable based upon the circumstances and conditions here in Nevada.

**Assemblywoman Peters:**

Section 2, subsection 2, paragraph (a), subparagraph (1) states "Additional time is necessary to organize the financing and construction of the work due to the size of the project." What kind of discretion is intended in that? How do you decide what size is required to limit the construction for a project? Are there thresholds that you expect to see?

**Tim Wilson:**

That would be one of the reasons you could have during the 15 years of extensions of time. You could use it as an excuse for not having proceeded with your project. We could approve the extension of time on that basis. It is not specific in that particular section. Section 2, subsection 2, paragraph (a), subparagraph (2) says that the person has to have "spent at least \$50,000 on the construction of work, including, without limitation, expenditures for the purchase of rights-of-way or property."

**Assemblywoman Peters:**

What kind of burden of proof would be expected with that?

**Micheline Fairbank:**

Typically it would be a similar type of proof to what we see submitted with extensions of time currently. Oftentimes the submissions will include a declaration or some form of statement from the applicant. The applicant will also submit receipts, other types of proof, and affidavits. We see different submissions to our office where the applicant will provide us with the documentation to support their requests for additional time. We can always go back to the applicant and ask for additional documentation. For example, if someone provides a statement, we can ask for backup to that statement, such as a contract. Those are the types of things that we would expect and currently evaluate with regards to our existing extension of time process. The standard is not changing, just the time limitation. We would be consistent with regards to the types of supporting documentation that we currently expect.

**Assemblyman Watts:**

Would you explain section 3, the language that would be added and the decision to allow any number of extensions?

**Micheline Fairbank:**

This is part of the component that we drew upon from the Idaho statute. It acts similarly to the tolling of the statute of limitations within a legal proceeding. This is, in a sense, an affirmative act that would allow an applicant, if their circumstances that are enumerated here are completely out of their control, it should not serve to inhibit their ability to reasonably seek to file the proof of completion of work. The sense here was to try to provide that



balance. Certainly, this would only come into play if it were to inhibit the ability to do so within a particular window of time. If it were a 15-year, 10-year, or 5-year extension of time, this would only come into play if they were not, upon resolution, able to complete their project within that window of time. If they were subject to these exceptions but still able to complete their project within a reasonable, expedient manner, this would not be applicable. For example, if we had an adjudication proceeding that was occurring and was inhibiting the ability to do so, because sometimes adjudication can take a very long time, that may offer an opportunity to allow a good-faith extension.

**Chair Swank:**

Are there any further questions? Seeing none, I will hear testimony in support of A.B. 62.

**Stephen D. Hartman, Executive Vice President, Corporate Counsel, Vidler Water Company, Inc.:**

Our company has done a fair amount of water resource development work throughout our state. It is a usual circumstance that when you are developing water resources in this state, you are typically at some point having to deal with federal land. When you are dealing with federal land, you are dealing with the National Environmental Policy Act of 1969 (NEPA) process and you are dealing with local permitting as well. This is pretty much what the State Engineer's office has looked at for the last two decades of dealing with this issue. The tolling issue, which is contained in section 2, subsection 3, sets the limits of the typical things you run into and what have been the occasions of granting extensions. This is just putting down in the statute the things that give the State Engineer the comfort that there is going to be work done because there are milestones that are being kept. I do not have an issue with anything put into this bill. The NEPA process is one in which we must deal with these issues. Invariably, the NEPA process also involves litigation. Between those two, we do not need to spend the State Engineer's time or the private sector time in filling out extensions for another year or another five years. This takes up time that can be spent on other issues. Large projects take lots of time.

**Chair Swank:**

Is there anyone else in support of A.B. 62? [There was no one.] Is there anyone who would like to speak in opposition to A.B. 62?

**Chris C. Mahannah, Owner, Mahannah & Associates, LLC, Reno, Nevada:**

Churchill County owns a number of water rights: surface water, groundwater in all forms, applications, permits, and certificates. They are opposed to this bill for the following reasons: The first one is related to Assemblywoman Titus's comment that they segregated based on the manner of use. Municipal gets 15 years, large irrigation gets 10 years, and all other uses get 5 years for filing proof of completion. All other uses can be commercial, industrial, quasimunicipal, which in many cases is somewhat synonymous with municipal. Why would municipal get 15 years and quasimunicipal only get 5 years?

I feel the bill also ignores economic conditions which are beyond the applicant's control, particularly a municipality. The exemptions in the bill do not address that. This could

severely hamper large water development projects. Churchill County has pending applications for an interbasin transfer from Dixie Valley to Lahontan Valley; that is an enormous project that involves pump stations and miles of pipeline. Fifteen years to drill all of those wells, equip them, and meter them is unrealistic.

The bill can be circumvented by either filing annual temporary changes or leasing water to others to restart the time clock when you file a change application. This will likely increase the cost of water rights administration for municipalities. I believe the current statute allows for flexibility for the State Engineer to review proof of completion extensions. I do not believe this bill is necessary. If it is going to proceed, I think municipal purveyors or legitimate water purveyors should be exempt from these provisions.

**Steve Walker, representing Truckee Meadows Water Authority; Douglas County; Lyon County; Eureka County; and Storey County:**

My testimony was developed mostly through Eureka County, but it does capture the concerns of all the entities that I am representing. We do not support A.B. 62 as written. We do not oppose measure-controlled water speculations, but we are not quite clear on the need for this bill. We believe the State Engineer already has the power to deny extensions of time or completion of work without A.B. 62. We believe A.B. 62 will tie the hands of the State Engineer when extension of time is appropriate.

Further, municipalities are asked to develop master plans and identify reliable and sustainable water supplies for their community development and expansions for decades into the future. Often this requires acquiring water rights that may not be put to use within the deadlines that would be mandated in A.B. 62. Municipalities could be forced to expend public resources and complete works that would end up being dated, obsolete, or stranded assets by the time the completed work would be done. Put simply, the growth patterns are not discernible, and we feel that the 15-year extension would not recognize things like the Great Recession that set things back 8 to 10 years.

The municipalities and water companies that I represent are not supporting A.B. 62 at this time. We would be willing to work with the bill sponsors and see if we can correct the issues.

**Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:**

Our opposition is not based on the objectives that are attempted to be pursued through this legislation. We have organizational policy that says we ask that all municipal applicants or permit holders be held to the same standard as other entities. Our argument against the bill has to do with the different segments of water types and how they are treated.

**Chair Swank:**

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

**Neena Laxalt, representing Central Nevada Regional Water Authority; and Humboldt River Basin Water Authority:**

Both of the authorities I am representing are neutral to A.B. 62. However, we do have concerns about the timeline, especially for municipal uses. We are encouraging counties and cities to incorporate and integrate their land use plans with their water plans. We feel that the deadlines for completion of works for municipal use proposed in this bill might be a little short. We would like to work with the State Engineer and other stakeholders to address this issue.

**Chaunsey Chau-Duong, Public Affairs, Southern Nevada Water Authority:**

The Southern Nevada Water Authority is the organization that supplies water to 73 percent of the state's population, using only 5 percent of the state's water supply. We are neutral on this bill. We are neutral because the State Engineer's office has indicated a willingness to work on the bill. Conceptually, we understand what the State Engineer's office is trying to do, but as a water purveyor with a 50-year water resource plan, we feel that we need to have the flexibility to use municipal water supply as the population grows and not have restrictions placed on us for certain time periods.

I heard from the State Engineer's testimony that this bill is intended to target speculators. As such, maybe the possibility could be entertained by the Committee or the State Engineer to exempt municipalities from this bill. We have also been in contact with him via email about that possibility.

In addition, we feel that pursuant to NRS 533.380, subsection 3 and subsection 4, that the State Engineer already has the authority to deny extensions if he wants to. As such, maybe the way to go about this would be to possibly have the State Engineer set criteria through the development of regulations on the approval or denial of extensions. We are more than happy to work with the State Engineer's office on this and look forward to the discussion and the opportunity to bring up some options to the State Engineer and this Committee.

**Kyle Roerink, Executive Director, Great Basin Water Network:**

We think the intent of this bill is a good one, but the words "one or more" in section 2, subsection 2 keeps the door open for unlimited extensions. We think some clarifying language could help to improve the intent of the bill.

**Warren B. Hardy, II, representing Virgin Valley Water District; and Moapa Valley Water District:**

I would agree with the comments from the Southern Nevada Water Authority with regard to how this potentially impacts the water districts. I know he has spoken with the State Engineer's office and we are looking forward to working with them to try to address those concerns.

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

We are neutral on this bill. We do have some concerns with the potential ability for extension in perpetuity. There should be some limits placed on these timelines. In general, it seems the intent of the bill to avoid water speculation is a good thing.

**Chair Swank:**

Seeing no one else in neutral, are there any closing remarks?

**Micheline Fairbank:**

We certainly appreciate the perspectives and interests of the municipal water suppliers. As we have stated previously, we are open to exploring alternatives that are a balancing of the interests and what we are trying to accomplish within the confines of this particular bill. With regards to a concern about our ability to ratchet down and deny extensions of time, that is certainly fraught with significant executional difficulties for us because if we cancel a water right based upon extensions of time, it is often challenged in court. The courts have leave to exercise equitable relief and we have historically seen courts returning those water rights to individuals even though we have gone through a cancellation process. One of the driving factors behind this legislation is that we can at least try to create a cap with regards to the number of extensions. Additionally, with respect to the concern about opening the door for perpetuity of extensions of time, that is certainly not our intention and we welcome suggestions with regards to how to clarify the language. The language included in here was for the purpose of allowing us not to have to grant either a single 5-, 10-, or 15-year extension of time, but allow smaller incremental extensions of time not to exceed that window.

**Chair Swank:**

I would like to ask Mr. Amburn to clarify a bit about the extensions of time.

**Allan Amburn, Committee Counsel:**

Looking at section 2, we are replacing an extension with one or more extensions. We are providing various different time limits for municipal use, for other large projects, and for other projects with the 15-, 10-, or 5-year period. Those are essentially the ceiling amounts of time that the extensions can be provided for. If you have five extensions, each of one year

for a section 2, subsection 2, paragraph (c) situation, then you would have five extensions, but the total amount of time is 5 years. It would not necessarily be extensions in perpetuity; it would be constrained by the time limits in those paragraphs.

**Chair Swank:**

I will close the hearing on A.B. 62. [Written testimony was provided but not mentioned ([Exhibit E](#)).] I will open up for public comment. Seeing no one, we are adjourned [at 5:15 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 the Work Session Document for Assembly Bill 58, dated March 13, 2019, presented by Jann Stinnesbeck, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit D](#) is the Work Session Document for Assembly Bill 59, dated March 13, 2019, presented by Jann Stinnesbeck, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit E](#) is written testimony submitted by Kenny Bent, Private Citizen, Pahrump, Nevada, in opposition to Assembly Bill 62.