

**MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES**

**Eightieth Session
May 2, 2019**

The Senate Committee on Natural Resources was called to order by Chair Melanie Scheible at 4:01 p.m. on Thursday, May 2, 2019, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Chris Brooks, Vice Chair
Senator Dallas Harris
Senator Pete Goicoechea
Senator Ira Hansen

GUEST LEGISLATORS PRESENT:

Assemblyman Greg Smith, Assembly District No. 30
Assemblywoman Heidi Swank, Assembly District No. 16
Assemblywoman Robin L. Titus, Assembly District No. 38
Assemblyman Howard Watts, Assembly District No. 15

STAFF MEMBERS PRESENT:

Alysa Keller, Committee Policy Analyst
Erin Sturdivant, Committee Counsel
Steve Woodbury, Committee Secretary

OTHERS PRESENT:

Doug Busselman, Nevada Farm Bureau Federation
Tim Wilson, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources

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Jim Lawrence, Deputy Director, State Department of Conservation and Natural Resources

Tony Wasley, Director, Department of Wildlife

Tiffany East, Board of Wildlife Commissioners, Department of Wildlife

Christi Cabrera, National Conservation League

Kyle Roerink, Great Basin Water Network

Drake Ridge, Pyramid Lake Paiute Tribe

Chaunsey Chau Dong, Southern Nevada Water Authority

Amanda Moss, Southern Nevada Home Builders Association

Andy Dick, Focus Plumbing; Southern Nevada Home Builders; Nevada Subcontractors Association; Plumbing, Heating, Cooling Contractors of Nevada

Warren Hardy, Nevada League of Cities and Municipalities

CHAIR SCHEIBLE:

I will open the hearing on Assembly Bill (A.B.) 95.

ASSEMBLY BILL 95 (1st Reprint): Revises provisions relating to water. (BDR 48-504)

ASSEMBLYWOMAN HEIDI SWANK (Assembly District No. 16):

I grew up in a home with a well outside a town of 2,000 in Wisconsin. I understand the concerns about water and wells.

Nevada Revised Statutes (NRS) 533 deals with the adjudication of vested water rights and appropriation of public waters. In this chapter, specifically NRS 533.024, there is a legislative declaration that in part speaks to domestic wells. It states:

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.

This bill aims to protect the supply of water to domestic wells from unreasonable adverse effects.

Under Nevada's water laws, domestic well owners are often the most junior water rights holders. This means that when curtailment of a basin happens, domestic well owners are most often the first left with no water.

When I first started learning more about water law as a member of this body, I was told by former Speaker Marilyn Kirkpatrick, someone with decades of experience, that it is not a matter of if we will run out of water, but a matter of when. At some point in the future curtailment will happen.

Regarding homeownership, NRS 533.024 defines domestic wells as appurtenances to private homes. We know that homeownership has been the main way that American families have accumulated wealth over generations. Houses are passed down. They appreciate and are sold by the subsequent generation. Many American families have been able to move up financially through homeownership.

Over the many years since Nevada became a state, people have moved here and communities have developed. The State has allowed some Nevadans to put in wells and allotted them 2 acre-feet of water per year for residential use. Over time and in some places in Nevada, we have ended up with a large number of domestic wells. People's homes are most likely a good portion of their accumulated wealth.

Under current Nevada law, if the water situation in a given basin became so dire that water needed to be curtailed, homes could be left with zero acre-feet of water. As a State lawmaker and someone who cares about well owners, I am looking to protect their supply of water from unreasonable adverse effects. With this bill, if curtailment was ever needed, domestic well owners would have up to 0.5 acre-feet of water per year.

Chapter 534 of NRS deals with underground water and wells, and section 110 specifies the rules and regulations of the State Engineer. The main section of A.B. 95 is section 9, which stipulates that if the court or the State Engineer orders curtailment, domestic well owners would be allowed up to 0.5 acre-feet per year. On average, residential water use is approximately 0.36 acre-feet per year, and this bill would allow for more than that.

To accomplish this, domestic well owners would have to allow meters to be put on their wells. This would be necessary to ensure that well owners use only the amount allocated while prior appropriation is suspended to a degree.

Section 1, subsection 6 states that where the annual replenishment to groundwater is not adequate to meet the needs of permittees and vested-right claimants need, the State Engineer can curtail withdrawals. Subsection 7 states that in critical management areas that have been so designated for 10 consecutive years, the State Engineer shall curtail withdrawals, unless a groundwater management plan has been approved for the basin. In either of these cases, domestic wells will be allocated 0.5 acre-feet annually.

SENATOR GOICOECHEA:

Section 1, subsection 6 states that:

... the State Engineer shall conduct investigations in any basin or portion thereof where it appears that the average annual replenishment to the groundwater supply may not be adequate for the needs of all permittees and all vested-right claimants, ...

Section 1, subsection 7 authorizes the State Engineer to designate a basin as a critical management area and that a domestic well would have to be in a critical management area for at least ten years or be subject to a court order before being curtailed. Adjudication would be required to address all vested-right claimants. Is that correct?

ASSEMBLYWOMAN HEIDI SWANK

I would need legal clarification to answer that question.

ERIN STURDIVANT (Committee Counsel):

I would need to look into that and provide Senator Goicoechea an answer to that question.

SENATOR HANSEN:

In your testimony, you mentioned that wells are appurtenances to the property. Do domestic wells have junior or senior water rights status? An underlying issue here is the need to protect the priority rights of those with senior water rights. My concern with this bill is that we might be infringing on senior water rights by attempting to be fair and giving a minimal amount of water to all homeowners.

This seems reasonable, but under the rule of prior appropriation, seniors get 100 percent before juniors get anything. If a domestic well is simply an appurtenance to the property and does not factor into prior appropriation, there is no problem. If domestic wells do fall under prior appropriation, then there is a problem.

ASSEMBLYWOMAN SWANK:

Domestic wells are subject to the rules of prior appropriation, and senior and junior rights would be considered. If severe circumstances required curtailment, everyone in the particular basin would be affected. The idea of this bill is that we are not going to leave domestic well owners with nothing. Without this bill, wells would be capped and owners would have nothing. This bill would ensure some water, but everyone would lose some water at some point in order to make this work for all Nevadans.

SENATOR HANSEN:

Is it not true that some of the people with wells could be senior water rights holders?

ASSEMBLYWOMAN SWANK:

As I understand it, yes.

CHAIR SCHEIBLE:

What happens if there is not enough water for every domestic well owner to get 0.5 acre-feet of water?

ASSEMBLYWOMAN SWANK:

I do not have an answer but can get that information, unless the State Engineer has a response.

CHAIR SCHEIBLE:

Perhaps that is unlikely to occur, since 0.5 acre-feet is a relatively small amount.

As I understand it, meters would not be put on domestic wells today but only if curtailment was required at some point in the future. Then the meters would be removed after the curtailment has ended. Is that correct?

ASSEMBLYWOMAN SWANK:

Yes, that is how I read the bill as well. We know there is sensitivity around wells and meters. There is no intent or desire to put meters on wells except under extreme circumstances if curtailment is needed in a specific basin.

CHAIR SCHEIBLE:

Domestic well owners with another source of water could opt to not use their wells during a curtailment, not have their wells metered and go back to using their wells after the curtailment. Is that correct?

ASSEMBLYWOMAN SWANK:

That is the intent of the bill.

DOUG BUSSELMAN (Nevada Farm Bureau Federation):

This is a good policy, and we are in support of A.B. 95. The prior appropriation doctrine should apply to everyone, including domestic well owners. If this bill passes, it will establish that principle more firmly. Under current law, there is a date of priority assigned to a domestic well when it is drilled. That establishes a precedent. The duty assigned to that well is two acre-feet. Domestic well owners have the same responsibility to follow State water law as others. This bill offers protections and benefits to domestic well owners.

SENATOR HANSEN:

We are speaking of worse-case scenarios. As I understand prior appropriation, a farmer in Lovelock who claims to be most senior on the Humboldt River should receive 100 percent of his or her allotment before a junior water rights holder gets a drop. Is that correct?

MR. BUSSELMAN:

Yes, that is correct. If there is a need for curtailment, it is brought about in line with junior water rights owners being shut off based on how much water is available according to the requirements. According to prior appropriation doctrine, junior water rights would be curtailed while senior water rights owners would be able to continue to pump.

SENATOR HANSEN:

If a basin reaches a point of over-appropriation, junior water rights holders would be capped off or restricted, correct? I can see where this bill is going. If someone buys a house in good faith in an over-appropriated basin, the State

Engineer could come in and, because the homeowner is a junior water rights holder, curtail water and diminish the value of the home.

MR. BUSSELMAN:

This bill is not just about over appropriation, and it is a mistake to think of it only in those terms. With extended drought conditions, a basin might not be over-appropriated but still have no water. A curtailment might be necessary because of that lack of water.

SENATOR HANSEN:

Under the prior appropriation doctrine, in a drought situation, the senior water rights holders are still allowed 100 percent of their appropriation before anyone else gets a drop.

MR. BUSSELMAN:

That is correct. If there is water available, the senior water rights holder gets to be the last one pumping.

TIM WILSON (Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources):

I am reading from my written testimony in the neutral position on [A.B. 95 \(Exhibit C\)](#).

SENATOR GOICOECHEA:

The two acre-feet duty on a domestic well has been mentioned, but the duty on a domestic well is set in statute at 1,800 gallons per day. That amount has changed up and down over the years. Is that correct?

MR. WILSON:

That amount used to be 1,800 gallons per day, which equated to 2.02 acre-feet annually. That was changed to a two acre-feet annual duty of water to better account for seasonal needs, such as heavy use in the summer for irrigation and lighter use in the winter. The amount has changed many times over the years.

SENATOR GOICOECHEA:

It has been as low as 900 gallons and as high as over 3,000 gallons.

SENATOR HANSEN:

In the absence of this bill passing, and if circumstances required curtailment, the most junior water rights holders would be cut off until senior water rights holders received 100 percent of their allocation. Is that correct?

MR. WILSON:

Under a water curtailment, statute says that domestic wells are included, and they do have a priority date from the date the wells were drilled. Depending on the amount of water available and the specific situation, a date would be selected, and senior users below that date would receive 100 percent; junior users above that date would receive nothing. Under the provisions of the bill, domestic well users would be spared a 100 percent curtailment and receive a de minimis amount of 0.5 acre-feet. This would allow people to continue using their homes, but it would be limiting.

SENATOR HANSEN:

Do you perceive this type of a situation not just for an over-appropriated basin, of which there are many, but as a temporary arrangement with meters in a basin impacted by severe drought conditions?

MR. WILSON:

I would envision curtailment most likely occurring in a basin with a combination of prolonged drought and over appropriation. If a drought was severe enough in a basin that was not over-appropriated, it would be possible for the aquifer to be depleted to a point where curtailment would be required.

SENATOR HANSEN:

In over-appropriated basins with declining aquifers, should we be shutting down junior water rights holders now?

MR. WILSON:

Curtailment is a harsh tool of last resort. Responsible water management is a better path. I will continue working with the Legislature to get the various tools I need to better manage these over-appropriated basins and take steps that are less than curtailment but still effective groundwater management to bring these basins back into balance.

SENATOR HANSEN:

You deal with many challenging and longstanding issues related to water. Senior water rights holders in Lovelock Valley are allowed to have 100 percent allocation under Nevada Law. How they use that water is not up to the State Engineer; it is up to them. They can flood irrigate if they want. The State Engineer's job is to make sure senior water rights holders are whole, not to spread the misery among both senior and junior water rights holders. That idea is not consistent with the prior appropriation doctrine in State law. Many of my constituents are senior water rights holders who have concerns about this and other efforts to spread the misery equally when the misery is supposed to be spread on the junior water rights holders first.

CHAIR SCHEIBLE:

When is the last time we implemented a curtailment?

MR. WILSON:

The State attempted a limited curtailment in Smith and Mason Valleys. It was challenged in court. The curtailment was on supplemental underground irrigation water. The effort was overturned by the court, and curtailment was not allowed. That is the only time it has been attempted on groundwater.

SENATOR GOICOECHEA:

We need to comment on the critical management areas (CMAs). Diamond Valley and Pahrump are both CMAs. Is that correct?

MR. WILSON:

Pahrump Valley is not a CMA at this time. Pahrump has been very proactive in developing a groundwater management plan. Diamond Valley is a CMA. Under our CMA declaration, if Diamond Valley does not come up with a plan to reduce water usage after ten years, mandatory curtailment will occur. The Valley has developed and is pursuing a plan the Division of Water Resources has approved, but it is subject to a court action.

SENATOR HANSEN:

I reviewed a map provided by the State Department of Conservation and Natural Resources Director Bradley Crowell, and there are other basins worse off than Diamond Valley. Some basins are over-appropriated by 300 percent. I was surprised how many valleys of concern there are.

ASSEMBLYWOMAN SWANK:

This bill is about taking care of hardworking Nevadans who the State allowed to drill wells. They may not be influential or the biggest users, but those are the people I am most concerned about. We allowed them to drill wells and promised two acre-feet per year. Pulling the rug out from under them is not a good way to govern the State.

SENATOR GOICOECHEA:

Regarding section 6 of the bill, I would be more comfortable if adjudication were required first. Otherwise, the State Engineer could start arbitrarily curtailing domestic wells.

ASSEMBLYWOMAN SWANK:

I will work on that and get back to you.

CHAIR SCHEIBLE:

I will close the hearing on A.B. 95 and open the hearing on A.B. 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 GREG SMITH (Assembly District No. 30):

I am presenting A.B. 93 from my written testimony ([Exhibit D](#)).

JIM LAWRENCE (Deputy Director, State Department of Conservation and Natural Resources):

I am presenting A.B. 93 from my written testimony ([Exhibit E](#)).

SENATOR HANSEN:

What is the total amount this program has raised?

MR. LAWRENCE:

The program has brought in nearly \$8 million in revenues since its inception 20 years ago. It has been a successful program. The Division of State Lands gives out approximately \$350,000 in grants annually.

CHAIR SCHEIBLE:

Seeing no additional testimony, I will close the hearing on A.B. 93 and open the hearing on A.B. 404.

ASSEMBLY BILL 404 (1st Reprint): Authorizes the Board of Wildlife Commissioners to establish a program authorizing certain persons to transfer, defer or return certain lawfully obtained tags if certain extenuating circumstances exist. (BDR 45-1029)

ASSEMBLYWOMAN SWANK:

This bill is a collaboration between Assemblywoman Titus and me to fix a couple of problems in the Department of Wildlife.

ASSEMBLYWOMAN ROBIN L. TITUS (Assembly District No. 38):

Assembly Bill 404 started out as a hunter-mentor program but has evolved to a program that allows the Department of Wildlife (NDOW) to help people who have big game tags but are not able to use them. Sometimes people have waited a long time or paid a lot of money but are unable to use their tags. This bill creates an avenue to turn them in, give them to a family member or donate them. It is a good policy. The idea arose several sessions ago when someone approached me who was frustrated that he had waited a long time and had used 12 points for his tag but became injured and could not use it. There was no clear process on what to do with his tag.

TONY WASLEY (Director, Department of Wildlife):

Assembly Bill 404 authorizes the Board of Wildlife Commissioners to establish a program authorizing certain persons to transfer, defer or return certain lawfully obtained tags if certain extenuating circumstances exist. Presently, NDOW maintains no authority to exercise discretion in the event that there are extenuating circumstances.

The demand for big game hunting tag outpaces the supply. This year's big game application period ended on April 29. Nearly 75,000 people applied for fewer than 30,000 tags. In many instances, individuals wait 15 to 20 years or longer to get tags. For each year they are unsuccessful, applicants receive bonus points. Applying for tags can be a significant investment financially and in time. There have been a number of circumstances in recent years where individuals have waited 15 to 20 years to obtain tags but were unable to use them because of extenuating circumstances. These have included open heart surgery, death of

a family member or injuries. One firefighter was burned and unable to defer the use of his tag or recover bonus points.

This would provide authority to the Board to adopt regulations that would establish the conditions that could be defined as extenuating circumstances. The NDOW would implement those regulations and implement the program. In instances where those circumstances were determined to be valid, a person would have the option to transfer his or her tag to another person eligible to hunt big game in the State, defer the use of the tag until the next applicable season or return the tag to NDOW and receive a restoration of any applicable bonus points.

ASSEMBLYWOMAN TITUS:

One thing tag holders could not do is sell their tags.

SENATOR GOICOECHEA:

I appreciate the intent of this bill. Section 1, subsection 1, paragraph (c), subparagraph 1 says, "Transfer his or her tag to another person who is otherwise eligible to hunt a big game mammal in this State." Would an extenuating circumstance have to exist for someone to make that transfer? I want to make sure that we do not have a situation where someone who wants a tag asks 50 people to put in for a tag with the intent of transferring it.

ASSEMBLYWOMAN TITUS:

Yes, that is one of the clarifications we made in the bill. A transfer could only occur if there are extenuating circumstances as defined by the Board of Wildlife Commissioners.

SENATOR HANSEN:

I had the same concern Senator Goicoechea expressed. What is the peak dollar value for a big horn sheep tag in the auction world?

MR. WASLEY:

There have been records approaching \$500,000 for Montana Rocky Mountain sheep tags. Last year, there was an individual who purchased a Nevada desert bighorn tag for \$170,000. He purchased it late winter or early spring with a diagnosis of amyotrophic lateral sclerosis. His disease progressed at a rate that could not be anticipated, and he was unable to use the tag in the way he had envisioned. He was hopeful he could transfer that tag to his son, but there was

no mechanism to do so. It is not unheard of for bighorn sheep tags to sell for \$120,000 to \$150,000.

SENATOR HANSEN:

I am concerned about the potential for fraud. Some of these tags are exceptionally valuable. Mule deer tags probably would not be an issue, but there could be wealthy people wanting to abuse the program to obtain high-value tags by getting a bunch of people to apply for tags on their behalf. How do you enforce the rules of the program and ensure that does not happen?

ASSEMBLYWOMAN TITUS:

Section 1, subsection 2 of the bill reads: "If a big game hunter transfers his or her tag to another person ... the big game hunter may not charge a fee or receive any compensation for such a transfer."

SENATOR HANSEN:

I understand that. My concern is on the application side of it where someone could get 50 people to apply. There is no specific penalty to prevent that. Once people have tags, they could be prosecuted if they sell them. Someone who wants a bighorn sheep tag but does not have lots of money could have extended family members apply for a tag with the intent to transfer. It is surprising how much money some of these tags have brought in to the Heritage Fund.

CHAIR SCHEIBLE:

Anyone who is transferring a tag would have to show an extenuating circumstance, correct?

ASSEMBLYWOMAN SWANK:

That is correct.

CHAIR SCHEIBLE:

Are points gathered by entering the draw multiple times?

ASSEMBLYWOMAN TITUS:

That is correct. As an avid hunter, I put in for the draw every year. I have 12 points, some of which I have purchased in years when I knew I could not go hunting. If I do put in for a tag and do not draw one, I get a point. I have

gathered 12 points over the past 15 years for a bighorn sheep tag, which I have yet to draw.

CHAIR SCHEIBLE:

It seems more likely that an experienced hunter would be able to get a tag that 10 or 15 other hunters wanted than a group of 10 or 15 new hunters get a tag that a longtime hunter was not able to get.

ASSEMBLYWOMAN TITUS:

Statistically, everyone has an equal chance by putting in for a tag one time. Bonus points accumulate and are squared to produce more draw numbers, but often someone with no points will draw a tag and someone with points will not.

TIFFANY EAST (Board of Wildlife Commissioners, Department of Wildlife):

We are in support of A.B. 404. The only question we have is related to the first degree of sanguinity. Some sportsmen have expressed that they would like to include stepchildren.

CHAIR SCHEIBLE:

We will close the hearing on A.B. 404 and open the hearing on A.B. 163.

ASSEMBLY BILL 163 (1st Reprint): Revises provisions governing water conservation. (BDR 48-798)

ASSEMBLYMAN HOWARD WATTS (Assembly District No. 15):

I will present A.B. 163 from my written testimony ([Exhibit F](#)). This bill updates existing statutes related to conservation standards put in place in the 1990s.

Sections 1 and 8 have to do with water loss information provided by suppliers of water. Section 1 covers those sending their plans to the Division of Water Resources. There are also water providers regulated as utilities under the Public Utilities Commission of Nevada, which are covered in section 8. The requirements are essentially the same and are distinguished by entities that serve 3,300 customers or more and those that serve fewer than 3,300 customers. This accounts for larger, complex systems and smaller systems.

For the larger systems, there is a methodology and software from the American Water Works Association for conducting water-loss auditing. These systems

can be used to gather water-loss information, including water build, and produce a comprehensive and robust audit. Goals to reduce water loss can be produced based on the results.

Smaller systems will only need to report how much water is being delivered to them and how much is being billed out. Calculating the difference between those two numbers shows how much water loss there is in the system.

Sections 4 through 7 have to do with fixture requirements. Going forward from January 1, 2020, the fixtures we have already established in State law will be tied to the Environmental Protection Agency (EPA) WaterSense standards. These sections also include the exceptions noted earlier in my testimony.

Proposed Amendment 5823 ([Exhibit G](#)) addresses waterless urinals. Since they do not use any water, they are not included in the WaterSense Program. This amendment makes it clear that these fixtures are allowed. The amendment includes clarifying language about certain shower fixtures that are not technically shower heads. The intent of the bill is not to restrict the number of fixtures in a shower but ensure that each fixture is water-efficient. Some master showers may have multiple shower heads, body sprays or other fixtures. This Amendment clarifies that all fixtures must be water-efficient.

SENATOR HANSEN:

As a plumber of 40 years, my understanding is that these kinds of things are typically addressed by local building codes. It seems unusual to go through the legislative process to determine fixture usage and gallonage requirements.

When the change was made from 3.5 to 1.6 gallon toilets, I was impressed how responsive industry was to adjust to this. However, there is a certain volume of water that is required to carry away waste. As this is scaled back further, clogging could result because waste is not carried away thoroughly and efficiently. Additional water could then be needed to clean out lines. It is a great idea to try to save water, but these things should be carefully considered. How has industry responded to this measure?

ASSEMBLYMAN WATTS:

In many cases there are local codes that address these issues, and water conservation measures already exist in State law. However, the applicable statutes have not been updated. The bill sends a clear message that the State

wants to use these updated standards for water conservation. A national water conservation policy scorecard showed that Nevada is lacking in this regard. This bill would establish a single standard that applies Statewide.

Regarding industry response, we did receive some feedback. Industry wants to make sure waterless urinals are not unintentionally banned going forward. Another concern is regarding institutions such as prisons and jails, which have to use different fixtures for security purposes. These cannot be WaterSense certified, and this is already addressed in statute. Body sprays and other fixtures are also items of concern, and they have been addressed in the Amendment.

Regarding the amount of water needed to carry waste, the Clark County Reclamation District has not expressed any concerns about that or the bill. Many of the proposed standards are already in place, and many WaterSense certified fixtures are already being sold in stores. It is my understanding that if requirements are further tightened in the future, it will be because technological advances support those increases while maintaining the performance of the systems.

Assemblywoman Titus asked a question about septic systems. Water-efficient appliances can be beneficial for septic systems.

SENATOR HANSEN:

You have done your homework. While we do seek efficiency, these things are typically handled at the industry level, rather than state-by-state legislative action. Nevada typically follows California because it is an enormous market. For manufacturers of plumbing fixtures, that is the target market. Nevada is a subsidiary market. I want to make sure we are not creating rules and requirements that conflict with other states. We should not try to force industry to conform to different standards in different states. I will be curious to hear further comments from industry.

ASSEMBLYMAN WATTS:

I appreciate that and have worked to address as many of those industry concerns as possible.

CHAIR SCHEIBLE:

This WaterSense standard is a national standard, not a Nevada standard, correct?

ASSEMBLYMAN WATTS:

That is correct. It is a public-private partnership. The EPA developed the program and the branding, but industry associations are partners. Industry agencies set the standards and certify fixtures to be WaterSense qualified. The EPA does not decide unilaterally which fixtures are included. It works with trade associations and relies on their expertise to make these determinations.

SENATOR GOICOECHEA:

Looking at the bill, it appears that utilities serving fewer than 3,300 people are exempt, and if there are fewer than 500 hookups, compliance is not mandatory. Why does the bill have a variety of different dates for various retrofitting requirements? Public buildings could have a significant hit.

ASSEMBLYMAN WATTS:

There is a carve out for transient water systems which serve campgrounds and other similar facilities. Initially, there was a significant fiscal note from the Division of State Parks because it did not want to meet all of the rigorous water auditing standards for campgrounds. We carved out those systems to remove the more detailed water audit methodology that the larger utilities have to follow.

The last time the State addressed water efficiency standards was 1993. At that time, prior standards were grandfathered in. This bill likewise allows for date-driven standards, with the new standards going into effect January 1, 2020. These standards only apply to new construction, major renovations or expansions after that date. There will be no mandate for people to go out and replace their fixtures.

CHRISTI CABRERA (National Conservation League):

We are in support of A.B. 163. Nevada is the driest State in the Union, and we need to use our limited resources in a responsible fashion so there is enough water left for plants, wildlife, rivers and lakes. We applaud any effort to conserve water.

KYLE ROERINK (Great Basin Water Network):

We support this bill. It recognizes the nexus between our water resources, infrastructure and consumption. It is a forward-looking measure in the driest State.

DRAKE RIDGE (Pyramid Lake Paiute Tribe):

The Tribe echoes the sentiments of previous support testimony, and we urge the Committee to support this bill.

CHAUNSEY CHAU DONG (Southern Nevada Water Authority):

As the organization that supplies more than 70 percent of the State's population with less than 5 percent of the State's water supply, we support A.B. 163. The Southern Nevada Water Authority (SNWA) has put significant effort into conservation. The SNWA's conservation initiatives include the Water Smart Landscape Rebate Program, where customers receive rebates for removing turf, and the Water Efficient Technologies program, which offers financial incentives to commercial and multifamily property owners who install water-efficient devices and technologies. These efforts have helped saved over 119 billion gallons of water to date. Although our community has done an excellent job in managing and reducing water consumption, water conservation should be continually at the forefront of our community's mindset.

AMANDA MOSS (Southern Nevada Home Builders Association):

We are in opposition to A.B. 163 as written, although we are working with the bill sponsor on an amendment. The Southern Nevada Home Builders Association (SNHBA) has worked diligently on water conservation issues over the past 18 months. The SNWA submitted a measure at the local level during the 2018 building code adoption process in southern Nevada. That measure was very similar to this bill. The SNHBA worked with the SNWA on body spray language and a delayed implementation date to ensure an adequate supply of lower gallons per minute toilets and other products would be available on the market for installation in new residential construction. This work was ongoing as recently as January 2019. However, that language and agreement was put on hold when this bill was introduced and we began working with the bill sponsor.

In southern Nevada, we receive return-flow credits for every drop of leftover water in pipes from indoor use that is treated, recycled and reused, regardless of when the building was built, excluding septic. A Statewide standard would conflict with our award-winning southern Nevada water purveyor's efforts to conserve water and the return-flow credit program that is already in place. We appreciate the delayed implementation date included in the bill and retained in the proposed amendment and the bill sponsor's willingness to work with our team to find solutions.

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The SNHBA unintentionally provided amendment language that could lead to unintended consequences regarding noncertified versus certified fixtures. This language is on page 7 of Proposed Amendment 5823, lines 43 through 45 regarding body sprays.

We cannot support a concept that ties water conservation to a federal program because we have local policies and processes in place that could provide southern Nevada with return-flow credits.

SENATOR HANSEN:

When you mentioned federal standards, were you referring to the WaterSense Program?

Ms. Moss:

Yes, that is correct. The EPA WaterSense Program is a certification process manufacturers go through to get their products certified. There is a federal scorecard the EPA and other federal agencies and associations put together that does not credit Nevada for return-flow credits. That is the basis for the water conservation efforts, in terms of indoor use, in southern Nevada. We have worked with industry. Because of the way the EPA's system is set up, and because of the way the products are certified, there is not a guarantee that those products will be available for new residential construction.

SENATOR HANSEN:

In order for you to support the bill, would that have to be removed?

Ms. Moss:

I do not want to talk about hypotheticals. The bill sponsor has done a good job and has worked with us to find common ground and address our concerns. We are close to finding agreeable language that will address the unintended consequences we foresee.

Andy Dick is with me today and is one of SNHBA's plumber members. He is also a member of Plumbing, Heating, Cooling Contractors of Nevada and the Nevada Subcontractors Association and can talk more about some of the issues related to lack of supply we are seeing.

CHAIR SCHEIBLE:

Why is it that the fixtures cannot be compliant with the WaterSense Program and still participate in the return-flow credit program?

Ms. MOSS:

Water conservation is a complex issue. The intent of this bill is water conservation, which we support. We have mechanisms in place such as the return-flow credit. Separate and aside from that program is the EPA's WaterSense Program, which requires that individual products be certified through a rigorous process. There are products in new residential construction or upgrades, including body sprays, which currently may or may not be certified. It is not the fault of the State that we do not get return-flow credit in southern Nevada at the federal level.

CHAIR SCHEIBLE:

I do not see the connection with this bill and the problem with return-flow credits.

Ms. MOSS:

Return-flow credits come from any water that falls off unit showers, is flushed through toilets and so forth. This water is treated at a wastewater treatment facility and recycled through the system. This water goes through the pipes and is reused. It is already recycled in southern Nevada.

Water conservation is important. We are the driest State in the Nation. Limited resources, growth, sustainability—all of these things are already addressed in southern Nevada. This Statewide bill addresses the issue of water conservation, but we already have a system in place in southern Nevada. In a Statewide bill, we would not get credit for existing programs available in southern Nevada. There are issues about what the next standards will be. The bill identifies that the standard will be the EPA's WaterSense Program. However, this certification does not necessarily include every single type of product that is used for new residential construction.

CHAIR SCHEIBLE:

I do not fully understand your opposition to this bill.

SENATOR HARRIS:

Would it be fair to characterize your concern that southern Nevada is already pursuing robust water conservation efforts and that this bill would require more, but there is not much more that can be done because of your current efforts?

Ms. Moss:

Yes. Our members are dedicated using the most current building codes and the most water efficient products that are on the market today. There is not much more that can be done. Any loss of water is already recycled and put back into the system.

CHAIR SCHEIBLE:

If you are already using the water-efficient fixtures, why are you opposed to a bill that requires you to use water-efficient fixtures?

Ms. Moss:

The issue is not water-efficient fixtures, it is WaterSense certification and its stringent requirements and process. Every single product must go through that process. The current code for toilets is 1.6 gallons. There are products available on the market using 1.28 gallons, as required in California. There are products using 1 gallon. These are not all necessarily certified under the WaterSense Program. As many as 95 percent of our members are going above and beyond code for shower heads and other products.

ANDY DICK (Focus Plumbing; Southern Nevada Home Builders; Nevada Subcontractors Association; Plumbing, Heating, Cooling Contractors of Nevada):

We are in opposition to this bill for the reasons stated in previous testimony. We have surveyed several manufacturers, and the WaterSense certified products are limited. For example, we were unable to find any pot fillers, Roman tub fillers, body sprayers or laundry faucets that are WaterSense certified. Several kitchen faucets also do not comply. If manufacturers are required to certify, that could drive up costs or result in certain lines being discontinued and products becoming unavailable. We do appreciate the intent of this bill and the opportunity for dialogue.

SENATOR HANSEN:

You are saying there are a lot of fixtures that do not meet WaterSense standards yet, such as Roman tub fillers, laundry faucets and so forth.

Consequently, many manufacturers are currently unable to meet those expectations at this time. Is that accurate?

MR. DICK:

Yes, that is correct. We are concerned about the certification requirements and timelines and product cost and availability. These could impact sales.

SENATOR HANSEN:

Ms. Moss also mentioned that you are already doing an efficient job recovering and recycling nearly 100 percent of the wastewater. Is that correct?

MR. DICK:

Yes, that is correct.

WARREN HARDY (Nevada League of Cities and Municipalities):

The Nevada League of Cities and Municipalities is neutral on this bill. Our concern is how this bill would interact with local building codes and the standards that are accepted in the industry, such as those set by the International Association of Plumbing and Mechanical Officials and the American National Standards Institute. Our conversations with plumbers have shown that current industry standards essentially mirror WaterSense standards. Based on the testimony we have just heard, I will need to have additional conversations to confirm that.

SENATOR HANSEN:

Are you saying this bill may be redundant? If uniform plumbing codes and international codes, which municipalities adopt, already reflect the efficiencies found in WaterSense standards, and if municipalities and industry are following these standards, what is the purpose of this bill? By pursuing this through the legislative process rather than through the typical process—the International Association of Plumbing and Mechanical Officials and others who develop codes—are we preemptively crossing into territory that more properly belongs among engineers?

MR. HARDY:

Yes, my testimony is that this seems redundant. That is not to say it is unprecedented for the Legislature. These standards change from time to time, and the Legislature has historically codified standards. If the federal government decided at some point to discontinue the WaterSense Program, but as a State

we decided those standards were important, it would be appropriate to keep them in statute. As currently written, however, it does appear to be redundant.

SENATOR HANSEN:

We have not addressed standards in statute since 1993 when there were significant changes in industry with regard to water conservation. It does seem we are going into an area where we should be hesitant. Engineers and water experts do a lot of work to come up with those industry codes, and municipalities adopt those codes. That is the typical approach.

MR. HARDY:

The EPA WaterSense Program is the kind of thing that codes react to, catch up to and try to come into compliance with.

ASSEMBLYMAN WATTS:

It is important that we have a single Statewide standard when it comes to plumbing fixtures. It is not unprecedented to do so. While we do have some localities leading in these areas, we need to send a clear message that we expect these standards to be met throughout the State. Regardless of whether we have those who are situated to capitalize on return-flow credits, or whether the communities are urban or rural, we should all be committed to water conservation.

When it comes to where we lose water in our distribution systems and using data to make better decisions to reduce loss, we should all be working to conserve water. That is what the other part of the bill addresses.

WaterSense is a partnership program. It is outlined in broad strokes at the national level. This Program works with associations and companies to certify fixtures. This can occur as products are being developed so they can be certified as soon as they hit the market.

Regarding concerns about products not currently certified under the WaterSense Program, this was addressed in the amendment. Some of these concerns, however, are new to me. I have worked with the SNHBA to address some of their main issues, including a grace period to avoid having noncompliant inventory and clarifying language dealing with shower fixtures. If there are other fixtures not covered under WaterSense, I am willing to work further on the bill

language, as long as the additional fixtures are held to the same flow rate standards as similar fixtures.

CHAIR SCHEIBLE:

If there was a homebuilder who wanted to install a particular fixture, and it was not WaterSense certified, could he or she go to the EPA and try to get it certified?

ASSEMBLYMAN WATTS:

It would probably make more sense for the manufacturer of that product to seek certification. That is something manufacturers do on an ongoing basis as they develop new fixtures. Manufacturers can also obtain certification on products that have already been released in the marketplace.

WaterSense certification is an attractive selling feature and marketing tool, especially in the southwestern states. There are also WaterSense certified homes that are built to certain specifications and that include all WaterSense fixtures. There is a value to be able to market that.

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CHAIR SCHEIBLE:

Seeing no further testimony or public comment, I will adjourn the meeting at 5:37 p.m.

RESPECTFULLY SUBMITTED:

Steve Woodbury,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	2		Agenda
	B	3		Attendance Roster
A.B. 95	C	1	Tim Wilson / Division of Water Resources	Written Testimony
A.B. 93	D	1	Assemblyman Greg Smith	Written Testimony
A.B. 93	E	2	Jim Lawrence / State Department of Conservation and Natural Resources	Written Testimony
A.B. 163	F	2	Assemblyman Howard Watts	Written Testimony
A.B. 163	G	12	Assemblyman Howard Watts	Proposed Amendment 5823