

Page 5. Section 7 subsections 8 and 9. No change.

Pages 5- 7. Section 8, subsections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10. No changes.

Page 7: Section 8, subsection 10, 11.

~~10. Subject to the provisions subsection 11, not later than 5 days after the State Engineer issues a decision pursuant to subsection 7, the State Engineer may order reconsideration of the decision:~~

~~—— (a) On the motion of any person interested to reconsider the decision; or~~

~~—— (b) On the motion of the State Engineer.~~

~~11. The State Engineer may grant a motion for reconsideration pursuant to subsection 10:~~

~~—— (a) Based on newly discovered or available evidence; or~~

~~—— (b) For good cause shown as determined by the State Engineer.~~

12. No change.

Page 8: Section 9

1. No change.

2. No change.

3. Except as otherwise provided in subsection 5 and NRS 533.395 and 533.4377, the State Engineer may, for good cause shown, which may include a pending judicial proceeding, extend the time within which the construction work must be completed, or water must be applied to a beneficial use under any permit therefore issued by him, but an application for extension must in all cases be:

~~—— 4. The State Engineer may grant an extension pursuant to subsection 3 if:~~

~~—— (a) The permit for which a request for an extension is made; or~~

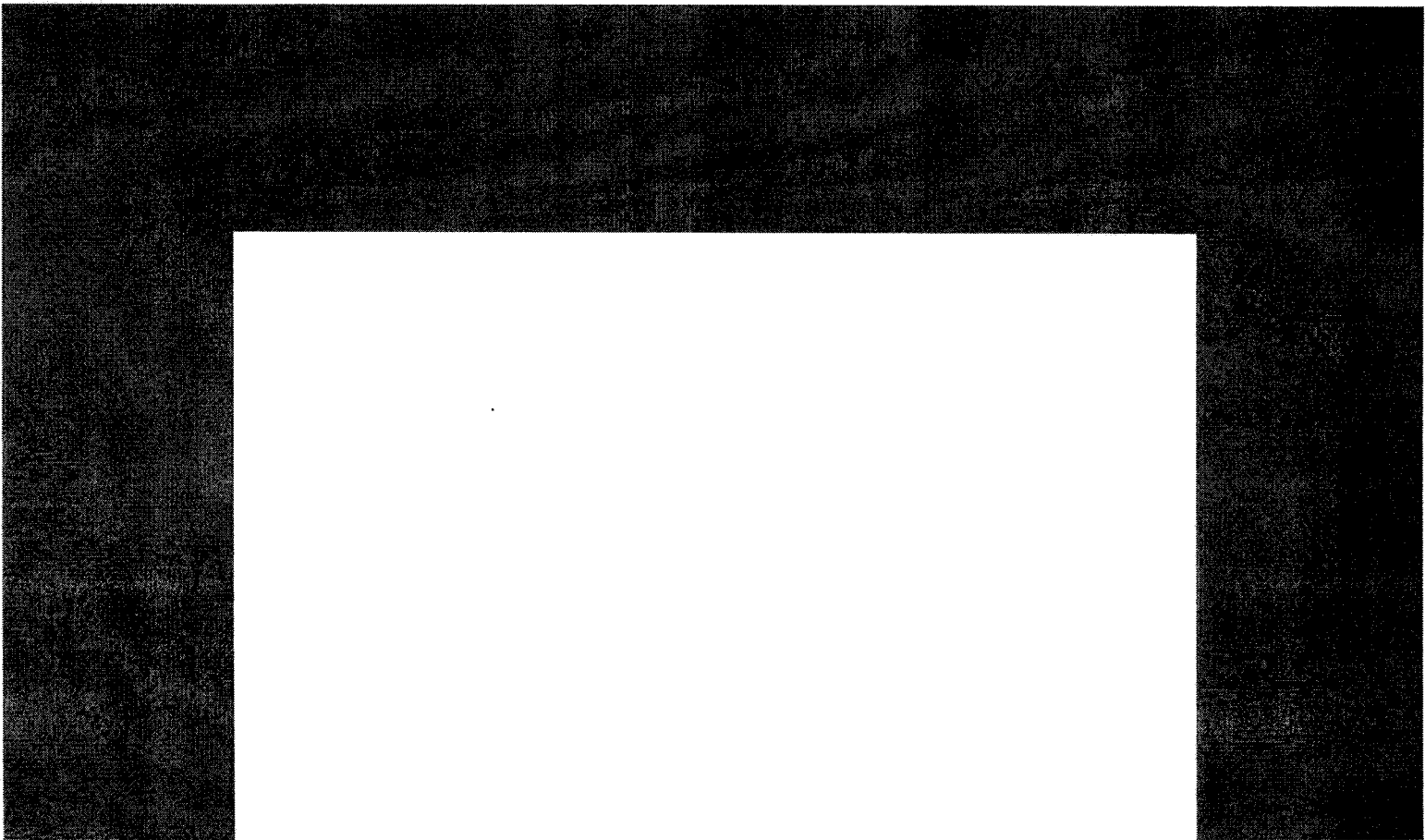
~~—— (b) Any order or other decision of the State Engineer relating to the permit, is the subject of a pending judicial proceeding. An applicant who has been granted an extension pursuant to this subsection shall submit a report to the State Engineer during each year that the permit remains valid.~~

5. No change.

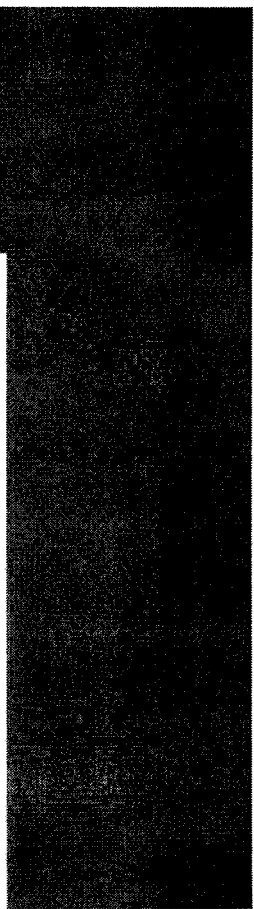
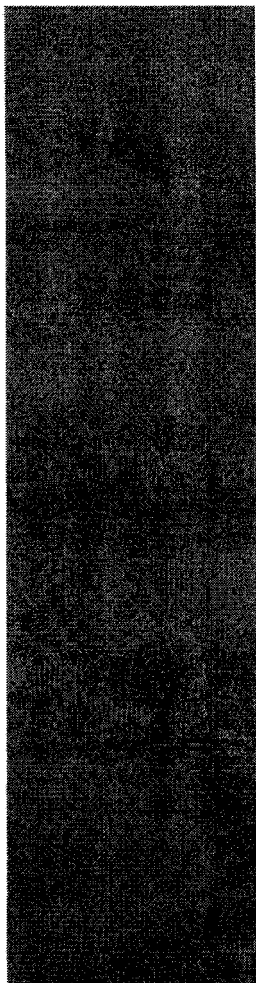
6. No change.

7. No change.

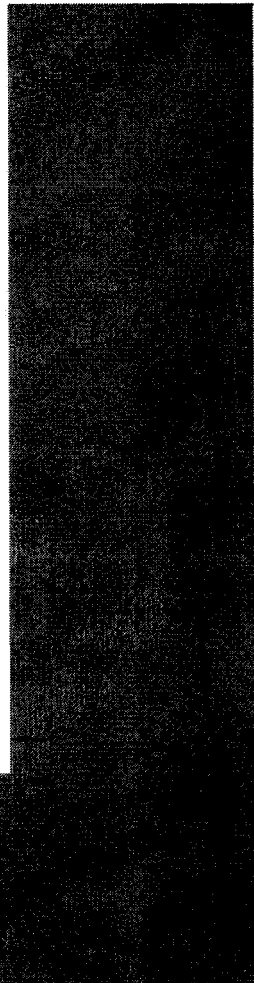
Pages 9-10 - Section 10. No change.



7



7



**STATE ENGINEER'S PROPOSED  
-AMENDMENTS TO SB 405 MOCK UP**

April 6, 2007

Section 1. Chapter 532 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, the State Engineer has full, exclusive and final authority with respect to:

- (a) The appropriation, allocation and availability of water;
- (b) The point of diversion, manner and place of use of ~~appropriated water already~~ appropriated;
- (c) The administration of the powers and duties conferred upon him by law; and
- (d) The ability to administer those powers and duties and any related provisions of law or regulation including consideration of ~~on the basis of~~ priority.

2. No change.

Section 2. Chapter 533 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

Section 3. 1. ~~The State Engineer shall before limiting the transfer of a water right to its consumptive use of a water right and the consumptive use of a proposed use of water are facts properly considered in determining whether a proposed change in point of diversion, place of use or manner or use complies with the provisions of NRS 533.370(5) in any hydrographic basin:~~

~~\_\_\_\_\_ (a) Conduct a public hearing to:~~

~~\_\_\_\_\_ (1) Establish the historical consumptive use for each beneficial use of water in the basin; and~~

~~\_\_\_\_\_ (2) Evaluate any future uses and corresponding consumptive uses of water in the basin, and~~

~~\_\_\_\_\_ (b) In conjunction with a protested application, make a finding that limiting the transfer to its consumptive use is appropriate.~~

~~\_\_\_\_\_ 2. If the State Engineer conducts a hearing pursuant to paragraph (a) of subsection 1, the State Engineer shall:~~

~~\_\_\_\_\_ (a) Provide reasonable public notice of the hearing; and~~

~~\_\_\_\_\_ (b) Allow any holder of a water right in the basin or service area to appear at the hearing and present testimony or any other evidence relevant to the hearing.~~

~~\_\_\_\_\_ 3. To assist the State Engineer in making a determination required pursuant to subsection 1, the State Engineer may investigate or study or cause to the investigation or study of any subject necessary to make that determination.~~

~~\_\_\_\_\_ 4. Any order or other decision of the State Engineer issued pursuant to this section is subject to judicial review pursuant to NRS 533.450.~~

~~\_\_\_\_\_ 5. As used in this section, "consumptive use" means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into~~

products, or that otherwise does not return to the ground water or surface source. The term does not include any water that:

- (a) Falls as precipitation directly on the place of use; or
- (b) Is used or subject to use in accordance with a federal or state compact or decree

6. This section shall not apply to surface water sources that are tributary to the Colorado River.

Section 4. 1. ~~Upon approval of an application to appropriate water, t~~The State Engineer may ~~approve an application to appropriate water for an amount of water less than the amount requested in the application and provided that the entire amount may limit the initial use of water to a quantity less than the amount be approved.~~ Use of additional water may be approved at a later date if additional evidence demonstrates to the satisfaction of the State Engineer that the additional amount of water is available and may be appropriated in accordance with the provisions of NRS chapters 533 and 534, subsection 5 of NRS 533.370. In making that determination, the State Engineer may establish a period during which additional studies may be conducted or additional evidence provided to support the application.

2. In any basin in which an application to appropriate water is approved pursuant to subsection 1, the State Engineer, in accordance with NRS chapters 533 and 534, may ~~approve or deny or otherwise act upon any other pending application to appropriate water in that basin or flow system for that basin that the State Engineer believes concludes:~~

- (a) ~~May affect any future economic growth in the basin; or~~
- (b) ~~Constitutes a minimal amount of water.~~

Page 4: Section 7

- 1. No change.
- 2. No change.
- 3. No change.
- 4. No change.

5. Each application and protestant shall, in accordance with a schedule established ~~for that purpose by the State Engineer, provide to the State Engineer and to each protestant and each applicant:~~

- (a) ~~All technical data regarding an application or an application protest~~  
Any information requested by the State Engineer.

6. The State Engineer may communicate with any applicant, protestant or person interested person for the purposes of obtaining information which the State Engineer deems necessary to ~~conduct a hearing or act on a protested application if the State Engineer:~~

- (a) Provides notice of the communication to each applicant, protestant or ~~person interested~~ interested person with whom the State Engineer did not communicate; and

- (b) Provides an opportunity to respond to each applicant, protestant or interested person specified in paragraph (a).



7. ~~The State Engineer shall, at least once, may invite technical representatives of the applicant or protestant or other governmental agency to meet with the technical staff of the State Engineer to settle or attempt to settle the dispute in consideration of a water right application.~~

Section 7 subsections 8 and 9. No change.

Section 8, subsections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10. No changes.

Section 8, subsection 10, 11, .

~~10. Subject to the provisions subsection 11, not later than 5 days after the State Engineer issues a decision pursuant to subsection 7, the State Engineer may order reconsideration of the decision:~~

~~—— (a) On the motion of any person interested to reconsider the decision; or~~

~~—— (b) On the motion of the State Engineer.~~

~~11. The State Engineer may grant a motion for reconsideration pursuant to subsection 10:~~

~~—— (a) Based on newly discovered or available evidence; or~~

~~—— (b) For good cause shown as determined by the State Engineer.~~

12. No change.

#### Section 9

1. No change.

2. No change.

3. Except as otherwise provided in subsection 5 and NRS 533.395 and 533.4377, the State Engineer may, for good cause shown, which may include a pending judicial proceeding, extend the time within which the construction work must be completed, or water must be applied to a beneficial use under any permit therefore issued by him, but an application for extension must in all cases be:

~~—— 4. The State Engineer may grant an extension pursuant to subsection 3 if:~~

~~—— (a) The permit for which a request for an extension is made; or~~

~~—— (b) Any order or other decision of the State Engineer relating to the permit, is the subject of a pending judicial proceeding. An applicant who has been granted an extension pursuant to this subsection shall submit a report to the State Engineer during each year that the permit remains valid.~~

5. No change.

6. No change.

7. No change.

Section 10. No change.



8

8

2007 SESSION (74th)

A SB405 412

Amendment No. 412

Senate Amendment to Senate Bill No. 405 (BDR 48-1158)

Proposed by: Senate Committee on Natural Resources

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>

EXPLANATION: Matter in (1) **blue bold italics** is new language in the original bill; (2) **green bold italic underlining** is new language proposed in this amendment; (3) **red strikethrough** is deleted language in the original bill; (4) **purple double strikethrough** is language proposed to be deleted in this amendment; (5) **orange double underlining** is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

LEGISLATIVE COUNSEL BUREAU  
RESEARCH LIBRARY

As the designated custodian of various records of the Nevada Legislature, I hereby certify that this is a true and correct copy of the document maintained in the Research Library.

Dated this 27 day of August, 2015

TERESA WILT, Legislative Librarian

By: Teresa Wilt

JRS/TMC



Date: 4/16/2007

S.B. No. 405—Revises provisions governing the appropriation of public waters.  
(BDR 48-1158)

Page 1 of 10



\* A S B 4 0 5 4 1 2 \*

## SENATE BILL NO. 405—SENATOR AMODEI

MARCH 19, 2007

Referred to Committee on Natural Resources

SUMMARY—Revises provisions governing the appropriation of ~~public waters;~~  
water. (BDR 48-1158)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

EXPLANATION Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted

AN ACT relating to water; ~~granting the State Engineer full authority with respect to the analysis, management, appropriation and diversion of public waters; providing for the preemption by decisions of the State Engineer over certain actions of agencies and political subdivisions of the State;~~ clarifying the authority of the State Engineer relating to the appropriation, allocation and determination of availability of unappropriated water; authorizing the State Engineer to consider the consumptive use of a water right under certain circumstances; authorizing the State Engineer to limit the initial use of water upon approval of an application to appropriate water under certain circumstances; making various other changes concerning the powers and duties of the State Engineer; and providing other matters properly relating thereto.

## Legislative Counsel's Digest:

Chapter 533 of NRS provides for the adjudication of water rights and the appropriation of ~~public waters;~~ water by the State Engineer. ~~Sections 1 and 4 of this bill provide~~ provides that the State Engineer has full and exclusive authority ~~over the analysis, management, appropriation and diversion of water. Section 5 of this bill prohibits actions by local governments and state agencies that conflict with decisions of the State Engineer. Section 6 of this bill requires the State Engineer, when approving an appropriation for water for an amount less than the amount requested, to declare whether the refusal to appropriate the remaining amount is with or without prejudice.~~ with respect to the appropriation, allocation and determination of availability of unappropriated water and the place of diversion, manner of use and place of use of appropriated water. Section 3 of this bill authorizes the State Engineer to consider the consumptive use of a water right in determining the appropriateness of approving a proposed change in the place of diversion, manner of use or place of use of water pursuant to that right. Section 4 of this bill authorizes the State Engineer, upon approval of an application to appropriate water, to limit the initial use of that water to an amount that is less than the total amount approved. If the State Engineer at a later date determines that water is available for the total amount approved for the application, he may authorize the use of that additional amount.

Existing law provides for interested persons to ~~appeal~~ protest applications to appropriate water. (NRS 533.365) Section 7 of this bill ~~specifically which interested parties may fully participate in hearings, requires applicants and proponents to provide technical data to each other and to the State Engineer, and provides for the resolution of disputes over such data;~~ authorizes the State Engineer to refuse to consider a protest if certain information concerning the protest is not received by the State Engineer. Section 7 ~~also requires~~ makes various other changes concerning protests before the State Engineer, including, without limitation, requiring the State Engineer to render a decision regarding each ~~permit~~ application within ~~120~~ 240 days after a hearing on the application.

~~Existing law provides for the approval or rejection of applications to appropriate water. (NRS 533.370) Section 8 of this bill requires the State Engineer to reject an application for a proposed use or change in previously appropriated water that increases the amount consumptively used under the existing use. Section 8 also prohibits the State Engineer from using the presence or absence of zoning or planning designations as a determining factor in approving an application. Additionally, section 8 authorizes the State Engineer to grant an extension on application to appropriate not more than 10 acre feet of water without a hearing. Section 8 also authorizes the State Engineer to order a reconsideration of a decision on the motion of an interested party or on the motion of the State Engineer.~~

Existing law authorizes the State Engineer ~~when approving a permit application to set a time limit on the validity of the permit~~, for good cause shown, to extend the time within which water must be applied to a beneficial use under a permit for that use. (NRS 533.380) Section 9 of this bill authorizes the State Engineer to grant such an extension ~~to a permit~~ of time if the permit is the subject of a pending judicial proceeding.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 532 of NRS is hereby amended by adding thereto a new section to read as follows:

~~1. Except as otherwise provided in subsection 2, the State Engineer has full, exclusive and final authority with respect to:~~

~~(a) 1. The appropriation, allocation and determination of availability of unappropriated water; and~~

~~(b) 2. The place of diversion, manner of use and place of use of appropriated water.~~

~~3. The orders and decisions of the State Engineer preempt the authority of a political subdivision regarding planning, zoning and management of growth within its jurisdiction only if the political subdivision takes any action that directly or indirectly conflicts with or is otherwise inconsistent with the orders and decisions of the State Engineer or the purposes and objectives of chapter 533 of NRS.~~

Sec. 2. Chapter 533 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 6, inclusive, of this act.

Sec. 3. ~~As used in this chapter, "consumptive use" means that portion of an annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor incorporated into products, or that otherwise does not return to the source from which it was taken. The term does not include any water that falls as precipitation directly on the place of use.~~

1. The State Engineer may consider the consumptive use of a water right and the consumptive use of a proposed beneficial use of water in determining whether a proposed change in the place of diversion, manner of use or place of use complies with the provisions of subsection 5 of NRS 533.370.

2. The provisions of this section:



1 (a) Must not be applied by the State Engineer in a manner that is  
 2 inconsistent with any applicable federal or state decree concerning consumptive  
 3 use.

4 (b) Do not apply to any decreed, certified or permitted right to appropriate  
 5 water which originates in the Virgin River or the Muddy River.

6 Sec. 4. ~~[The State Engineer shall be the only public agency to analyze and~~  
 7 ~~manage the water resources of this State on a basin-by-basin basis, a regional~~  
 8 ~~water flow basis or a statewide basis.]~~

9 1. Upon approval of an application to appropriate water, the State Engineer  
 10 may limit the initial use of water to a quantity that is less than the total amount  
 11 approved for the application. The use of an additional amount of water that is not  
 12 more than the total amount approved for the application may be authorized by  
 13 the State Engineer at a later date if additional evidence demonstrates to the  
 14 satisfaction of the State Engineer that the additional amount of water is available  
 15 and may be appropriated in accordance with this chapter and chapter 534 of  
 16 NRS. In making that determination, the State Engineer may establish a period  
 17 during which additional studies may be conducted or additional evidence  
 18 provided to support the application.

19 2. In any basin in which an application to appropriate water is approved  
 20 pursuant to subsection 1, the State Engineer may, pursuant to this chapter and  
 21 chapter 534 of NRS, act upon any other pending application to appropriate water  
 22 in that basin that the State Engineer concludes constitutes the use of a minimal  
 23 amount of water.

24 Sec. 5. ~~[A state agency or political subdivision, including, without~~  
 25 ~~limitation, the Public Utilities Commission of Nevada, shall not take any action~~  
 26 ~~that directly alters, changes or diminishes any right regarding the appropriation~~  
 27 ~~of water or the place of diversion of water that is granted to a utility by a decision~~  
 28 ~~of the State Engineer.] (Deleted by amendment.)~~

29 Sec. 6. ~~[If the State Engineer approves an appropriation of an amount of~~  
 30 ~~water less than the amount requested by the applicant, the State Engineer:~~

31 ~~1. Shall make a specific declaration in the decision that~~  
 32 ~~(a) The State Engineer is denying the remaining amount of the requested~~  
 33 ~~appropriation temporarily and without prejudice; and~~

34 ~~(b) The applicant may resubmit the original application at any point in the~~  
 35 ~~future to request an increase in the amount of water appropriated; or~~

36 ~~2. Shall make a specific declaration in the decision that~~  
 37 ~~(a) The State Engineer is denying the remaining amount of the requested~~  
 38 ~~appropriation with prejudice; and~~

39 ~~(b) The applicant~~  
 40 ~~(1) May not resubmit the original application at any point in the future to~~  
 41 ~~request an increase in the amount of water appropriated; and~~

42 ~~(2) May file a new application to request an increase in the amount of~~  
 43 ~~water appropriated.] (Deleted by amendment.)~~

44 Sec. 7. NRS 533.365 is hereby amended to read as follows:

45 533.365 1. Any person interested may, within 30 days ~~from~~ after the date  
 46 of last publication of the notice of application, file with the State Engineer a written  
 47 protest against the granting of the application, setting forth with reasonable  
 48 certainty the grounds of such protest, which ~~shall~~ must be verified by the affidavit  
 49 of the protestant, his agent or attorney.

50 2. On receipt of a protest, the State Engineer shall advise the applicant whose  
 51 application has been protested of the fact that the protest has been filed with him,  
 52 which advice ~~shall~~ must be sent by certified mail.

1 3. ~~{The}~~ Except as otherwise provided in subsection 4, the State Engineer  
2 shall consider the protest, and may ~~in his discretion,~~ hold hearings and require  
3 the filing of such evidence as he may deem necessary to a full understanding of the  
4 rights involved. The State Engineer shall give notice of the hearing by certified mail  
5 to both the applicant and the protestant. The notice must state the time and place at  
6 which the hearing is to be held and must be mailed at least 15 days before the date  
7 set for the hearing.

8 4. ~~If the protestant:~~

9 ~~(a) Is a bona fide owner of water rights who has demonstrated or provided~~  
10 ~~technical data regarding injury or impairment of a permitted, vested, decreed or~~  
11 ~~otherwise adjudicated water right, the protestant may fully participate in any~~  
12 ~~hearing conducted by the State Engineer on the application.~~

13 ~~(b) Has a concern relative to any public policy issues that may attend the~~  
14 ~~application, the protestant may provide a written protest of the application and~~  
15 ~~any supporting documentation and may offer oral comments during a time set by~~  
16 ~~the State Engineer but may not otherwise participate in any hearing conducted by~~  
17 ~~the State Engineer on the application.~~ In addition to the provisions of subsection

18 5, the State Engineer may refuse to consider the protest if the protestant fails to  
19 provide information relating to the protest required by the State Engineer.

20 5. Each applicant and each protestant shall, in accordance with a schedule  
21 established by the State Engineer, provide to the State Engineer and to each  
22 protestant and each applicant full technical data regarding an application or an  
23 application protest not later than 60 days before the date set for the permit  
24 application hearing, information required by the State Engineer relating to the  
25 application or protest.

26 6. The State Engineer or any member of his technical staff may, at his  
27 discretion, communicate with any applicant, protestant, for person, interested  
28 person, governmental entity, technical representative or expert for the purposes  
29 of obtaining information which the State Engineer deems necessary to a  
30 hearing.

31 ~~7. If there is a dispute regarding technical data relating to a permit~~  
32 ~~application, they act on a protested application if the State Engineer:~~

33 (a) Provides notice of the communication to each applicant, protestant,  
34 interested person, governmental entity, technical representative or expert with  
35 whom the State Engineer did not communicate relating to the protested  
36 application; and

37 (b) Provides an opportunity to respond to each applicant, protestant,  
38 interested person, governmental entity, technical representative or expert  
39 specified in paragraph (a).

40 7. The State Engineer ~~shall~~ may invite technical representatives of the  
41 applicant ~~and of~~, the protestant, an interested person or a governmental entity  
42 to meet with the technical staff of the State Engineer ~~one or more times, not less~~  
43 than 30 days before the date set for the permit application meeting, to attempt to  
44 reach an agreement regarding the dispute.

45 ~~8. The to consider issues relating to an application to appropriate water.~~

46 8. If the State Engineer holds a hearing pursuant to subsection 3, the State  
47 Engineer shall render a decision on each ~~permit~~ application not later than ~~{220}~~  
48 240 days after the ~~hearing on the application,~~ later of:

49 (a) The date all transcripts of the hearing become available to the State  
50 Engineer; or

51 (b) The date specified by the State Engineer for the filing of any additional  
52 information, evidence, studies or compilations requested by the State Engineer.  
53 The State Engineer may, for good cause shown, extend any applicable period.



1       9. The State Engineer shall adopt rules of practice regarding the conduct of  
2 such hearings. The rules of practice must be adopted in accordance with the  
3 provisions of NRS 233B.040 to 233B.120, inclusive, and codified in the Nevada  
4 Administrative Code. The technical rules of evidence do not apply at such a  
5 hearing.

6       Sec. 8. NRS 533.370 is hereby amended to read as follows:

7       533.370 1. Except as otherwise provided in this section and NRS 533.345,  
8 533.371, 533.372 and 533.503, the State Engineer shall approve an application  
9 submitted in proper form which contemplates the application of water to beneficial  
10 use if:

11       (a) The application is accompanied by the prescribed fees;

12       (b) The proposed use or change, if within an irrigation district, does not  
13 adversely affect the cost of water for other holders of water rights in the district or  
14 lessen the efficiency of the district in its delivery or use of water; and

15       (c) The applicant provides proof satisfactory to the State Engineer of:

16       (1) His intention in good faith to construct any work necessary to apply the  
17 water to the intended beneficial use with reasonable diligence; and

18       (2) His financial ability and reasonable expectation actually to construct  
19 the work and apply the water to the intended beneficial use with reasonable  
20 diligence.

21       2. Except as otherwise provided in this subsection and subsections 3 and 8, ~~4~~  
22 and NRS 533.365, the State Engineer shall approve or reject each application  
23 within 1 year after the final date for filing a protest. The State Engineer may:

24       (a) Postpone action upon written authorization to do so by the applicant or, if  
25 an application is protested, by the protestant and the applicant.

26       (b) Postpone action if the purpose for which the application was made is  
27 municipal use.

28       (c) In areas where studies of water supplies have been determined to be  
29 necessary by the State Engineer pursuant to NRS 533.368 or where court actions  
30 are pending, withhold action until it is determined there is unappropriated water or  
31 the court action becomes final.

32       3. Except as otherwise provided in subsection 8, the State Engineer shall  
33 approve or reject, within 6 months after the final date for filing a protest, an  
34 application filed to change the point of diversion of water already appropriated  
35 when the existing and proposed points of diversion are on the same property for  
36 which the water has already been appropriated under the existing water right or the  
37 proposed point of diversion is on real property that is proven to be owned by the  
38 applicant and is contiguous to the place of use of the existing water right. The State  
39 Engineer may:

40       (a) Postpone action upon written authorization to do so by the applicant or, if  
41 the application is protested, by the protestant and the applicant.

42       (b) In areas where studies of water supplies have been determined to be  
43 necessary by the State Engineer pursuant to NRS 533.368 or where court actions  
44 are pending, withhold action until it is determined there is unappropriated water or  
45 the court action becomes final.

46       4. If the State Engineer does not act upon an application within 1 year after  
47 the final date for filing a protest, the application remains active until acted upon by  
48 the State Engineer.

49       5. Except as otherwise provided in subsection 8, where there is no  
50 unappropriated water in the proposed source of supply, or where its proposed use or  
51 change conflicts with existing rights or with protectible interests in existing  
52 domestic wells as set forth in NRS 533.024, ~~for where the proposed use or change~~  
53 ~~increases the historic amount of consumptive use under the existing use or~~

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1 ~~otherwise enlarges the use of the right~~ or threatens to prove detrimental to the  
 2 public interest, the State Engineer shall reject the application and refuse to issue  
 3 the requested permit. If a previous application for a similar use of water within the  
 4 same basin has been rejected on those grounds, the new application may be denied  
 5 without publication. ~~It with the exception of surface water sources that are~~  
 6 ~~tributary to the Colorado River.~~

7 6. In determining whether an application for an interbasin transfer of  
 8 groundwater must be rejected pursuant to this section, ~~the~~ ~~for~~

9 ~~(a) The~~ State Engineer shall consider:

10 ~~(a) (1)~~ Whether the applicant has justified the need to import the water from  
 11 another basin;

12 ~~(b) (2)~~ If the State Engineer determines that a plan for conservation of water  
 13 is advisable for the basin into which the water is to be imported, whether the  
 14 applicant has demonstrated that such a plan has been adopted and is being  
 15 effectively carried out;

16 ~~(c) (3)~~ Whether the proposed action is environmentally sound as it relates to  
 17 the basin from which the water is exported;

18 ~~(d) (4)~~ Whether the proposed action is an appropriate long-term use which  
 19 will not unduly limit the future growth and development in the basin from which  
 20 the water is exported; and

21 ~~(e) (5)~~ Any other factor the State Engineer determines to be relevant.

22 ~~(b) The presence or absence of zoning or master plan designations must not~~  
 23 ~~be a determining factor in the State Engineer's analysis.~~

24 7. If a hearing is held regarding an application, the decision of the State  
 25 Engineer must be in writing and include findings of fact, conclusions of law and a  
 26 statement of the underlying facts supporting the findings of fact. The written  
 27 decision may take the form of a transcription of an oral ruling. The rejection or  
 28 approval of an application must be endorsed on a copy of the original application,  
 29 and a record must be made of the endorsement in the records of the State Engineer.  
 30 The copy of the application so endorsed must be returned to the applicant. Except  
 31 as otherwise provided in subsection 9, if the application is approved, the applicant  
 32 may, on receipt thereof, proceed with the construction of the necessary works and  
 33 take all steps required to apply the water to beneficial use and to perfect the  
 34 proposed appropriation. If the application is rejected, the applicant may take no  
 35 steps toward the prosecution of the proposed work or the diversion and use of the  
 36 public water while the rejection continues in force.

37 8. The provisions of subsections 1 to 6, inclusive, do not apply to an  
 38 application for an environmental permit.

39 9. The provisions of subsection 7 do not authorize the recipient of an  
 40 approved application to use any state land administered by the Division of State  
 41 Lands of the State Department of Conservation and Natural Resources without the  
 42 appropriate authorization for that use from the State Land Registrar.

43 10. ~~The State Engineer may grant or deny any application to appropriate~~  
 44 ~~not more than 10 acre feet of water without a hearing if the applicant has~~  
 45 ~~provided sufficient information with the application. Any application granted~~  
 46 ~~pursuant to this subsection must not be used as a precedent for any future or~~  
 47 ~~similar applications.~~

48 ~~11. Subject to the provisions of subsection 12, not later than 5 days after the~~  
 49 ~~State Engineer issues a decision pursuant to subsection 7, the State Engineer~~  
 50 ~~may order reconsideration of the decision.~~

51 ~~(a) On the motion of any person interested to reconsider the decision or~~

52 ~~(b) On the motion of the State Engineer.~~

~~12. Grounds for reconsideration pursuant to subsection 11 include, without limitation:~~

~~(a) Newly discovered or available evidence;~~

~~(b) Error in the hearing or in the findings of fact or conclusions of law; or~~

~~(c) The need, in the public interest, for further consideration of the issues or the evidence, or both.~~

~~13f.~~ As used in this section, "interbasin transfer of groundwater" means a transfer of groundwater for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.

Sec. 9. NRS 533.380 is hereby amended to read as follows:

533.380 1. Except as otherwise provided in subsection 5, ~~16f~~ in his endorsement of approval upon any application, the State Engineer shall:

(a) Set a time before which the construction of the work must be completed, which must be within 5 years after the date of approval.

(b) Except as otherwise provided in this paragraph, set a time before which the complete application of water to a beneficial use must be made, which must not exceed 10 years after the date of the approval. The time set under this paragraph respecting an application for a permit to apply water to a municipal or quasi-municipal use on any land:

(1) For which a final subdivision map has been recorded pursuant to chapter 278 of NRS;

(2) For which a plan for the development of a project has been approved by the local government pursuant to NRS 278.010 to 278.460, inclusive; or

(3) On any land for which a plan for the development of a planned unit development has been recorded pursuant to chapter 278A of NRS, must not be less than 5 years.

2. The State Engineer may limit the applicant to a smaller quantity of water, to a shorter time for the completion of work, and, except as otherwise provided in paragraph (b) of subsection 1, to a shorter time for the perfecting of the application than named in the application.

3. Except as otherwise provided in subsection 4 ~~15f~~ and NRS 533.395 and 533.4377, the State Engineer may, for good cause shown, including, without limitation, a pending judicial proceeding, extend the time within which construction work must be completed, or water must be applied to a beneficial use under any permit therefor issued by him, but an application for the extension must in all cases be:

(a) Made within 30 days following notice by registered or certified mail that proof of the work is due as provided for in NRS 533.390 and 533.410; and

(b) Accompanied by proof and evidence of the reasonable diligence with which the applicant is pursuing the perfection of the application.

~~16f.~~ The State Engineer shall not grant an extension of time unless he determines from the proof and evidence so submitted that the applicant is proceeding in good faith and with reasonable diligence to perfect the application. The failure to provide the proof and evidence required pursuant to this subsection is prima facie evidence that the holder is not proceeding in good faith and with reasonable diligence to perfect the application.

4. ~~The State Engineer shall grant an extension pursuant to subsection 3 if the permit for which a request for an extension is made is the subject of a pending judicial proceeding. Each extension granted pursuant to this subsection must be in annual increments. An applicant who has been granted an extension pursuant to this subsection shall provide a report to the State Engineer during each year that the permit remains valid.~~

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1 ~~5.1~~ Except as otherwise provided in subsection ~~5.1~~ and NRS 533.395,  
2 whenever the holder of a permit issued for any municipal or quasi-municipal use of  
3 water on any land referred to in paragraph (b) of subsection 1, or for any use which  
4 may be served by a county, city, town, public water district or public water  
5 company, requests an extension of time to apply the water to a beneficial use, the  
6 State Engineer shall, in determining whether to grant or deny the extension,  
7 consider, among other factors:

8 (a) Whether the holder has shown good cause for not having made a complete  
9 application of the water to a beneficial use;

10 (b) The number of parcels and commercial or residential units which are  
11 contained in or planned for the land being developed or the area being served by the  
12 county, city, town, public water district or public water company;

13 (c) Any economic conditions which affect the ability of the holder to make a  
14 complete application of the water to a beneficial use;

15 (d) Any delays in the development of the land or the area being served by the  
16 county, city, town, public water district or public water company which were  
17 caused by unanticipated natural conditions; and

18 (e) The period contemplated in the:

19 (1) Plan for the development of a project approved by the local government  
20 pursuant to NRS 278.010 to 278.460, inclusive; or

21 (2) Plan for the development of a planned unit development recorded  
22 pursuant to chapter 278A of NRS,

23 if any, for completing the development of the land.

24 ~~5.161~~ The provisions of subsections 1 and ~~4~~ ~~161~~ do not apply to an  
25 environmental permit.

26 ~~5.171~~ For the purposes of this section, the measure of reasonable diligence is  
27 the steady application of effort to perfect the application in a reasonably expedient  
28 and efficient manner under all the facts and circumstances. When a project or  
29 integrated system is comprised of several features, work on one feature of the  
30 project or system may be considered in finding that reasonable diligence has been  
31 shown in the development of water rights for all features of the entire project or  
32 system.

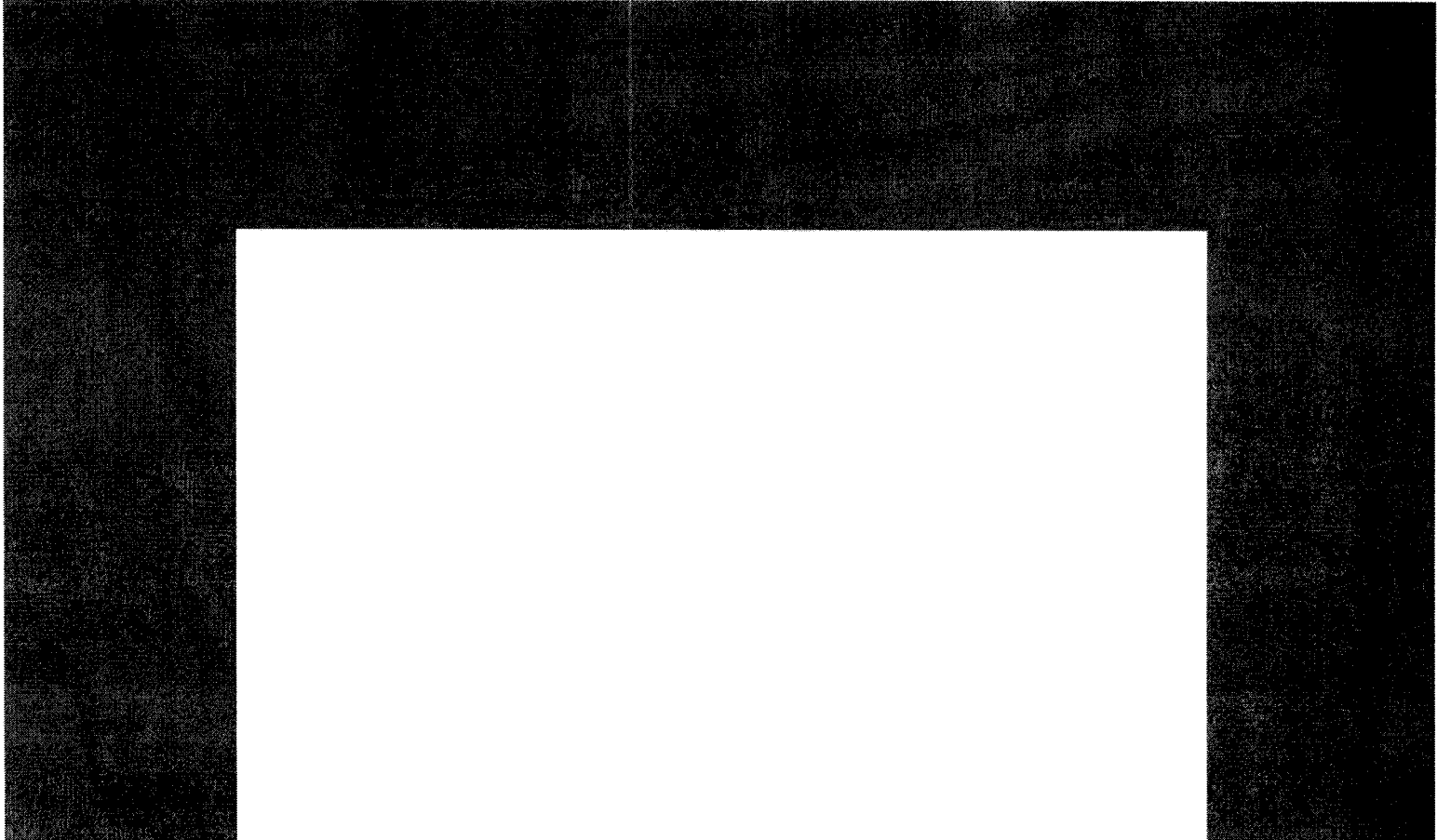
33 Sec. 10. ~~NRS 538.171 is hereby amended to read as follows:~~

34 ~~538.171 1. The Commission shall receive, protect and safeguard and hold in~~  
35 ~~trust for the State of Nevada all water and water rights, and all other rights, interests~~  
36 ~~or benefits in and to the waters described in NRS 538.041 to 538.251, inclusive,~~  
37 ~~and to the power generated thereon, held by or which may accrue to the State of~~  
38 ~~Nevada under and by virtue of any Act of the Congress of the United States or any~~  
39 ~~agreements, compacts or treaties to which the State of Nevada may become a party,~~  
40 ~~or otherwise.~~

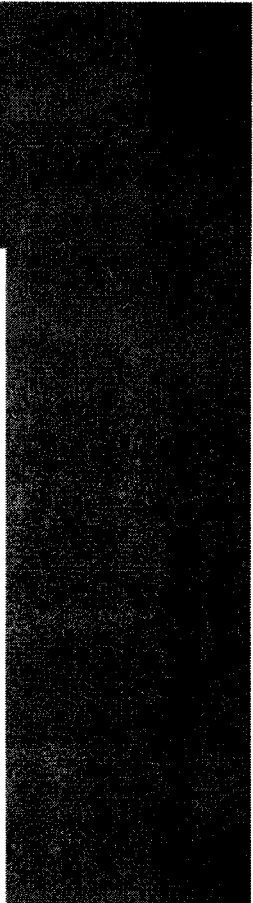
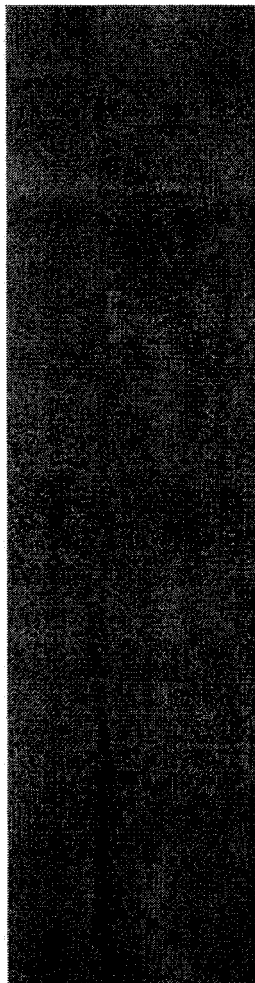
41 ~~2. Except as otherwise provided in this subsection, applications for the~~  
42 ~~original appropriation of such waters, or to change the place of diversion, manner~~  
43 ~~of use or place of use of water covered by the original appropriation, must be made~~  
44 ~~to the Commission in accordance with the regulations of the Commission. In~~  
45 ~~considering such an application, the Commission shall use the criteria set forth in~~  
46 ~~paragraph (a) of subsection 6 of NRS 533.320. The Commission's action on the~~  
47 ~~application constitutes the recommendation of the State of Nevada to the United~~  
48 ~~States for the purposes of any federal action on the matter required by law. The~~  
49 ~~provisions of this subsection do not apply to supplemental water.~~

50 ~~3. The Commission shall furnish to the State Engineer a copy of all~~  
51 ~~agreements entered into by the Commission concerning the original appropriation~~  
52 ~~and use of such waters. It shall also furnish to the State Engineer any other~~  
53 ~~information it possesses relating to the use of water from the Colorado River which~~

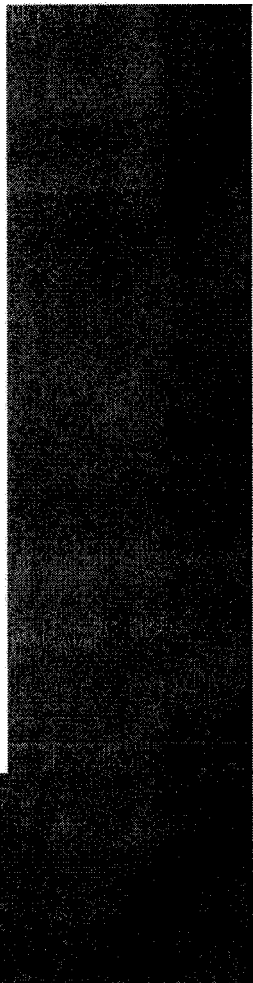
1 ~~the State Engineer deems necessary to allow him to act on applications for permits~~  
2 ~~for the subsequent appropriation of those waters after they fall within the State~~  
3 ~~Engineer's jurisdiction.~~  
4 ~~1. Notwithstanding any provision of chapter 533 of ARS, any original~~  
5 ~~appropriation and use of the waters described in subsection 4 by the Commission or~~  
6 ~~by any entity to whom or with whom the Commission has contracted the water is~~  
7 ~~not subject to regulation by the State Engineer. (Deleted by amendment.)~~



9



9



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

**Seventy-fourth Session  
May 16, 2007**

The Senate Committee on Natural Resources was called to order by Chair Dean A. Rhoads at 3:30 p.m. on Wednesday, May 16, 2007, in Room 2144 of the Legislative Building, Carson City, 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 Dean A. Rhoads, Chair  
Senator Mike McGinness, Vice Chair  
Senator Mark E. Amodei  
Senator Joseph J. Heck  
Senator Bob Coffin  
Senator Michael A. Schneider  
Senator Maggie Carlton

**GUEST LEGISLATORS PRESENT:**

Senator Warren B. Hardy II, Clark County Senatorial District No. 12  
Assemblyman John Carpenter, Assembly District No. 33  
Assemblyman Jerry D. Claborn, Assembly District No. 19  
Assemblyman Joe Hogan, Assembly District No. 10

**STAFF MEMBERS PRESENT:**

Susan E. Scholley, Committee Policy Analyst  
Randy Stephenson, Committee Counsel  
Shirley Parks, Committee Secretary

**OTHERS PRESENT:**

Gerry Lent, Nevada Hunters Association  
Allen Biaggi, Director, State Department of Conservation and Natural Resources  
Andy Belanger, Las Vegas Valley Water District; Southern Nevada Water Authority  
Steve K. Walker, Truckee Meadows Water Authority

**LEGISLATIVE COUNSEL BUREAU  
RESEARCH LIBRARY**

As the designated custodian of various records of the Nevada Legislature, I hereby certify that this is a true and correct copy of the document maintained in the Research Library.

Dated this 27 day of August, 20 15

TERESA WILT, Legislative Librarian

By: 



Senate Committee on Natural Resources  
May 16, 2007  
Page 16

search regarding water protests. I would add to section 3 of the amendment, "The mandatory provisions of sections 1 and 2 of the amendment apply only to applications filed after the effective date of the act." This will move the action forward and there will not be an expense with retroactive applications.

SENATOR CARLTON:

Could we have a clarification on the amendment, page 4, line 38, subsection 10 has been stricken. A citation, the NRS 533.365 has been added. To what does this refer?

MR. STEPHENSON:

The new language will be transferred to the NRS 533.365.

SENATOR AMODEI:

I have additional discussion for the Committee to consider. Senate Bill (S.B.) 405 which this Committee processed, and as you will recall, was reworked by Committee Counsel and other interested parties, received a super majority of support from this Committee and on the Floor of the Senate. It did not receive a hearing in the Assembly.

**SENATE BILL 405 (1<sup>st</sup> Reprint)**: Revises provisions governing the appropriation of public waters. (BDR 48-1158)

Assembly Bill 285 is germane for purposes of amendment to the content of that bill. I propose, with the amendments already discussed, that we also amend S.B. 405 to be inserted as part of A.B. 285. I intend to do this and my reason for doing this now is to do it early in the process so that it does not happen on the Floor of the Senate by surprise. I have had some concern over the lack of an Assembly hearing. The decision to have no hearing on S.B. 405 was made by the leadership of the Assembly.

SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED A.B. 285 AS SET FORTH IN THE MOCK-UP IN THE WORK SESSION AND AMEND SECTION 3 TO INCLUDE LANGUAGE TO THE EFFECT OF "THE AMENDATORY PROVISIONS OF SECTIONS 1 AND 2 APPLY ONLY TO APPLICATIONS FILED AFTER THE EFFECTIVE DATE OF THE ACT" AND TO ADD S.B. 405 IN ITS FIRST REPRINT FORM.

SENATOR HECK SECONDED THE MOTION.

Senate Committee on Natural Resources  
May 16, 2007  
Page 17

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

\* \* \* \* \*

CHAIR RHOADS:

We will open the hearing on A.B. 296.

**ASSEMBLY BILL 296 (1st Reprint)**: Expresses the sense of the Legislature concerning the temporary conversion of certain water rights. (BDR 48-978)

Ms. SCHOLLEY:

This bill finds and declares that the policy of Nevada is to allow temporary conversion of agricultural water rights for wildlife purposes or to improve water quality or water flows.

SENATOR CARLTON MOVED TO DO PASS A.B. 296.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR RHOADS:

We will open the discussion on A.B. 259.

**ASSEMBLY BILL 259 (2nd Reprint)**: Revises provisions governing wildlife. (BDR 45-100)

SENATOR CARLTON MOVED TO DO PASS A.B. 259.

SENATOR COFFIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 28, 2015, I submitted the foregoing NOTICE OF SUPPLEMENTAL AUTHORITIES (NRAP 31(e)) AND ATTACHED “HIGHLIGHTED LEGISLATIVE HISTORY” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

Severin A. Carlson  
Kaempfer, Crowell, Renshaw,  
Gronauer & Fiorentino  
50 West Liberty Street, No. 900  
Reno, Nevada 89501

Micheline Fairbank  
Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701

Paul Hejmanowski  
Lynda S. Mabry  
Hejmanowski & McCrea LLC  
520 South Fourth Street, Suite 320  
Las Vegas, Nevada 89101

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

Kelly C. Brown  
District Attorney for White Pine County, Nevada  
810 Clark St., Suite 3  
Ely, Nevada 89301

J. Mark Ward  
Utah Association of Counties  
5397 South Vine Street  
Murray, Utah 84107

Aaron Waite  
Weinstein & Riley, P.S.  
6785 South Eastern Avenue, Suite 4

Simeon Herskovits  
Iris Thornton  
Advocates for Community and Environment

Las Vegas, Nevada 89119

Paul Echo Hawk  
Echo Hawk Law Office  
P.O. Box 2634  
Kirkland, Washington 98083

The Honorable Robert E. Estes  
Senior District Judge  
911 Harvey Way  
Yerington, Nevada 89449

P. O. Box 1075  
El Prado, New Mexico 87529  
John B. Rhodes  
Rhodes Law Offices  
P.O. Box 18191  
Reno, Nevada 89511

Scott Williams  
Curtis Berkey  
Berkey Williams, LLP  
2030 Addison Street, Suite 40  
Berkeley, California 94704

/s/ Jessie M. Helm  
An Employee of Lewis Roca Rothgerber LLP

- 7 -

~~1 (b) The presence or absence of zoning or master plan designations  
2 must not be a determining factor in the State Engineer's analysis.~~

3 7. If a hearing is held regarding an application, the decision of the  
4 State Engineer must be in writing and include findings of fact, conclusions  
5 of law and a statement of the underlying facts supporting the findings of  
6 fact. The written decision may take the form of a transcription of an oral  
7 ruling. The rejection or approval of an application must be endorsed on a  
8 copy of the original application, and a record must be made of the  
9 endorsement in the records of the State Engineer. The copy of the  
10 application so endorsed must be returned to the applicant. Except as  
11 otherwise provided in subsection 9, if the application is approved, the  
12 applicant may, on receipt thereof, proceed with the construction of the  
13 necessary works and take all steps required to apply the water to beneficial  
14 use and to perfect the proposed appropriation. If the application is rejected,  
15 the applicant may take no steps toward  
16 the prosecution of the proposed work or the diversion and use of the public  
17 water while the rejection continues in force.

18 8. The provisions of subsections 1 to 6, inclusive, do not apply to an  
19 application for an environmental permit.

20 9. The provisions of subsection 7 do not authorize the recipient of an  
21 approved application to use any state land administered by the Division of  
22 State Lands of the State Department of Conservation and Natural  
23 Resources without the appropriate authorization for that use from the State  
24 Land Registrar.

25 10. ~~The State Engineer may grant or deny any application to  
26 appropriate not more than 10 acre feet of water without a hearing if the  
27 applicant has provided sufficient information with the application. Any  
28 application granted pursuant to this subsection must not be used as a  
29 precedent for any future or similar applications.~~

30 ~~11.~~ Subject to the provisions of subsection ~~12,~~ 11, not later than 5  
31 days after the State Engineer issues a decision pursuant to subsection 7,  
32 the State Engineer may order reconsideration of the decision:

33 (a) On the motion of any person interested to reconsider the decision;  
34 or

35 (b) On the motion of the State Engineer.

36 12. ~~Grounds~~ The State Engineer may grant a motion for  
37 reconsideration pursuant to subsection ~~11 include, without limitation:~~

38 ~~(a) Newly~~ 10:

39 (a) Based on newly discovered or available evidence; or

40 ~~(b) Error in the hearing or in the findings of fact or conclusion of  
41 law; or~~

42 ~~(c) The need, in the public interest, for further consideration of the  
43 issues or the evidence, or both.~~

44 (b) For good cause shown as determined by the State Engineer.



- 8 -

~~112.1~~ 12. As used in this section, "interbasin transfer of groundwater" means a transfer of groundwater for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.

Sec. 9. NRS 533.380 is hereby amended to read as follows:

533.380 1. Except as otherwise provided in subsection ~~[5.]~~ 6, in his endorsement of approval upon any application, the State Engineer shall:

(a) Set a time before which the construction of the work must be completed, which must be within 5 years after the date of approval.

(b) Except as otherwise provided in this paragraph, set a time before which the complete application of water to a beneficial use must be made, which must not exceed 10 years after the date of the approval. The time set under this paragraph respecting an application for a permit to apply water to a municipal or quasi-municipal use on any land:

(1) For which a final subdivision map has been recorded pursuant to chapter 278 of NRS;

(2) For which a plan for the development of a project has been approved by the local government pursuant to NRS 278.010 to 278.460, inclusive; or

(3) On any land for which a plan for the development of a planned unit development has been recorded pursuant to chapter 278A of NRS, must not be less than 5 years.

2. The State Engineer may limit the applicant to a smaller quantity of water, to a shorter time for the completion of work, and, except as otherwise provided in paragraph (b) of subsection 1, to a shorter time for the perfecting of the application than named in the application.

3. Except as otherwise provided in subsection ~~[4]~~ 5 and NRS 533.395 and 533.4377, the State Engineer may, for good cause shown, extend the time within which construction work must be completed, or water must be applied to a beneficial use under any permit therefor issued by him, but an application for the extension must in all cases be:

(a) Made within 30 days following notice by registered or certified mail that proof of the work is due as provided for in NRS 533.390 and 533.410; and

(b) Accompanied by proof and evidence of the reasonable diligence with which the applicant is pursuing the perfection of the application.

The State Engineer shall not grant an extension of time unless he determines from the proof and evidence so submitted that the applicant is proceeding in good faith and with reasonable diligence to perfect the application. The failure to provide the proof and evidence required pursuant to this subsection is prima facie evidence that the holder is not proceeding in good faith and with reasonable diligence to perfect the application.

4. The State Engineer ~~shall~~ may grant an extension pursuant to subsection 3 if ~~the~~:

(a) The permit for which a request for an extension is made; or

- 9 -

1 (b) Any order or other decision of the State Engineer relating to the  
 2 permit,

3 is the subject of a pending judicial proceeding. ~~{Each extension~~  
 4 ~~granted pursuant to this subsection must be in annual increments.}~~ An  
 5 applicant who has been granted an extension pursuant to this subsection  
 6 shall ~~{provide}~~ submit a report to the State Engineer during each year  
 7 that the permit remains valid.

8 5. Except as otherwise provided in subsection ~~{5}~~ 6 and NRS 533.395,  
 9 whenever the holder of a permit issued for any municipal or quasi-  
 10 municipal use of water on any land referred to in paragraph (b) of  
 11 subsection 1, or for any use which may be served by a county, city, town,  
 12 public water district or public water company, requests an extension of  
 13 time to apply the water to a beneficial use, the State Engineer shall, in  
 14 determining whether to grant or deny the extension, consider, among other  
 15 factors:

16 (a) Whether the holder has shown good cause for not having made a  
 17 complete application of the water to a beneficial use;

18 (b) The number of parcels and commercial or residential units which  
 19 are contained in or planned for the land being developed or the area being  
 20 served by the county, city, town, public water district or public water  
 21 company;

22 (c) Any economic conditions which affect the ability of the holder to  
 23 make a complete application of the water to a beneficial use;

24 (d) Any delays in the development of the land or the area being served  
 25 by the county, city, town, public water district or public water company  
 26 which were caused by unanticipated natural conditions; and

27 (e) The period contemplated in the:

28 (1) Plan for the development of a project approved by the local  
 29 government pursuant to NRS 278.010 to 278.460, inclusive; or

30 (2) Plan for the development of a planned unit development  
 31 recorded pursuant to chapter 278A of NRS,  
 32 if any, for completing the development of the land.

33 ~~{5-}~~ 6. The provisions of subsections 1 and ~~{4}~~ 5 do not apply to an  
 34 environmental permit.

35 ~~{6-}~~ 7. For the purposes of this section, the measure of reasonable  
 36 diligence is the steady application of effort to perfect the application in a  
 37 reasonably expedient and efficient manner under all the facts and  
 38 circumstances. When a project or integrated system is comprised of several  
 39 features, work on one feature of the project or system may be considered in  
 40 finding that reasonable diligence has been shown in the development of  
 41 water rights for all features of the entire project or system.

42 **Sec. 10.** NRS 538.171 is hereby amended to read as follows:

43 538.171 1. The Commission shall receive, protect and safeguard  
 44 and hold in trust for the State of Nevada all water and water rights, and all  
 45 other rights, interests or benefits in and to the waters described in NRS



- 10 -

1 538.041 to 538.251, inclusive, and to the power generated thereon, held by  
2 or which may accrue to the State of Nevada under and by virtue of any Act  
3 of the Congress of the United States or any agreements, compacts or  
4 treaties to which the State of Nevada may become a party, or otherwise.

5 2. Except as otherwise provided in this subsection, applications for  
6 the original appropriation of such waters, or to change the place of  
7 diversion, manner of use or place of use of water covered by the original  
8 appropriation, must be made to the Commission in accordance with the  
9 regulations of the Commission. In considering such an application, the  
10 Commission shall use the criteria set forth in ~~paragraph (c) of~~ subsection  
11 6 of NRS 533.370. The Commission's action on the application constitutes  
12 the recommendation of the State of Nevada to the United States for the  
13 purposes of any federal action on the matter required by law. The  
14 provisions of this subsection do not apply to supplemental water.

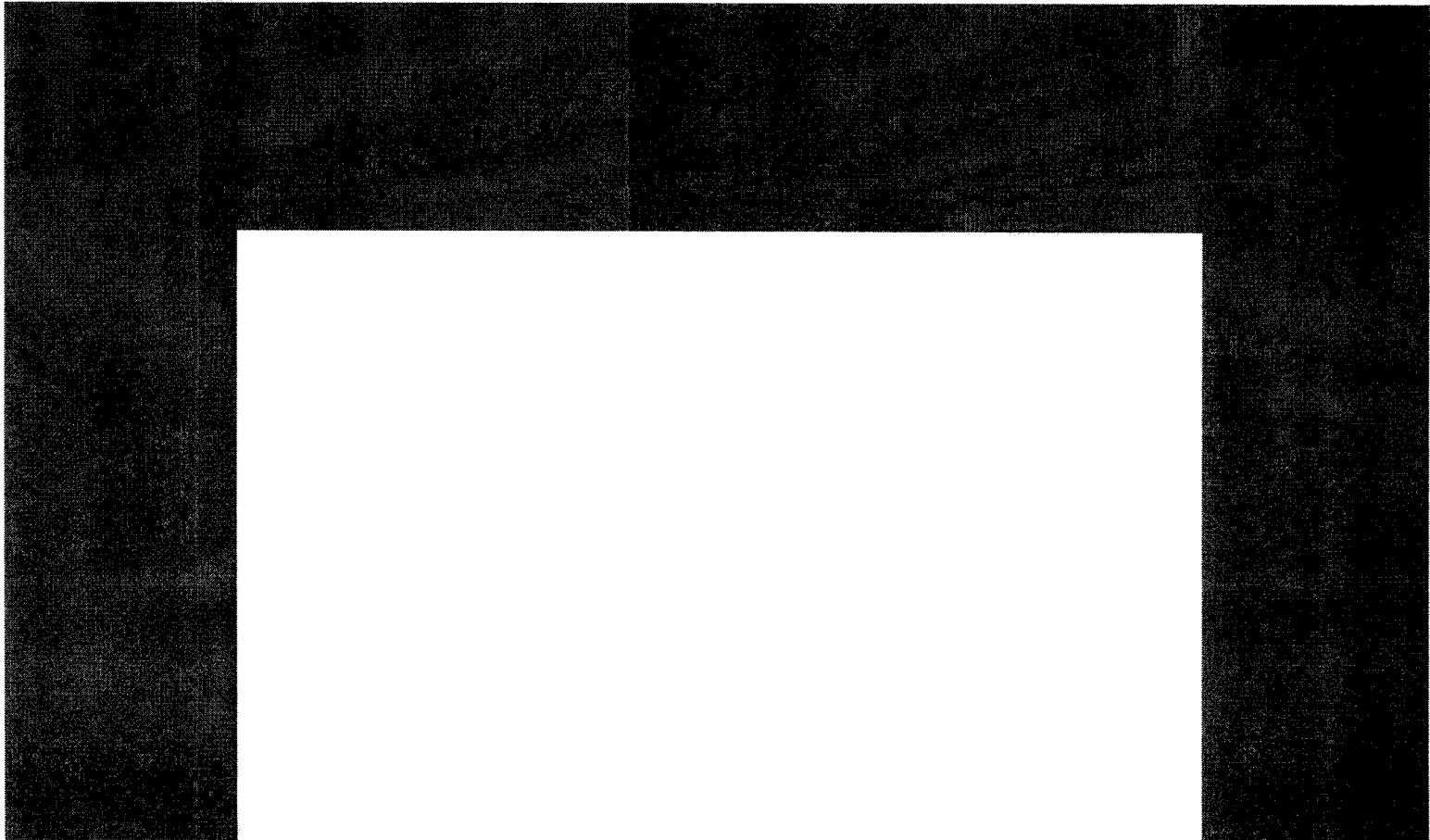
15 3. The Commission shall furnish to the State Engineer a copy of all  
16 agreements entered into by the Commission concerning the original  
17 appropriation and use of such waters. It shall also furnish to the State  
18 Engineer any other information it possesses relating to the use of water  
19 from the Colorado River which the State Engineer deems necessary to  
20 allow him to act on applications for permits for the subsequent  
21 appropriation of these waters after they fall within the State Engineer's  
22 jurisdiction.

23 4. Notwithstanding any provision of chapter 533 of NRS, any original  
24 appropriation and use of the waters described in subsection 1 by the  
25 Commission or by any entity to whom or with whom the Commission has  
26 contracted the water is not subject to regulation by the State Engineer.

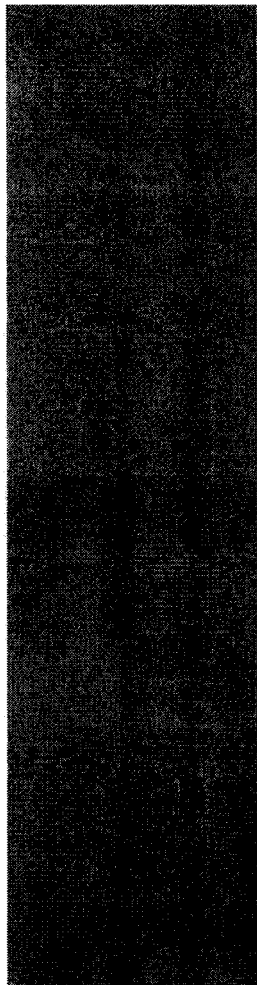
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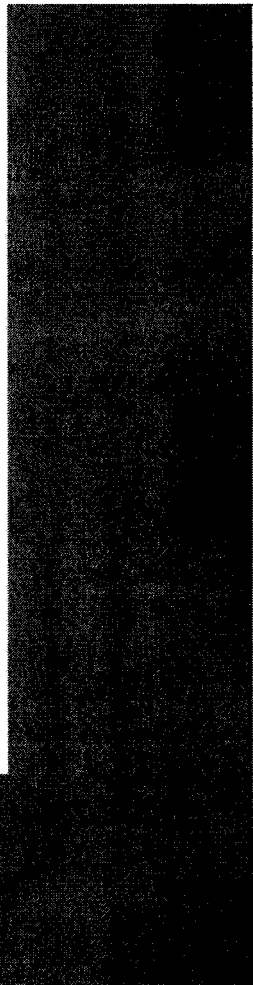
\*PROPOSED AMENDMENT TO SB405\*



4



4



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

**Seventy-fourth Session  
April 4, 2007**

The Senate Committee on Natural Resources was called to order by Chair Dean A. Rhoads at 3:33 p.m. on Wednesday, April 4, 2007, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Dean A. Rhoads, Chair  
Senator Mike McGinness, Vice Chair  
Senator Mark E. Amodei  
Senator Joseph J. Heck  
Senator Bob Coffin  
Senator Michael A. Schneider  
Senator Maggie Carlton

**GUEST LEGISLATORS PRESENT:**

Senator Bob Beers, Clark County Senatorial District No. 6  
Assemblyman Harry Mortenson, Assembly District No. 42

**STAFF MEMBERS PRESENT:**

Susan Scholley, Committee Policy Analyst  
Randy Stephenson, Committee Counsel  
Michael J. Stewart, Principal Research Analyst  
Ardyss Johns, Committee Secretary

**LEGISLATIVE COUNSEL BUREAU  
RESEARCH LIBRARY**

I, the designated custodian of various records of the Nevada Legislature, hereby certify that this is a true and correct copy of the document maintained in the Research Library.

and this 27 day of August, 2015

\_\_\_\_\_  
JESSICA WILT, Legislative Librarian

**OTHERS PRESENT:**

Tracy Taylor, P.E., State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources  
Jason King, P.E., Deputy State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources

Senate Committee on Natural Resources  
April 4, 2007  
Page 3

CHAIR RHOADS:

We will open the hearing with Senate Bill (S.B.) 274.

**SENATE BILL 274**: Makes various changes to provisions governing the State Engineer. (BDR 48-206)

TRACY TAYLOR, P.E. (State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources):

The language in S.B. 274 was requested by the Division of Water Resources during the 2006 interim study on water resources. Its primary focus is to authorize this agency to order any person in violation of the *Nevada Revised Statutes* (NRS) chapters 533, 534, 535 and 536 and the *Nevada Administrative Code* chapters 534 and 535 to pay an administrative fine not to exceed \$10,000 a day for each violation, be liable for any expense incurred by the Division of Water Resources in investigating and stopping the violation, potentially repaying up to 200 percent of the water illegally used and to have the ability to seek injunctive relief. Administrative details for addressing violations, assessing fines or penalties and procedures would be done through the development of rules and regulations. This fining authority is needed because the existing process for addressing violations of the water law is slow and cumbersome, without any meaningful consequence or accountability for violations. Currently, it is a misdemeanor only. The substantial increase in the value and importance of water rights over the past ten years makes a misdemeanor offense almost meaningless.

The intent of these fines is to achieve compliance only and not as an additional funding source for the Division. This fining ability does not fall on individual taxpayers, but on the affected industry. The interim committee asked this office to develop some draft regulations concerning their requirement on fining. The Deputy State Engineer, Jason King, has spent numerous days reviewing other western states as well as Nevada agencies' fining regulations. He has done a thorough job in developing these draft regulations.

JASON KING, P.E. (Deputy State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources):

You should all have a copy of the draft regulations and a flowchart that lays out the framework for assessing violations and implementing the penalties ([Exhibit C](#)). I will not go through the draft regulations item by item, but will instead just highlight the intent.

Senate Committee on Natural Resources  
April 4, 2007  
Page 18

a technical committee on the Carson River to start dealing with these issues. I can see us coming back in the future to ask for some of these funds to help us plan in the right direction. If you plan in the right direction, you will save funds while more efficiently using the water.

DON ALLEN (Silver Springs Mutual Water Company):

I run a water company that is a community water system. We are a nonprofit public water system. When the original A.B. No. 198 of the 66th Session was presented, it excluded nonprofits. Even though we are a public water system, we still have to follow the same federal and State laws and regulations. We just do not have the funding mechanisms to help us accomplish this task. I was hoping to propose a change in the eligibility requirement so it would also include the nonprofit public water systems. I am not looking to save the guy making a profit. I am trying to save the same community in rural areas that do not, at this time, have the funding mechanisms they would if they were a general improvement district.

MR. SCOTT:

I cannot speak formally for the Board, but I do not object to some of these small mutual water companies achieving eligibility as long as we have a way to make sure we are not inadvertently giving access to those who really do not need it. We are a program for those in need.

BOB FOERSTER (Executive Director, Nevada Rural Water Association):

I am in support of Mr. Allen's proposal. The Nevada Rural Water Association has 191 small water systems in its organization. Some are represented in the group of homeowners associations and mutual water companies that would benefit. The A.B. 198 Program has been a tremendous help to the small water systems.

CHAIR RHOADS:

We will close the hearing on S.B. 276 and open the hearing on S.B. 405.

**SENATE BILL 405**: Revises provisions governing the appropriation of public waters. (BDR 48-1158)

CHAIR RHOADS:

Everyone who wants to testify on this bill may do so, but for your information, this Friday at 9 a.m., in this room, Susan Scholley, our Committee Policy

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Analyst, will meet with all of you who have an interest in the bill and try to come to a consensus. If you are unable to reach a consensus, the bill will die. If you do come to a consensus, we will add it to a work session next week and vote on it at that time.

SENATOR AMODEI:

You all have a copy of the mock-up of the proposed amendment ([Exhibit F](#)). The bill before you deals with nine major areas. The first area is a restatement of the State Engineer's authority, which is the statement of existing law. As I indicated in my earlier testimony, as the State has grown and matriculated and we talked about more and more transfers from agricultural to municipal and quasi-municipal use, some of those jurisdictional lines are blurred. That is the reason it would be appropriate at this point in time, to come forward with a more unequivocal statement on the State Engineer's authority. That is section 1.

Three of those nine areas are arguably substantive law changes or additions to the State water law, and the other six are procedural in nature. If you recall, the State Engineer is not subject to the Administrative Procedures Act so the procedures the State Engineer utilizes are ones that are promulgated by his office, specifically for the purposes of administering water law.

In section 3 is what I call the second area. That is the definition of consumptive use we are working with for purposes of a discussion now. This is a substantive addition to the water law in the State and one we need in view of the change of applications as they go from one permitted use to another permitted use. That is technical in nature, and I will leave its discussion to the folks with the slide rules who will speak after me. However, we absolutely need a definition of consumptive use in some way, shape or form. To leave this Legislative Session without one, will invite further proliferation of litigation and further depletion of the resources of the Office of the State Engineer, which you will recall, consists of approximately 90 employees.

The last substantive provision is in section 4, which gives the State Engineer specific statutory authority for incremental analysis of applications. Those are situations you are seeing right now in terms of the Southern Nevada Water Authority and their applications to import from outside the county into their service area. I would submit to you that you will see continuing applications along those lines elsewhere in the State. Remember, we are the most urbanized



State in the nation. Most of the population lives in Clark County or a five- or six-county area in western Nevada. You will need to import water into both of those areas to allow that matriculation to continue. I am not here to talk about planning and zoning. That is up to the local government, but when the locals give the zoning and planning and master plan amendment, you will have to find water to do that. The language in section 4 gives the State Engineer specific statutory authority to go ahead and do that in an incremental sense so if somebody wants to challenge that later on, he has something to rely upon.

Number four is the bifurcation of who a protestant could be. The language did not do much to change things and what we are aiming at here is frivolity. I told you the example of folks who use the same sheet of paper for the protest and only change the date and name and mail it in. I did not like the way that turned out, so on page 4, lines 17 through 26 ([Exhibit F](#)), I have labeled it "frivolity." It provides that the State Engineer may refuse to consider the protest if the protestant fails to provide any information relating to the protest required by the State Engineer. That is an attempt to make sure the people who access the protest procedure at the Division of Water Resources are doing so with some sound basis.

The fifth area is section 7, subsection 6, which I have labeled "communications." It reads, "The State Engineer may communicate with any applicant, protestant or person interested for the purposes of obtaining information which the State Engineer deems necessary to conduct a hearing ...," if he provides notice to the other parties and an opportunity to respond. This is a way to acknowledge the fact that with what resources are available, I do not think it is helpful to attempt to streamline things to prohibit all ex parte communications. However, if the State Engineer speaks with someone on information relating to a protest, and as long as the other sides are advised of that conversation and given an opportunity to provide input, that is a practical way of dealing with the information flow for purposes of protest.

I have the sixth area labeled as "settlement discussions." It is a technical review process prior to a hearing. It starts on page 4, line 38 ([Exhibit F](#)). It provides specific statutory authority for the State Engineer to bring technical persons in although I had said I do not think you should have lawyers in that process. If it is technical in nature and really scientific, the aim is to find out what the science is and where the differences are. It is a potentially useful tool.



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The seventh area starts at the top of the page 5 ([Exhibit F](#)), section 7, subsection 8 which is the framework for action. This is an attempt to provide some framework for action within which parties can look at and count on in terms of when they are planning out what a protest entails and for how long it goes. Originally, it came before you as 120 days, and now we have it at 240 days. Some people hated 120 and some hate 240. It is a function of several things. One, there is a potential fiscal note if we go to the 120, which would probably result in the need for about a 10-percent increase in staff for the State Engineer's office. This is an attempt to provide some sort of structure within existing resources to avoid a huge fiscal note, but also let those people who are part of the process, know that there is a framework for taking action.

Number eight starts on page 7, lines 30 through 44 ([Exhibit F](#)). This was an attempt to give the State Engineer specific statutory authority for reconsideration. I am still not thrilled with the way that turned out, but maybe someone on Friday morning will have an idea along those lines.

Finally, the ninth area is the "stay" language. It says if there is litigation involving the subject of an application, then processing that application is stayed until litigation is completed.

CHAIR RHOADS:

I have two letters to go on the record concerning S.B. 405. One is from the White Pine County Economic Diversification Council ([Exhibit G](#)) and the other is from Laurie Carson, White Pine County Commission ([Exhibit H](#)).

MR. TAYLOR:

I have given each of you a copy of my prepared testimony from which I will read ([Exhibit I](#)). Although the bill drafters have made improvements to the initial draft, I still have concerns. I have provided you with some suggested amendments ([Exhibit J](#)). I will go over those when we meet on Friday morning.

MR. DEPAOLI:

I have been working with the State Engineer. I have seen their proposed amendments and they have seen mine. We agree on some, but not yet on others but if it is the Committee's preference, I would also wait and see what comes from Friday's meeting.

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ROBERT MARSHALL:

I support this bill. There are a number of things in it that are very helpful. As I indicated in a letter that was passed out to you last week, I specifically approved of section 1. It makes the State Engineer's orders final. He makes the final decision on the matter covered by the order. One of the problems I have had as a water right holder is that some agencies do not take the State Engineer's order seriously and think they can make other determinations. You go through years of paying the bills for expensive experts and hearings and hiring attorneys and, in my case, sometimes I hire attorneys and sometimes I do it myself. You go through all this expense and delay, and you drill a test well that indicates a basin can produce a certain amount of water consistent with the State Engineer ruling. Then, you have a governmental agency that says, "We won't recognize that." It is regulatory chaos and I have experienced it firsthand. I have a great deal of confidence in the State Engineer's office. That does not mean I always agree with them. Sometimes I take appeals against them and sometimes I win. It is very important that the State Engineer be the final, sole arbiter of the availability of water in basins pursuant to the permits he issues. In the past, the State Engineer may have issued too many permits and over appropriated a basin, but they do not do that anymore. Now they do not issue enough permits. They can always designate a basin and they can administer it, so there is a mechanism in the law to take care of that. However, those concerns are not with us today because the State Engineer's office is very careful about not over-allocating a basin.

In section 1, subsection 1, paragraph (a) of Mr. Taylor's proposed amendment, ([Exhibit J](#)), he stuck in the word "unappropriated." It reads, " ... the State Engineer has full exclusive and final authority with respect to the appropriation, allocation and availability of unappropriated water." This emasculates the purpose of the bill, because it means the State Engineer can make final orders on new permitting, but it does not protect existing right holders from people who would not recognize existing permits. I would strongly suggest the word "unappropriated" be eliminated from any amendment and that the language stay as it is in the mock-up bill for S.B. 405, [Exhibit F](#). I would like to have a shorter time period than 240 days for a decision to be rendered.

ROSS DELIPKAU:

On page 7 of [Exhibit F](#) starting at line 33, on the motion to reconsider an order of the State Engineer, my concern is whether there is a staying of the 30-day appeal period. It is fine if someone wants to file a motion to reconsider, but we

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do not want anybody to blow the 30-day appeal period. That is the decision of this Committee.

On page 2, [Exhibit F](#), starting at line 30, I find "consumptive use" quite confusing. For example, on lines 33 and 34 it reads, " ... or that otherwise does not return to the ground water or surface ... " Does that mean the converse? If it does return to the source, meaning that is included within "consumptive use." The provisions also found on page 2, state that the State Engineer conducts all of these hearings. In these very large desert basins of ours, what happens in the north may be different from what happens in the south. If water for a wheat field is converted to a different use, the consumptive use is going to be different than the conversion from an alfalfa field. The goal we are all trying to achieve is to allow a change of a permitted or certificated right to another use with no additional yield or withdrawal upon the source. There should be some language requiring the State Engineer to look at both what happened on the agricultural source and what happens to the water when it is used. It can all be consumed in a plant, or it can go into a subdivision. The subdivision will have secondary or return flows through the sanitary waste system and through outdoor irrigation.

The State Engineer is well equipped. His people have the expertise to determine these items on a case-by-case basis without having hearings in each basin. We need to change some of the statutory language to simplify and condense it where the State Engineer looks at these two factors, existing use and proposed use, with no additional withdrawal upon the source.

LISA GIANOLI (Washoe County):

Washoe County is pleased with the mock-up of S.B. 405. However, we do have one amendment ([Exhibit K](#)), which Jeanne Ruefer will explain to the Committee.

JEANNE RUEFER (Water Resource Planning Manager, Department of Water Resources, Washoe County):

We were pleased to see the proposed amendments to the bill and we fully support it. We would like to offer an amendment that would explicitly state the authority of local governments to determine water availability and acceptability of water rights in their jurisdictions, while fully recognizing the mandate of the State Engineer to have full, exclusive and final authority with respect to the maximum limit of appropriations of water rights in Nevada.

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BOB FULKERSON:

I have been working on public land and water issues in this State for the last 25 years and I agree with the opening remarks of Senator Amodei. This State is changing rapidly and there are a lot of pressures on decision makers which speaks for a more deliberative and open process. I have prepared testimony showing why I am opposed to this bill ([Exhibit L](#)).

DENNIS GHIGLIERI:

I have reviewed the amended S.B. 405 ([Exhibit F](#)) and it still contains language that will unnecessarily limit public participation. It also gives the State Engineer a new role, which is not defined, and I argue, presently rests in part, with local government. Currently, those with water rights can protest as well as any of the public that will be affected by the appropriation of water. This feature in Nevada water law should remain unchanged simply because appropriation may impact natural resources such as lakes, rivers, streams, springs and wetlands dependent on groundwater, as well as affecting existing water rights. The State Engineer should not be limited by the Legislature in the scientific information the State Engineer can hear and consider by limiting who can participate in certain hearings.

Further, when the State Engineer grants a portion of an application as a water right, there should not be any automatic granting of the remaining portions as provided for in my reading of S.B. 405. Each appropriation must follow due process for applicant and protestant as provided for in the existing law. Currently, the State Engineer determines how much of the public waters of Nevada, both surface and groundwater, can be appropriated for use by the applicant. That is a specific and necessary role for the State Engineer, and it works. However, section 1 provides the State Engineer with a role to determine the allocation and availability of water ([Exhibit F](#)). I am concerned that this wording may merely be a rewrite of sections 2 and 4, which were deleted from the original bill. Some people see regulatory chaos. I see a necessary need by local governments to understand what real water allocation means when houses are put on a demand for water. If that water is not there, they are not going to come back and complain to the State Engineer as loudly as they are going to come back and complain to their local officials who may have permitted that application to begin with.



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I am also concerned that you try to define "consumptive use." Currently, consumptive use is defined by the State Engineer on a case-by-case basis and it needs to stay that way.

SUSAN LYNN (Great Basin Water Network):

The Great Basin Water Network is a group that looks at sustainable use of water. The first writing of the bill alarmed us drastically. The second one only alarms us some, so we are making some progress, but some portions of this bill are troublesome to us. We do not think there is any regulatory chaos as was referred to today. Having sat through a number of the State Engineer's hearings, it is a very orderly process. It is much like an attorney's appeal or discovery process and you have the weighing of evidence that is provided by the parties who are interested. The process used by the State Engineer is sufficient and does not need further definition.

We also see that it becomes more difficult for ordinary citizens who have serious concerns and need to protect our water rights; we may be shut out of the process. This repeatedly calls for science and we agree that science is a very necessary part of the procedure the State Engineer follows. We are finding a lot of little people who are fighting big water applications, and they need to band together to find legitimate representation and legal and scientific experts to help them represent their cases. The most recent case had to do with Aqua Trac where several ranchers in the affected valley have already filed applications but the Aqua Trac applications were heard first. Those ranchers were not only required to provide a defense of their applications, but they will have to come back again when their applications are finally heard by the State Engineer. They have to go to double the costs, which is something we are very concerned about.

We are also concerned about the terminology for consumptive use. Trying to define consumptive use is like trying to say one glove fits every hand. There are a number of different basins having different requirements and consumptive use varies from basin to basin. It also varies from home to home, field to field and region to region. Therefore, we are very hesitant to begin trying to define consumptive use.

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JOE JOHNSON (Toiyabe Chapter, Sierra Club):

The Toiyabe Chapter of the Sierra Club would like to go on record as opposing S.B. 405 as it is presently written. Our principal concerns have to do with the public's right to participate and the definition of consumptive use, which is confusing.

MR. DAVIS:

We still have some concerns about the public participation section of the bill, but I will be here on Friday to see if some of those concerns can be addressed.

ERIK HOLLAND:

I am an artisan teacher from Reno. It figures that the bill would share the same number as the busiest freeway in southern California. What is with all these changes in water law? What is broken? I do not want all the water allocation responsibility concentrated on the State Engineer. I am not sure he does either. Talk about a recipe for an ulcer in this State. The public process should be as broad as possible. Just because I do not own water rights does not mean I do not have an interest in how water is allocated. The cartoon I submitted to this Committee ([Exhibit M](#)) is what I fear could happen. It is easier to replace a recalcitrant State Engineer than the public.

I should be able to come and talk about water issues. It seems to be part of the grand scheme to put northern Nevada on a freeway to even more rapid growth than we are currently experiencing. I am concerned about all this matriculation, as it was called. For example, a huge new development is planned in Storey County called Cordevista. I noticed a lot of art in this building with Nevada scenes, but unfortunately, urban sprawl is becoming a more accurate Nevada scene. As a member of the public, I am concerned and frustrated with it. I am a veteran of some master-plan changes and wars in Washoe County where a master plan is completely overturned to benefit a developer. With the large development on tap in Storey County, I would argue that the citizens of Storey County, even if they do not possess water rights, would like to weigh in on this proposal. The reason I bring up Cordevista is because water will need to be imported. As a citizen, I generally prefer that the water stay where it is. I do not want over-pumping to result in dust storms that will obscure our clear Nevada skies. I do not want Pershing County stripped of water for development in Reno, and I do not want water moved around to support developments like Coyote Springs.

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Please think about the people you represent. This room is filled with a lot of suits, but you also represent the people who are toiling to earn their daily bread. Ask yourselves as you consider this bill, do Nevadans want their landscape to look like urban sprawl? Do Nevadans want to pay higher taxes for more water to support mega developments? Do Nevadans want the chance to weigh in on water decisions? I know a fourth-generation Nevadan who is often in tears after a day out and about when she sees her favorite places have been paved. Let us keep our voices.

CHAIR RHOADS:

We will close the hearing on S.B. 405 and open the hearing on S.B. 484.

**SENATE BILL 484**: Creates the position of Rural Land Use Planner within the Division of State Lands of the State Department of Conservation and Natural Resources. (BDR 26-397)

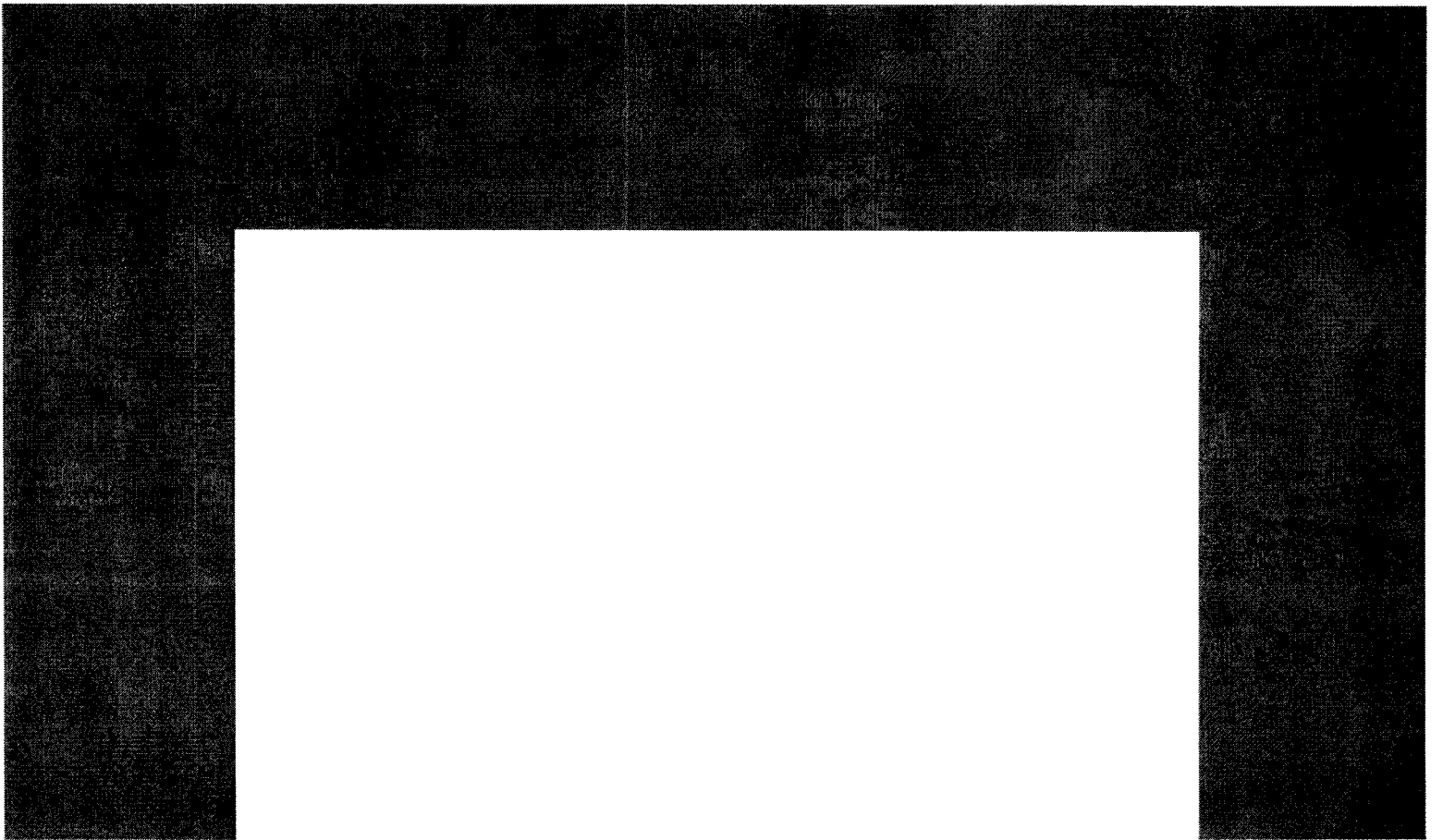
MICHAEL J. STEWART (Principal Research Analyst):

As nonpartisan staff of the Legislative Counsel Bureau, we cannot advocate the passage or defeat of any legislation. However, as staff to the Legislative Committee on Public Lands, from which S.B. 484 was recommended, I am here to present the bill. I have given you an outline of the bill ([Exhibit N](#)). Given these important functions, the Committee on Public Lands believes that providing an additional staff member in the Division of State Lands would be beneficial to the State and to those local governments needing assistance from the Division. The Committee was approached with an amendment that would somewhat restructure S.B. 484 to include an appropriation to pay for the position ([Exhibit O](#)). It would require that the appropriation be included as a base budget expenditure in the proposed budget for the Executive Branch of the state government in a future biennium.

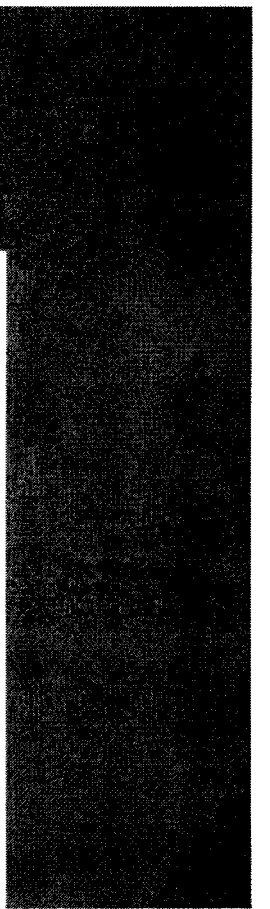
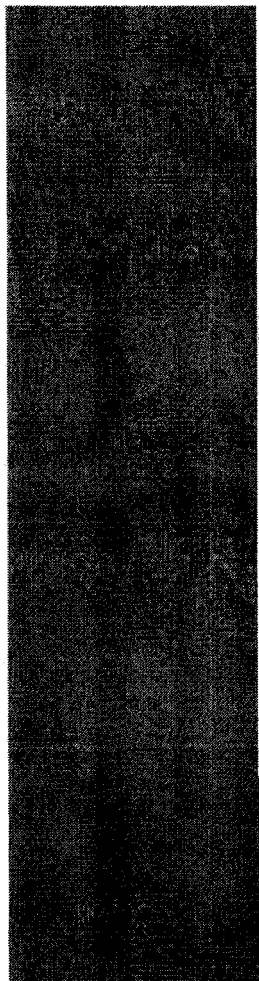
CHAIR RHOADS:

The rural counties do not have the expertise enjoyed by the larger counties. That is what we were getting at during the meetings of the Committee on Public Lands. Everywhere we went, we were told by the rural counties that they did not have the talent needed for land-use planning.

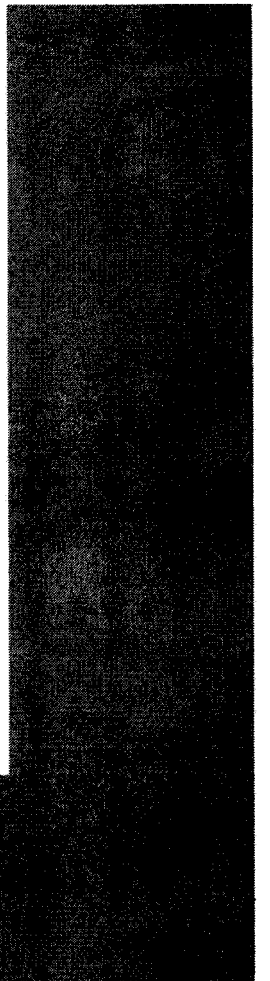
PAMELA B. WILCOX (Administrator and State Land Registrar, Division of State Lands, State Department of Conservation and Natural Resources)



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**SB 405**  
**Testimony for Tracy Taylor, State Engineer**  
**Senate Natural Resources**

April 4, 2007

Good afternoon Chairman Rhoads and Members of the Committee. For the record, my name is Tracy Taylor, Nevada State Engineer. Thank you for the opportunity to provide testimony on this bill. I appreciated the opportunity Senator Amodei has provided myself and staff to work closely with him on this bill. The bill drafters have made improvements to the initial draft, however, I still have concerns. I have provided you with some suggested amendments and if you would like I can quickly go through them and comment on why they are needed or I could answer any questions.

More specifically:

Addressing Section 1, I believe the State Engineer already has the final authority on the allocation of water, but I do believe this addresses limitations on other entities for determinations on those items. I just have small amendment concerning only administering on the basis of priority, this may preclude administering basins on preferred use or other statutory tools and I do not want to be so limited.

**LEGISLATIVE COUNSEL BUREAU**  
**RESEARCH LIBRARY**

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Dated this 27 day of August, 2015

TERESA WILT, Legislative Librarian

By: *Teresa Wilt*

EXHIBIT I Comm. on Natural Resources

Date: 04/04/07 Page 1 of 3

Page 2 Section 2,

I am strongly in support of defining consumptive use and I have provided some minor amendments to this section of the bill. The concept remains the same, but the amendments are merely points of clarification. I have also introduced the concept of waste into this section of the bill in that water cannot be wasted in an attempt to show a higher consumptive use. I want to be clear that the intent of this bill is to consider the consumptive use of the original right and the new right on a basin wide analysis in a general sense, but also provide the flexibility to consider applications on an individual basis.

I am in support of clarifying that the State Engineer has the authority to issue conditional permits. However, I do not want to be restricted to granting the entire amount, but want the discretion to grant additional amounts as the science shows.

Section 4, subsection 2. The changes here grant the ability to grant applications of junior priority for a minimal amount of water, but those applications must also meet the requirements of Nevada water law.

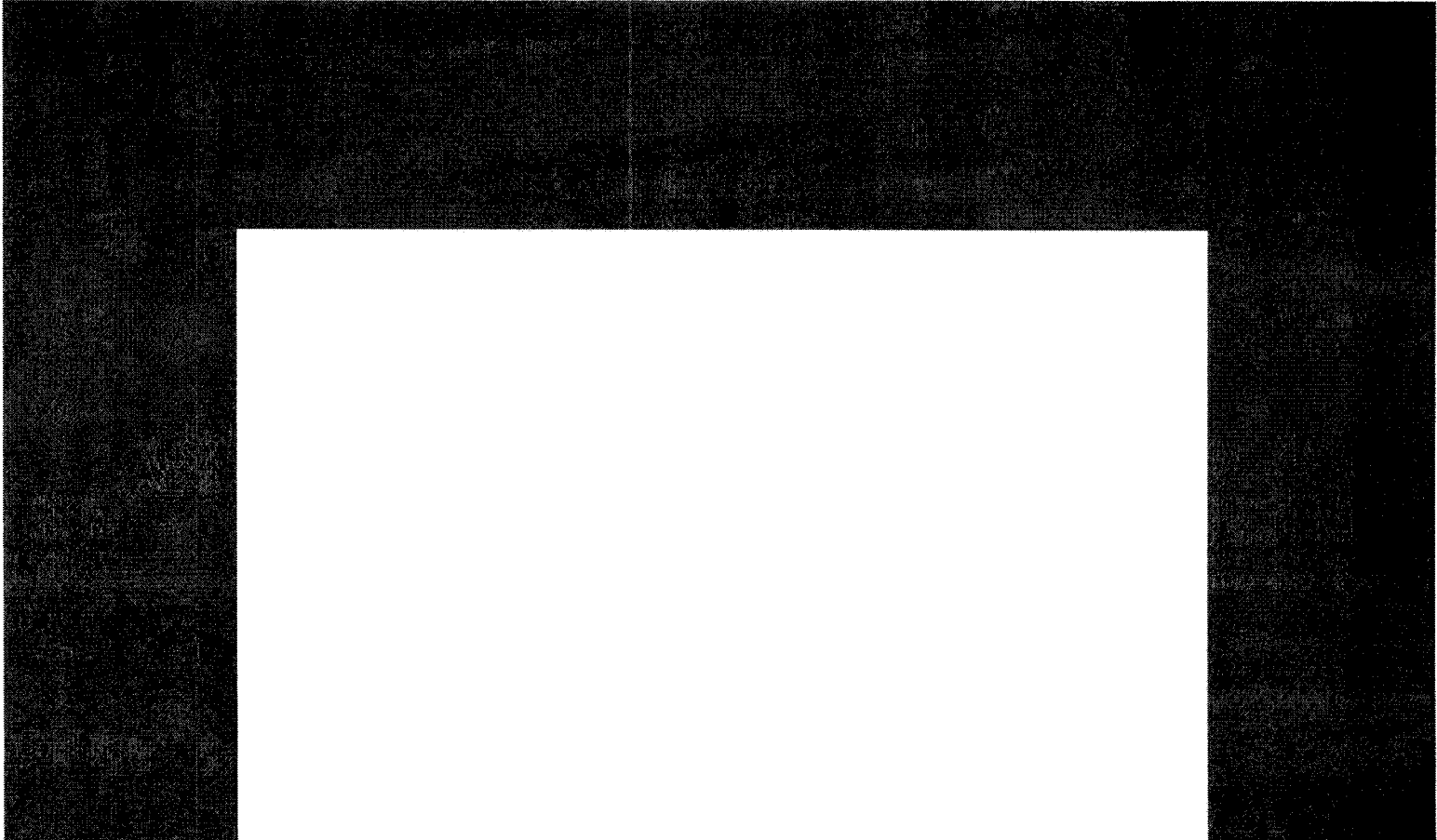
Page 4, Section 7, subsection 5. I think there is confusion on what is technical data and what should be submitted, my amendment addresses all types of information that must be submitted in the application process. And I do not want to be inundated by technical data that I do not need.

Page 4, Section 7, subsection 6. I do not want to be limited to communication with parties only if there is a hearing, I want to be able to communicate on any protested application, which may not require a hearing.

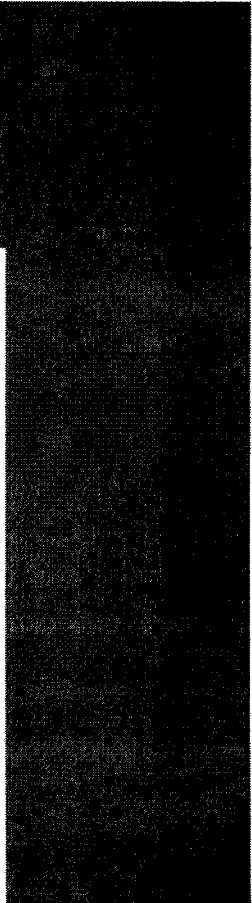
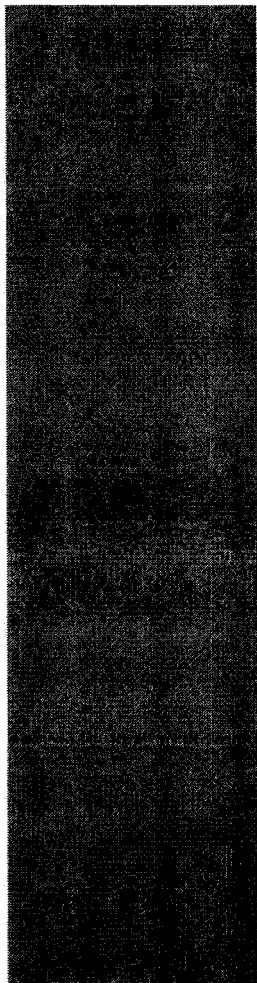
Page 4, Section 7, subsection 7. The term dispute is too open-ended and I believe the intent here is to allow the State Engineer to meet with technical representatives to address any issues on water right applications and my amendments speak to that concern.

Page 7, Section 8, subsections 10-12. I would like to eliminate this section because the State Engineer already has the option of reconsidering any error made in his ruling and I believe this amendment will be overused and will lead to a dramatic increase in the workload. If there is that much concern about this language I would propose this issue be addressed by the public lands committee.

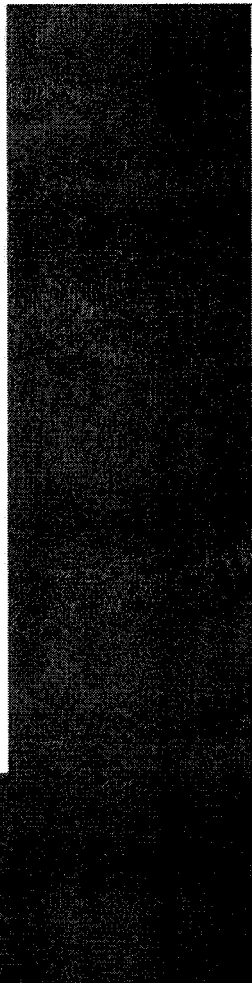
Page 8, Section 9. I agree with the concept and suggest a better a location in the water law for the proposed amendment.



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As the designated custodian of various records of the Nevada Legislature, I hereby certify that this is a true and correct copy of the document maintained in the Research Library.

Dated this 27 day of August, 2015

TERESA WILT, Legislative Librarian

By: Teresa Wilt

STATE ENGINEER'S PROPOSED AMENDMENTS TO SB 405

April 4, 2007

Page 1: Section 1. Chapter 532 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, the State Engineer has full, exclusive and final authority with respect to:

- (a) The appropriation, allocation and availability of unappropriated water;
- (b) The point of diversion, manner and place of use of appropriated water already appropriated;
- (c) The administration of the powers and duties conferred upon him by law; and
- (d) The ability to administer those powers and duties and any related provisions of law or regulation including consideration of ~~on the basis of~~ priority.

2. No change.

Page 2: Section 2. Chapter 533 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

Section 3. 1. The State Engineer ~~may shall~~ before limiting the transfer a change in point of diversion, place or manner of use of a water already appropriated ~~right to its~~ consumptive use in any hydrographic basin or stream system:

(a) Conduct a public hearing to:

(1) Establish the historical and future consumptive use ~~for each beneficial use of water in the basin; and or~~

(2) ~~Evaluate any future uses and corresponding consumptive uses of water in the basin (b) if determination has not been made pursuant to subsection (a), in conjunction with a protested change application, make a finding that limiting the transfer to its consumptive use is appropriate.~~

2. If the State Engineer conducts a hearing pursuant to paragraph (a) of subsection 1, the State Engineer shall:

(a) Provide reasonable public notice of the hearing; and

(b) Allow any holder of a water right in the hydrographic basin or service-area stream system to appear at the hearing and present testimony or any other evidence relevant to the hearing.

3. No change.

4. No change.

5. As used in this section, "consumptive use" means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or that otherwise does not return to the ground water or surface waters of the state. The term does not include any water that:

(a) Falls as precipitation directly on the place of use, which reduces the crop water requirement; or

(b) Is ~~used or subject to use in accordance with a federal or state compact or decree~~ waste as defined in NRS 533.460, 534.0165 or is a non-efficient use of water.

6. This section shall not apply to surface water sources that are tributary to the Colorado River.

Pages 2-3: Section 4. 1. The State Engineer may approve an application to appropriate water, but may also limit ~~for an~~ the initial use amount of water to a quantity less than the amount requested in the application and provided that the entire amount approved. Use of the additional water permitted may be approved at a later date if additional evidence demonstrates to the satisfaction of the State Engineer that the additional amount of water is available and may be appropriated in accordance with the provisions of NRS chapters 533 and 534, ~~subsection 5 of NRS 533.370~~. In making that determination, the State Engineer may establish a period during which additional studies may be conducted or additional evidence provided to support the application.

2. In any basin in which an application to appropriate water is approved pursuant to subsection 1, the State Engineer, in accordance with NRS chapters 533 and 534, may approve or deny or otherwise act upon any other pending application to appropriate water in that basin or flow system for that basin that the State Engineer believes concludes:

(a) May affect any future economic growth in the basin; or

~~(b) Constitutes a minimal amount of water.~~

Page 4: Section 7

1. No change.

2. No change.

3. No change.

4. No change.

5. Each application and protestant shall, in accordance with a schedule established ~~for that purpose by~~ the State Engineer, provide to the State Engineer and to each protestant and each applicant:

(a) ~~All technical data regarding an application or an application protest~~  
Any information requested by the State Engineer.

~~(b) Any other information specified by the State Engineer relating to the application or application protest.~~

Page 4: Section 7

6. The State Engineer may communicate with any applicant, protestant or person interested person for the purposes of obtaining information which the State Engineer deems necessary to ~~conduct a hearing or~~ act on a protested application if the State Engineer:

(a) Provides notice of the communication to each applicant, protestant or ~~person interested~~ interested person with whom the State Engineer did not communicate; and

(b) Provides an opportunity to respond to each applicant, protestant or interested person specified in paragraph (a).

7. ~~The State Engineer shall, at least once, may~~ invite technical representatives of the applicant or protestant or other governmental agency to meet with the technical staff of the State Engineer ~~to settle or attempt to settle the dispute~~ in consideration of a water right application.

In the Supreme Court of Nevada

Electronically Filed  
Aug 28 2015 03:15 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

CORPORATION OF THE PRESIDING BISH-  
OP OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, ON BEHALF OF  
CLEVELAND RANCH,

Petitioner,

vs.

THE SEVENTH JUDICIAL DISTRICT  
COURT of the State of Nevada, in and  
for the County of White Pine; and THE  
HONORABLE ROBERT E. ESTES, Senior  
District Judge,

Respondents,

and

JASON KING, P.E., in his official capac-  
ity as the NEVADA STATE ENGINEER,  
and the NEVADA DEPARTMENT OF  
CONSERVATION AND NATURAL RE-  
SOURCEs, DIVISION OF WATER RE-  
SOURCEs; and SOUTHERN NEVADA WA-  
TER AUTHORITY,

Real Parties in  
Interest.

**NOTICE OF SUPPLEMENTAL AUTHORITIES (NRAP 31(e))**  
*and attached "Highlighted Legislative History"*

Petitioner indicated that there is no legislative history for the lan-  
guage that became NRS 533.3705. (Pet'n 19, 26.) But it turns out that  
that language, added by the conference committee, was originally con-  
tained in SB 405, and there is a discussion about that language in the  
legislative history for that bill. SNWA therefore calls the Court's atten-

tion to this legislative history, which shows that NRS 533.3705 codifies the state engineer's preexisting authority to implement staged development and manifests the legislative intent to allow the state engineer to use this authority in pending applications, including, expressly, SNWA's applications under review in this case. (This supplement pertains to pages 21 and 22 of SNWA's answer, pages 19 and 26 of the petition, and pages 3–4 and 21–27 of petitioner's reply to SNWA's answer.)

***The Legislature confirmed the state engineer's preexisting authority***

In a March 28, 2007 committee hearing, Senator Amodei explained that proposed legislation discussing staged development—which was the predecessor to what would later become NRS 533.3705—intended to clarify the state engineer's existing power to implement staged development, specifically as it regards SNWA's applications in this case:

[The proposed legislation] talks about incremental approvals. Currently, there are several instances in the State. The Southern Nevada Water Authority has an importation scenario where they have applied for 90,000-plus acre-feet in White Pine County and various valleys. **It would not be unusual for the State Engineer to say, "I am going to approve a portion of your application.** We are going to put it into effect a monitoring program to see how the water



levels do based on what you pump. You can come back and if they go down too much, then we may adjust it downward. If they stay the same, then we may let you pump more.”

(Minutes of Sen. Comm. on Nat. Resources (3/28/07) at 8–9, Leg. Hist. at 5–6 (emphasis added).) The legislator, the sponsor of the measure, discussed that this section did not *change* the state engineer’s authority, but *codified* the process so that “everybody knows what the rules are”:

[The proposed legislation] is an attempt **not to change the criteria by which the State Engineer makes a decision** as to whether or not the water is available, but the administrative process by which they deal with that stair-stepped approach. **This will ensure it is in statute so everybody knows what the rules are** in terms of protest and information submittal and how the monitoring programs are going to work. It should not be something that varies from application to application. Make sure the basic structure is there, go forward with it and proceed from then.

(*Id.* (emphasis added).) Senator Amodei noted that this codification would prevent unnecessary litigation on the scope of the state engineer’s authority to call for incremental development:

I am not saying he does not have the opportunity, but he does not have clear-cut guidance in the statute. If he were to be sued, it would be everyone’s interpretation of something that does not deal directly with that issue. This is an attempt to deal directly with that issue in statute.

(*Id.* at 9, Leg. Hist. at 7.)

At that hearing, Ross de Lipkau, a water lawyer, also testified that the language under consideration would add no new authority:

[T]he State Engineer has, for many years, issued permits incrementally. . . . We are codifying what he has done for at least 25 years.

(*Id.* at 20, Leg. Hist. at 17.)

***The Legislature's understanding was consistent throughout the legislative process***

The legislative history shows that the creation of NRS 533.3705 maintained the same purposes, even after the language was amended. (Proposed Amend. 3489 to SB 405 (3/31/07) at 2–3, Leg. Hist. at 2–3 (renumbering section 6 as section 4).) In an April 4 committee hearing, Senator Amodei explained that the redrafted section provided a specific statute confirming that the state engineer had the authority to implement staged development in approving the SNWA applications that are at issue in this case:

[The section with the language that became NRS 533.3705] gives the State Engineer specific statutory authority for incremental analysis of applications. **Those are situations you are seeing right now in terms of the Southern Nevada Water Authority and their applications to import from outside the county into their service area. . . .** The lan-

guage in [this section] gives the State Engineer specific statutory authority to go ahead and do that in an incremental sense **so if somebody wants to challenge that later on, [the State Engineer] has something to rely upon.**

(Minutes of Sen. Comm. on Nat. Resources (4/4/07) at 19–20, Leg. Hist. at 37–38 (emphasis added).) During that hearing, the state engineer agreed that the redrafted section clarified his existing authority:

I am in support of **clarifying** that the State Engineer has the authority to issue conditional permits.

(Testimony of State Engineer in from of Sen. Nat. Resources Comm. (4/4/07) at 2, Leg. Hist. at 47 (emphasis added).) Concerned that the proposal might inadvertently restrict that authority, however, the state engineer suggested amendments, which the Senate adopted. (*Id.*; State Engineer’s Proposed Amendments to SB 405 (4/4/07) at 2, Leg. Hist. at 50; State Engineer’s Proposed Amendments to SB 405 (4/6/07) at 2, Leg. Hist. at 53; Amend. No. 402 to SB 405 (4/16/07) at 4, Leg. Hist. at 58.)

***NRS 533.3705 was enacted from the earlier bill***

After the assembly did not act on SB 405, the Senate incorporated the language into other measures. The Senate Committee on Natural Resources first inserted the language into AB 285. (Minutes of Sen. Comm. on Nat. Resources (5/16/07) at 16, Leg. Hist. at 66.) Ultimately,

the conference committee incorporated the language from SB 405 into the final version of SB 274, which was enacted as NRS 533.3705.

Dated this 28th day of August, 2015.

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*Attorneys for Southern Nevada Water Authority*

## **HIGHLIGHTED LEGISLATIVE HISTORY**

*This legislative history has boxes around the key points that pertain to the issues in this case. These boxes do not appear in the original legislative history.*



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

**Seventy-fourth Session  
March 28, 2007**

The Senate Committee on Natural Resources was called to order by Chair Dean A. Rhoads at 3:49 p.m. on Wednesday, March 28, 2007, in Room 2144 of the Legislative Building, Carson City, 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 Dean A. Rhoads, Chair  
Senator Mike McGinness, Vice Chair  
Senator Mark E. Amodei  
Senator Joseph J. Heck  
Senator Bob Coffin  
Senator Michael A. Schneider  
Senator Maggie Carlton

**STAFF MEMBERS PRESENT:**

Susan Scholley, Committee Policy Analyst  
Randy Stephenson, Committee Counsel  
Ardyss Johns, Committee Secretary

**OTHERS PRESENT:**

Tracy Taylor, P.E., State Engineer, Division of Water Resources, State  
Department of Conservation and Natural Resources  
Steve K. Walker, Douglas County  
Sabra Smith-Newby, Clark County  
Gordon DePaoli, Walker River Irrigation District  
Steve Bradhurst  
Kyle Davis, Policy Director, Nevada Conservation League  
Lisa A. Gianoli, Washoe County  
Edwin D. James, P.E., Carson Water Subconservancy District  
Ross DeLipkau  
Michael Pagni, Truckee Meadows Water Authority  
Andy Belanger, Southern Nevada Water Authority

**LEGISLATIVE COUNSEL BUREAU  
RESEARCH LIBRARY**

As the designated custodian of various records of the Nevada Legislature, I hereby certify that this is a true and correct copy of the document maintained in the Research Library.

Dated this 27 day of August, 2015

TERESA WILT, Legislative Librarian

By: 

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relinquish the right that is dedicated for that parcel for that domestic well to the State Engineer. The State Engineer will hold that right and then when that parcel is to be hooked up by a public purveyor, or municipal water system, the State Engineer will grant a credit from that right. It stops all the applications yearly to keep the rights viable. This is a Douglas County bill that actually came out as another bill, but it fits perfectly into this segment and we asked to amend it into this bill, because it kills two birds with one stone.

CHAIR RHOADS:

How long does the State Engineer hold on to those water rights?

MR. WALKER:

Forever, as long as it is pertinent to the parcel.

SENATOR HECK:

This amendment appears identical to the mock-up amendment presented by the State Engineer.

MR. WALKER:

I did not review what was in the mock-up, so if there is a problem, I am unaware of it.

SABRA SMITH-NEWBY (Clark County):

I have been working with the State Engineer on this friendly amendment (**Exhibit F**). It was also included in the mock-up amendment proposed by the State Engineer. We are in favor of this bill, particularly as it relates to accessory structures.

CHAIR RHOADS:

We will close the hearing on S.B. 275 and open the hearing on S.B. 405. Senator Amodei requested we hold a hearing on this bill today and then wait a week and have another hearing on the same bill after amendments have been processed.

**SENATE BILL 405:** Revises provisions governing the appropriation of public waters. (BDR 48-1158)

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SENATOR AMODEI:

For the record:

I have filed this disclosure with the Director of the Legislative Counsel Bureau under NRS 281.501 to indicate to you there are members of my firm who lobby on behalf of people who are interested in water clients. Also, part of my practice in my full-time day job, relates to water matters in various areas of the State. I would refer people to that disclosure, but I will indicate, for purposes of this hearing today and also for this proposed legislation, that I have not accepted a gift or a loan with relation to this legislation. I have no pecuniary interest nor does my law firm in whether it passes or fails. Also, my commitment in a private capacity to interest of others will not reasonably affect my judgment in this matter. That is based on ethics opinion case of Henry Woodbury where it says if this affects all members similarly situated that it applies to, that there is a presumption that there is no commitment or effect in that capacity.

Allow me to give you a history of why I decided to bring a separate bill on water matters. If you look at the bill, I have tried to focus mainly on two areas. As Nevada has matriculated from where we get a lot of our major legislation regarding water law and the administration thereof, which was sometime around the time of World War I, we have evolved over the last 20 or 30 years from a state where we used to fight about water for agricultural reasons. However, we had not seen anything until we stopped fighting just about agricultural use and started fighting about domestic uses along with agriculture. The intensity level on water matters in Nevada has been escalated phenomenally over the last couple decades. When we look at how we administer that law, it is time for us to have the discussion and see if there are areas where we can give the State Engineer additional tools and also take care of some areas where jurisdictions have been blurred. Those are the main two themes of what I had hoped to accomplish with S.B. 405, and hope to accomplish with a major amendment before we get down to considering whether to support or not support this bill.

I have practiced in the water law area and served as a member of the S.C.R. 26 Committee, and this Committee. I have heard from jurisdictions in western Nevada with concerns of both surface and groundwater throughout the seven-county region in western Nevada. I have also served on this Committee



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for the past several sessions and I have talked to the State Engineer and developers concerning issues regarding how we administer water.

Nothing in S.B. 405 is intended to, nor should be interpreted to, change the way we do priority in water or affect any negotiated settlements, court decrees, anything to do on the Colorado River or any of the bistate compacts that may be affected by this. This is strictly how we administer water law, mostly in terms of protests.

My intent through the first section of the bill was to say the State Engineer has exclusive and final administrative authority with respect to the appropriation, allocation and availability of water resources in this State. That is a restatement of the existing law, but I have heard over the last couple years, and become aware of situations where perhaps those lines are beginning to blur. There are jurisdictions that may be requiring people who go through the State Engineer's office to go through a second procedure regarding appropriation, allocation and availability. If that is not currently happening in any jurisdictions, then that should not be objectionable. However, we have set up the State Engineer's office as the primary and sole jurisdictional entity in the State for purposes of application, appropriation, allocation and availability of water. They go through a public process in carrying out those administrative abilities. It is not a process in which local jurisdictions or other regulatory entities cannot participate if they have issues relating to those areas. That was my intent.

SENATOR AMODEI:

What was not my intent was to place the State or the State Engineer in the planning, zoning or land-use master-plan business. What I was attempting to do was say, "If it is something that is in the State Engineer's jurisdiction, we want to reinforce that." The State Engineer is in charge of water in terms of appropriation, allocations and availability. The State Engineer is not in charge of planning, zoning and master-planning. That is the exclusive province of local county commissions, city councils or planning commissions. It is my hope to do whatever I have to do with bill drafting staff to obtain a mock-up of an amendment to have available a few days before the next hearing.

The intention of S.B. 405, for purposes of your record today, is in those areas. Water is considered a public resource of the State of Nevada and the administrative authority over that is given to the State Engineer. Nothing in the bill says you cannot still go to court and sue the State Engineer if you do not

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like what he or she did. If the State Engineer is given the statutory authority to make a decision on those matters, that decision should not be modified or second-guessed by any other public entity or political subdivision of Nevada. If the U.S. Geological Survey wants to do a study, or someone wants to assist in the management, that is fine, but the initial determination, as far as availability or change applications, should clearly remain the exclusive province of the State Engineer.

There was a recent district court decision out of Lyon County that talked about consumptive-use issues. Consumptive-use issues are relevant when you make an application to change from agricultural use to domestic use. The Nevada Supreme Court basically said, "State Engineer, you cannot rely upon consumptive use because it is not in the statute." I am not sure consumptive use is an area I would beg for indulgence to speak about specifically, because we need to define "consumptive use" in the statute. In my opinion, if you respect the science and the resource, you do not change from agricultural to municipal, where we account for every drop, and then recycle it and turn it into effluent and then we use those drops once or twice more. For those of you who think I am just looking out for the developers, I can assure you there are many in the development community who vehemently disagree with me and want a one-to-one transfer. You cannot look at the science and reasonably come to the opinion that there is not a change in consumptive use. Even when those systems are going into septic systems, you must ask yourself if they are going to stay that way forever. When you talk about those issues related to the matriculation of water usage in this State, from agricultural to domestic, you need to talk about consumptive use.

SENATOR AMODEI:

Section 6 talks about incremental approvals. Currently, there are several instances in the State. The Southern Nevada Water Authority has an importation scenario where they have applied for 90,000-plus acre-feet in White Pine County and various valleys. It would not be unusual for the State Engineer to say, "I am going to approve a portion of your application. We are going to put it into effect a monitoring program to see how the water levels do based on what you pump. You can come back and if they go down too much, then we may adjust it downward. If they stay the same, then we may let you pump more." Section 6 is an attempt not to change the criteria by which the State Engineer makes a decision as to whether or not the water is available, but the administrative process by which they deal with that stair-stepped

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approach. This will ensure it is in statute so everybody knows what the rules are in terms of protest and information submittal and how the monitoring programs are going to work. It should not be something that varies from application to application. Make sure the basic structure is there, go forward with it and proceed from then.

SENATOR CARLTON:

This is almost a contingency clause then. I am assuming because of this discussion, the State Engineer does not have an opportunity to say in this application, "Okay, you have asked for 70 and I am giving you 50, but contingent upon the study, I could give you 60."

SENATOR AMODEI:

I am not saying he does not have the opportunity, but he does not have clear-cut guidance in the statute. If he were to be sued, it would be everyone's interpretation of something that does not deal directly with that issue. This is an attempt to deal directly with that issue in statute.

Section 7 talks about protests. The language does not change the definition of an interested party, but you will notice that NRS 533.365 starts out, "Any person interested may, within 30 days from the date of last publication of the notice of application, file with the State Engineer a written protest ... " The change comes in the definition of protestant. This was an attempt to restrict the full-blown protest process to people who have a right on the stream or a right in the designated basin. Obviously, they have an interest in what is going on in their basin or on their stream if somebody wanted to do something that would potentially change their water rights. This was an attempt to say, "If you do not have a right on the stream or in the designated basin, you can still participate orally or submit anything in writing, but essentially, you do not have the ability to cross-examine the technical experts." However, as I read through this, I do not know if it will change anything or not, but I have heard time and time again from jurisdictions in western Nevada that they are tired of seeing the processes of the State Engineer subjected to a Xerox copy of a protest form that does not change except for the date over the years. There are 90 employees in the Office of the State Engineer. At some point in time, there should be a measure of respect for the process and the resource in the form of the State Engineer's Office to require at least some minimal qualification to basically put a protest in motion. This is not put in the context of people who have rights that could potentially be affected by a change of application or a new application to

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appropriate. This is not to say the public interests should not be heard, but the protest process is being used in its barest form with a Xerox sheet where the dates change. I am not saying the State Engineer cannot deal with it, because they have been doing so for a long time, but the use of water is matriculating in this State over the last 20 years.

The rest of section 7, starting with subsection 5, is an attempt to provide a technical meeting process prior to a hearing on a protest. The way it is worded purposefully excludes members of the bar. This provides specific statutory authority to have technical settlement conferences in advance of hearings on protests. It is my hope that by virtue of putting this in statute, when the State Engineer calls all those protesting people in for the technical stuff and says, "Okay, tell me why you think the aquifer is going to go down, or why is this going to affect your existing right, or why is this too close to your point of diversion," they can work out as much as possible in that technical, informal context before the hearing in order to streamline the hearings.

SENATOR AMODEI:

Finally, in section 7, subsection 8, which reads, "The State Engineer shall render a decision on each permit application not later than 120 days after the hearing on the application," I threw in 120 days just to get the discussion started, but it could as easily be 240 days. The intent was for purposes of protest after a hearing is held and the transcript is delivered, or after the last piece of evidence the State Engineer asks for at the hearing is received, the State Engineer would have 240 days to make a decision. The 240 days would be extendable by the State Engineer based on necessity for additional information or whatever. That would be at the State Engineer's discretion. Currently, the time frame is open-ended and we need some sort of structure to say, "Here are the time frames, generally, unless there is something special going on in which case the State Engineer will have the ability to extend those deadlines."

There will be other State Engineers and there will be other circumstances. It is appropriate for us to think about some sort of time-frame network in terms of that action.

Section 8 has a change on consumptive use. For purposes of today, completely mark out that section. Regarding page 6, line 4, it was not our intent to affect what is going on in the Colorado River. On the same page, lines 23 through 25, is an example of miscommunication between the bill drafters and me. What

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I had told the bill drafters was, "I do not want anybody in the State Engineer's jurisdiction, and I do not want the State Engineer in anybody else's jurisdiction." The State Engineer is not in the planning and zoning and master-plan process. That is local government jurisdiction and local government is not putting somebody through the same process they have to go through with the State Engineer.

Subsection 10 of section 8 was an attempt to give the State Engineer a tool to provide for a summary process for a relatively small amount. Ten acre-feet was picked as a number to start the discussion, but to say, "Listen, if it would help you in dealing with some of these administrative procedures in the protest process to have a summary process, here is an attempt to give you the ability to do that." It does not say if you are dealt with in the summary context, you cannot still sue him or her for whatever it is you think you were aggrieved. It is just another potential tool to help that office of 90 people deal with what has been going on in the State with respect to water.

SENATOR AMODEI:

Subsection 11 is an attempt to allow the State Engineer to make corrections to decisions without necessitating going to court. If there is a clerical error or an inadvertent omission in findings or facts, and it is pointed out in a certain time frame, then they ought to be able to correct it. A statutory authority ought to exist for that unequivocally, so they can correct it as an administrative matter. The reason all of these procedural things are being addressed is because the State Engineer is not subject to the Nevada Administrative Procedure Act.

The intent of lines 29 through 35 on page 8 is if there is litigation affecting someone's ability to proceed with the application, whether it is an initial application or a change process, then that person would get a stay. He or she would have to do an annual filing to tell the State Engineer what is going on with the litigation, but basically, no action will be taken on the application until that court proceeding is resolved.

The reason I did not ask that the bill be pulled is even though this is administrative and even though there are some jurisdictional things, it does represent a fairly big bite of the apple. It is a discussion we should have.

MR. TAYLOR:

I will read from prepared testimony ([Exhibit G](#)).



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SENATOR COFFIN:

Senator Amodei, if you have the mock-up amendment ready in a few days, would it be possible to put it on the Internet where it can be seen by the interested parties before it goes to a hearing?

SENATOR AMODEI:

That is a legitimate concern and I will attempt to meet with the bill drafters first thing tomorrow morning to generate the mock-up. The only reason I delayed was to hopefully narrow the testimony on what I was attempting to do. I have no objection to having it put on the Internet.

The intention is to get it done as soon as possible. I just want it on the record too that, "There are deadlines that have come up and as soon as the individual bills were drafted, the committee bills were a priority and it is no secret we were on the Senate Floor at 5 p.m. for the third time last Monday getting that finished." It is no secret there has not been a single amendment come to the floor of the Assembly. It would be more productive to hear what the concerns are regarding those areas to which I have tried to narrow it, so we can have a more global discussion in terms of specifics at the next meeting on S.B. 405.

GORDON DEPAOLI (Walker River Irrigation District):

To a certain extent, my comments may be based on a misunderstanding of precisely what was intended with a particular provision. Senator Amodei's presentation has helped, and in some cases, I understood and in others, I did not. I did figure that section 1 was an attempt to draw a brighter line of the authority of the State Engineer as well as the authority of others. I do not think the language does that and I am not sure exactly what language can be used to get it to the point to which Senator Amodei would like to see. Historically, the State Engineer has had jurisdiction over appropriation, place of use and place of diversion, but that has not been exclusive and final on systems where there are court decrees. It will not be exclusive and final even now because of the judicial-review provisions of the statute. Irrigation districts have some authority in some of these areas as well. In terms of trying to establish a bright line distinction or dividing line between the State Engineer's authority and the authority of others, discussion about the availability of water is one that gives me some pause. I recognize that the State Engineer certainly has that authority from the standpoint of whether there are going to be new appropriations. When it comes to a situation where the State Engineer has issued a permit or certificate to an entity, whether it is a public utility or a local government that

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provides municipal and industrial water service, it seems to me those entities have to have some authority to make judgments about whether or not that particular water right is going to be accepted for purposes of will-serve commitments. In rewriting this bill, those kinds of things need to be taken into account.

I did not completely understand section 6. I will be interested in how it comes out and what it says. In terms of the two categories of protestants, the language seems to create the two categories, those with and those without water rights. On page 3 at the bottom, it seems to say that even those with water rights do not get to participate unless somehow, they have demonstrated, through technical data, that there may be injury to their water rights. It suggests the potential for a need to have a hearing to see who can participate in a hearing, which I do not think is intended. This is not a good distinction to draw. I am not sure what is meant in the reference to technical data. A lot of times, these issues can be resolved based on common sense without technical data, whether it relates to injury to a water right or public interest. There are a lot of other issues potentially raised by protestants that go beyond conflicts with existing rights. It is not clear to me where you fall in those categories. For example, one of the key issues in an appropriation case is whether or not there is any unappropriated water on the source. That is a question that is not necessarily related to conflict with existing rights. Impacts on district efficiencies, absence of speculation, forfeiture, abandonment and reasonable beneficial use, and reasonable means and methods of diversion are all issues that are not caught in this distinction.

MR. DEPAOLI:

The second category of protestant created here talks about public policy concerns. Whatever you do, you need to use the terminology in statute, regarding whether or not the use or change threatens to prove detrimental to public interest. In my experience, the problem has not been with the people who want to participate on that issue and how many there are. The real question is what is within that category and how do you limit the issues they want to raise. In a lot of cases, people want to raise issues the State Engineer really does not have any control over, no matter what he does. For example, dust, traffic mitigation, sewage issues and those kinds of things. My recent experience has been good with getting the State Engineer to decide early that certain issues people want to raise under the, "threatens to prove detrimental to the public interest," provisions simply are not issues the State Engineer is going to

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consider. In reference to sections 5, 6, 7 and 8, the State Engineer should remain as the party responsible for deciding how contested proceedings should be managed. The State Engineer needs to decide when there will be an exchange of information, of documents and of testimony. He needs to decide if there will be settlement discussions and a process to narrow issues. You should not build that into a statutory requirement. Participants in cases before the State Engineer can help themselves by raising these issues early with the State Engineer and the State Engineer will deal with them in an efficient way. Regarding the time requirement for the State Engineer to render a decision on each permit, 120 days is not enough. I will even be interested to see if 240 days is enough. I like the idea of building some exceptions into that for the State Engineer in special cases.

I initially skipped over the definition of consumptive use. Though the definition is not there, consumptive use comes into the statute at the bottom of page 5, starting on line 42 of the bill, where the State Engineer is directed to reject an application if, "... the proposed use or change increases the historic amount of consumptive use under the existing use or otherwise enlarges the use of the right ..." The statute already says he is to reject an application if it conflicts with existing rights. Two ways that can happen is if the consumptive use increases or there is something in the change that is going to enlarge the use of the right. However, if those things do not conflict with an existing right, then the State Engineer need not limit the change to a consumptive-use component. That simply is a tool to decide whether there is injury and if so, the extent of the injury. A good example is the Truckee Meadows. For years, the State Engineer has not limited conversion of irrigation rights in the Truckee Meadows to a consumptive-use component. The reason he has not done so is twofold. The change does not really increase consumptive use, but rather decreases it. Second, the return flow from municipal and industrial use goes back to the river at the sewage treatment plant and is available to serve downstream water rights. If we get into a situation where changes from agriculture to municipal and industrial in the Truckee Meadows are going to be reduced to the consumptive-use component, the water supply for the Reno/Sparks communities is going to be drastically reduced as a result.

MR. DEPAOLI:

Another factor to take into account is the historic amount of consumptive use. How are you going to define it and how is the State Engineer going to apply it? Within the Walker River Irrigation District, the cropping pattern has changed

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considerably from what crops were being grown back when the decree was issued on that system, to the kinds of crops being grown today. Potentially, just by changing the kind of crop being grown, the consumptive use will change. Are you going to be looking at what crops were grown when the right was established, or what crops are being grown currently? I am not disagreeing, but it is a factor the State Engineer needs to take into account in applying the, "conflicts with existing rights" standard. It does not need to be looked at in every case, but it has to be looked at in the injury context.

Regarding section 8, subsection 10, in NRS 533.365, there is already a provision giving the State Engineer discretion in regard to a hearing. I would be concerned this language would result in someone saying, "For every application of more than 10 acre-feet, you have to hold a hearing." You need to take into account there is already language allowing the State Engineer not to have a hearing.

I would like to see how subsections 11 and 12 are fleshed out. It is a good idea, even though I am not sure what it should say. There should be some fairly narrow reasons. I am not sure it can happen within five days of a decision. One thing that should be included is if there is a request for reconsideration, it then stays the time for filing an appeal under NRS 533.450 so that 30-day clock does not start running.

Regarding page 8, lines 29 through 35, it was not clear to me if this means any kind of judicial proceeding, or rather was intended to be limited to a judicial proceeding actually involving an action the State Engineer has taken. I know the State Engineer does grant extensions where other kinds of procedures are impacting someone's ability to comply with a permit.

STEVE BRADHURST:

I appear before you today as a concerned citizen who has 34 years of experience with Nevada water law in various professional capacities, including directing a state agency, being a county commissioner, directing a public water utility and providing services to rural counties on contentious water issues. I mention my previous capacities because it is important you consider that in terms of what I am going to say. Nevada water law works. It may be the best water law in the West, so when I saw S.B. 405 and what I consider shocking revisions, it bothered me considerably, because when you make changes to Nevada water law, it should be in an incremental fashion. It should be studied

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by interim and standing committees looking at every word as you have done in the past and not make significant wholesale changes. I was pleased with Senator Amodei's comments that the content of this bill was not what he had in mind and he is hoping that testimony will focus on what he did have in mind.

Nevada water law works because we have checks and balances. That is, it is not the State Engineer out there by himself making decisions without some checks and balances in Nevada law, not just Nevada water law. What I mean by checks and balances is in State planning law. In NRS 278, that law allows local governments to make decisions, for example, on subdivisions, based on what local governments think the water resources are for that subdivision. If someone comes before a local government with a subdivision and says, "Well you have to approve this subdivision because we have paper water here," meaning water permits, local government can use the best available information to make a determination as to whether or not to approve that subdivision. Therefore, there is a check and balance there in terms of State law.

There was a Nevada Supreme Court decision back in 1995 with respect to Washoe County. The county did not approve a subdivision zoning because the density looked like it would be too high and would require too much water in Washoe Valley. It went all the way to the Nevada Supreme Court, which upheld the ability of the county to impose water resource-based land use and zoning restrictions that are not consistent with the water-rights decisions of the State Engineer. Therefore, the county can use the best available water resource information when making land-use and zoning decisions. That is important.

MR. BRADHURST:

There is also a check and balance with respect to utilities. You heard Mr. DePaoli mention his concern about availability of water. Having run a water utility, I can tell you, I would not have my staff respond to someone walking in the front door saying, "Here, I have water rights. You need to issue will-serve letters for this 100-unit subdivision because I have these water rights." The responsibility of a prudent utility is to make sure those water rights involve real water. If the water is not real water, and you issue a water right, then the responsibility falls on the utility. Who is going to back that up if the water is not there? The utility will have to, so if you have a water right that says I have 2,000 acre-feet of water, but there is really only 500 acre-feet and there is a subdivision out there requiring all 2,000 and they are tied into the system,



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there is a shortfall and somebody is going to have to come up with that shortfall. The utilities have a right to say no.

There is also a check and balance with respect to Nevada water law in terms of the public being involved. I would hate to see that diluted, in terms of anyone being able to come to the table and file a protest against a water right. The State Engineer is able to take care of those extraneous protests, and I have seen him do that over the years. You should not throw the baby out with the bathwater. Everybody will have the right to come to the table and file a protest if they want to and if they do not have a case, they are out of the picture in terms of the hearings. There is also a financial responsibility. If you protest when the hearing starts, you are going to have to put some money on the table. It is required by the State Engineer because you are going to have to pay for some of the hearings. That sometimes causes people to think twice about whether or not they want to go forward.

Regarding comments on S.B. 405, on the surface, it appeared to me that it was eliminating the public-interest safety net we have today with respect to Nevada law. I would hope the local governments would continue to be able to use the best available water-resource information they have in terms of making decisions. That should also apply to the utilities. It would be a terrible burden for a utility to have to issue a will-serve letter based on a water right.

MR. BRADHURST:

I will give you an example. In Spanish Springs Valley, which is just north of Sparks, there are 6,000 acre-feet of water rights. Two U.S. Geological Studies have been conducted out there on the water resource and have indicated that at best, there is 1,000 acre-feet of water in the ground. That includes secondary recharge with the Orr Ditch that carries Truckee River water through the Valley. Well monitoring out there has indicated the water level is dropping. So even though there are 6,000 acre-feet of water there according to paper, there is actually no more than 1,000 acre-feet. If one were to go forward and have to go into the utilities that provide water service there, and say, "I now have these water rights and you have to go ahead and issue will-serve letters," there will be a significant impact on the utility and more particularly on the water customers. Somebody has to make up for that water. In Spanish Springs Valley, if you had to make up for the 5,000 acre-feet shortfall, it would cost approximately 5,000 times \$40,000 per acre-foot, because water would have to come in from the outside. There would be a \$200 million fiscal impact. When I look at this bill

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and see there is no effect on local government as far as a fiscal note, I would question it.

MR. BRADHURST:

In the 1999 Legislative Session, this Committee led the charge to add NRS 533.370, subsection 6. If you go to page 6 and take a look at lines 6 through 21, those provisions were added to address concerns rural counties have with respect to interbasin transfer of water. The rural counties asked the Legislature to add additional findings the State Engineer has to make to try to protect the basins of origin and make sure the job is done right in terms of looking at the natural resources. I read lines 23, 24 and 25 to contradict lines 18, 19 and 20, which states the State Engineer shall determine, "Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported." One way to determine the future growth in a basin is to look at the zoning and the master plan in that basin in order to get a sense of where the community is going with that basin. That is what we had in mind back in 1999 when we put this in the bill. This Committee approved it and it was approved by the Legislature. That is of particular concern to me and it seems to be a step backwards from what was a fine addition to State water law to protect the rural counties. I will look forward to Senator Amodei's revised bill.

SENATOR COFFIN:

You suggested in your opening remarks that it might be a good idea to study this, which usually means put it off until the end and then create a study. I do not like studies. They go on and on and frankly, it is almost as if you are learning the same thing over and over again. I have an obligation to try to do better. I can see this is an important bill and not one we ought to put off, and not be forced to make a judgment.

MR. BRADHURST:

I concur with what you are saying, but I must comment on the studies. I understand what you say about studies continuing and continuing, but there is nothing like success. The process we followed was deliberate and it had to take two or three years. We worked very hard with the Southern Nevada Water Authority and all the parties to come together under Senator Rhoad's leadership, and we brought it before the Legislative Committee on Public Lands. We discussed it and we worked it out during the interim session, so when the

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1999 Session came around, we were ready to go and we had something that worked. I do not think we could have done it during the session. It needed a couple years. I was pleased with the result which is the reason I am so concerned about this possible amendment.

SENATOR AMODEI:

I hear what you are saying regarding water law. For the most part, I agree that it works. However, the example you used regarding Spanish Springs Valley where there is 6,000 acre-feet on paper and 1,000 acre-feet by the science, at some point in time, that is going to occur in every basin that is urbanizing around the State, except possibly in Clark County. Do we just wait for that to happen? It is not the intent to tell utilities they have to issue will-serve letters based on what the State Engineer says, but at some point, someone has to be responsible for those decisions, at least going forward. I do not know whether that is something where they have a special deal that talks about utilities and irrigation districts, or whatever, but for better or for worse, we are discussing it now.

MR. BRADHURST:

What Washoe County has done in a situation like Spanish Springs Valley is discounted those water rights. For example, instead of half an acre-foot needed for development in a valley where there is too much on paper in terms of water rights versus what really exists, then when somebody comes to the table with a development, instead of having half an acre-foot for a home, they may be required to dedicated two and a half acre-feet for a home to draw down on that deficit. That seems to have been very successful. People with water rights are not happy about that, but the alternative is not a very positive situation.

KYLE DAVIS (Policy Director, Nevada Conservation League):

I had originally signed in as opposed to S.B. 405 but I did not know there would be significant amendments. I am hopeful those amendments will clarify and resolve any issues I had. I do still have some concerns about section 7 with regard to the public process. As a public interest group, the Nevada Conservation League would like to maintain the ability for public interest groups to fully participate in the process. In hearing Senator Amodei's comments, it reminds me of the Nevada Administrative Procedure Act. The bill last session actually restricted, to some degree, people's ability to participate in administrative procedures. Consequently, we are now in a situation where there

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is a possibility that the U.S. Environmental Protection Agency may take over the regulation of air and water.

LISA A. GIANOLI (Washoe County):

We initially signed in as opposed to S.B. 405, but based on the introduction done by Senator Amodei and other testimony that has been given, we would like to work with the Senator on his amendments.

EDWIN D. JAMES, P.E. (Carson Water Subconservancy District):

I signed in as neutral to S.B. 405 because there are still a lot of things I do not understand. The language on consumptive use is extremely important. I cut my eye teeth in the business doing consumptive-use analysis and studies. It is very important and is something that needs to be considered. However, I also do not want to be in conflict with any federal decrees. With the Alpine Decree, we already administer the federal waters in the Carson River. It already establishes how much water can be transferred if you are moving the water, and we do not want a conflict between the two. We are looking at a lot of regional programs and working together and looking at how to utilize the water as efficiently as possible. We do that, but then we also work with the State Engineer to make sure whatever we do come up with is legal. We are a planning agency that does a lot of analysis and planning. When I saw language that only a State Engineer would do it, it concerned us, because that is what we do.

ROSS DELIPKAU:

I am a lawyer in Reno and have basically spent my career in water law. I have submitted a written summary by one of my partners, Bob Marshall, who is in favor of this bill, with certain amendments ([Exhibit H](#)). In general terms, I am in favor of this bill. Consumptive use can be polished up. The purpose of setting forth the definition is when, for example, a 100-acre alfalfa farm is converted to a different use, that the different use will develop water from the same or different sources, meaning wells, but the hydrologic effect upon the aquifer is zero, meaning if water is used for the alfalfa field or used for the development, the effect upon the aquifer is zero. If we can collectively get to that point, we have our problem resolved.

Regarding section 6 of the bill, the State Engineer has, for many years, issued permits incrementally. I can recall one in 1981, a very large Washoe County development. We are codifying what he has done for at least 25 years. I am in favor of section 6.

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I have been involved in many administrative hearings involving protestants and have always adhered to the theory that the water law is specific in character and must be strictly followed. That principal applies to both the State Engineer protestants and applicants. I have found that many times, protests are filed, not on a water-rights basis, but because the protestants do not like the end result. The end result is some sort of development, factory, power plant, mine or something that is simply unpopular to the protestants. The protestants have no water rights in the valley or on the surface source, so upon the public-interest doctrine, they attempt to convince the State Engineer to deny the water right based on the fact they do not like the project.

In 1996, the Nevada Supreme Court affirmed the State Engineer's definition of public interest. To the best of my knowledge, the State Engineer's Office, in over 100 years of history, has only denied 2 applications solely on the basis of being detrimental to the public interest. Both of those applications involved disputes between the Truckee/Carson Irrigation District and the Pyramid Lake tribe of Paiute Indians. I further found that many of these protestants, without literal legal standing, are attempting to have the State Engineer base his or her denial upon grounds outside of the State Engineer's area of expertise, or outside of the State Engineer law. An example was raised earlier about traffic or air problems. The State Engineer has no jurisdiction over those two items. There are other agencies to handle the air-quality issues. I fully agree with Senator Amodei when he said there should be a clear line of jurisdiction between local government and the State Engineer. One does not cross over into the other. The State Engineer should be the ultimate decider of water-right applications. There should not be a two-step process where the applicant first must go, for example, to the county, ask the county if they will approve the application, and if they do, the applicant would then have to file it with the State Engineer. We have had many examples of local government protest based upon the fact the local governments feel they should be duplicating or acting in lieu of the State Engineer. The balance of the proposed bill is acceptable with the rewrites that will come up.

MICHAEL PAGNI (Truckee Meadows Water Authority):

Some of our concerns have not been mentioned. We were concerned section 1 eliminated the right of judiciary review. I understand now that is not the intent. In sections 4 and 5, we were concerned to what extent this might impact our ability to use best management practices and the effect it might have on the Truckee River Operating Agreement. Referring to section 8, there was a case



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that came out of the Nevada Supreme Court in November 2006, which talked about interbasin transfers and the requirement to show need. Sometimes with a municipal purveyor, the only way you are going to be able to show need is to look at a regional plan or zoning. To completely exempt that as something that can be considered could be problematic in that context. Finally, on the consumptive-use aspect, we do have some significant concerns about the adverse affect that could have in the Truckee Meadows. We would welcome the opportunity to engage in discussions on consumptive-use issues as they relate specifically to the Orr Ditch Decree in the Truckee Meadows.

MR. WALKER:

We have an agreement on the Truckee River in which 119,000 acre-feet of Orr Ditch rights will eventually be converted to municipal, industrial rights and with that, certain things happen. Getting those 119,000 acre-feet takes the conversion of an agricultural Orr Ditch right to a municipal right on a one-to-one basis. You have heard testimony from Mr. DePaoli saying that basically, from a downstream benefit, under the municipal right, you have a better benefit than you did under the Orr Ditch agricultural application. All we need to do is make sure we take care of the unique issue on the Truckee River because it is basically our water supply for the next 25 years.

SENATOR AMODEI:

Consumptive use is something that does not always mean a right gets reduced. If there are facts available to the State Engineer that indicate a one-to-one transfer is appropriate, then it ought to be one to one. Do not assume that trying to add consumptive use into the statute means an agricultural acre-foot is always going to get reduced.

ANDY BELANGER (Southern Nevada Water Authority):

We want to register our willingness to work with the sponsor on this bill. We have a couple comments related to ensuring the consumptive-use portion does not affect the Colorado River. We know there is language in the bill, but we want to make sure however that language is finalized, we are involved.

SENATOR COFFIN:

What is the difference between groundwater and surface water?

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MR. BELANGER:

The State manages two water resources separately; ground water and surface water. However, our real focus related to this surface-water provision, is we do have compact rights on the diversion of the Muddy Rivers and we want to make sure we have the ability to access those rights. They are being used for agriculture. We currently have them under agricultural lease and when we do use those water rights, we want to be able to transfer them.

SENATOR COFFIN:

Sometimes, when you add words to define something, you add problems and when you try to make an exception, sometimes you create a lockout situation.

CHAIR RHOADS:

If there is no one else to testify on S.B. 405, we will close the hearing on that bill and open the hearing on S.B. 433. A constituent of mine suggested this bill in a letter I have given to the Committee (**Exhibit I**). He would like to see a developer of private land within a Bureau of Land Management or U.S. Forest Service allotment be required to fence off the private land before he is permitted to let people start living there. That is what this bill does.

**SENATE BILL 433:** Requires a developer of private land to ensure that the land is enclosed by a legal fence under certain circumstances. (BDR 50-264)

DOUG BUSSELMAN (Nevada Farm Bureau):

The Nevada Farm Bureau is here today to speak in favor of S.B. 433. This is an issue, not only in the northeastern corner of the State, but also in places where there is an expanding interface with rural areas. This type of legislation clearly puts the burden on those who are developing within these agricultural areas. They need to take an action that is unquestioned so they do not try to soften the approach later by claiming there is harm when they could have prevented the harm by building the fence in the first place. From that standpoint, this piece of legislation clearly defines that responsibility. Also, Mike Montero from the Nevada Cattlemen's Association asked that I express their interest in support of the bill as well.

DON ALT:

I am in favor of this bill.



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Dated this 21 day of August, 2015

TERESA WILT, Legislative Librarian

*Teresa Wilt*

**SB 405**  
**Testimony for Tracy Taylor, State Engineer**  
**Senate Natural Resources**

March 28, 2007

Good Afternoon Chairman Rhoads and Members of the Committee, for the record, my name is Tracy Taylor, State Engineer. Thank you for the opportunity to provide testimony on this bill.

Our office has been working closely with Senator Amodei and others regarding our many amendments to the bill. Because there are so many elements to this bill, as written, we are in support of a number of the elements, we are neutral on some and we oppose some of the elements.

More specifically,

Our office is in support of having full, exclusive and final authority with respect to the appropriation, allocation and availability of water, however, we are not in support of language that would seem to imply that we have authority or jurisdiction over planning, zoning and management of growth in a given basin.

We are in support of defining consumptive use and will offer some additional language regarding how our office will notice water right holders that may be affected by a consumptive use reduction.

We are not in support of the language that says we are the only public agency that can analyze and manage water in a given area – we believe there are a number of entities that should also have that right.

We have offered some new language to Section 6 of the bill that we believe clarifies the intent of the original language whereby our office has the authority to issue a permit for a large amount of water yet only allow the permittee to develop the water on an incremental basis until

such time that data and other information dictates the final amount to be appropriated.

We are neutral to the Section 7 language regarding the standing of varied protestants. In that same Section 7, we've made a few word changes and timeframe changes. Most notably, changing the time limit for which our office has to act on an application that has gone to hearing from 120 days to 240 days from the date we've received the hearing transcript or the deadline for which any filings of additional information, evidence, studies etc have been requested by our office, whichever is later.

- With our proposed amendment to go to 240 days, I would like to emphasize strongly that our office strives to take action on all water right application as soon as we can – the majority of the time within the 120 day proposed deadline, however, there are those water right applications, and they are increasing in number, that are very complicated from a number of aspects, that simply NEED the additional time for proper analysis. It is those type applications that we will require the additional time. It doesn't make sense to force our office to render a decision due to a timeframe at the expense of the resource.
- Additionally, if the legislature imposes a time restriction in this matter, there will be a fiscal impact to our Division.

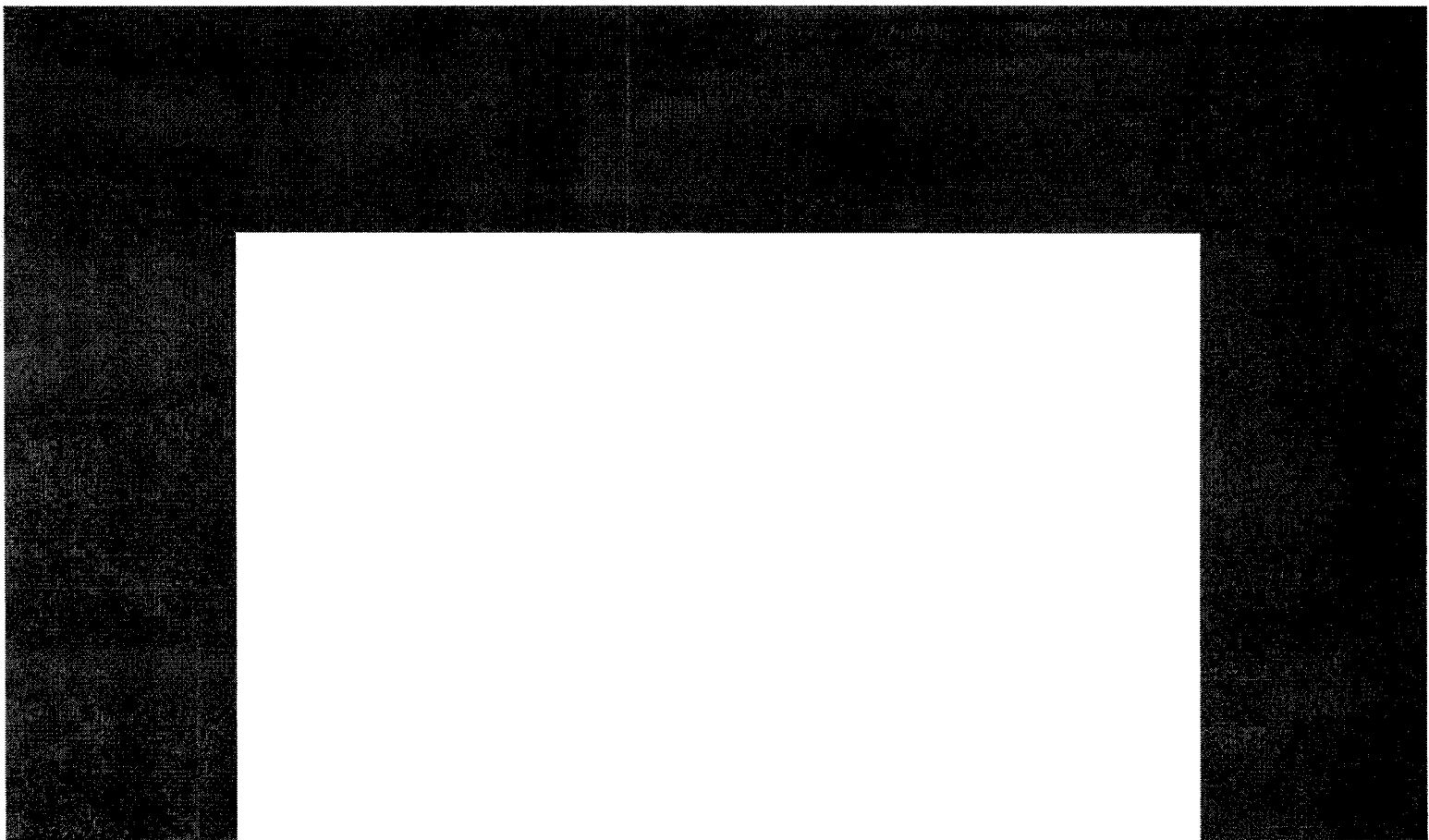
We are opposed to the language in Section 8 that states that the presence of zoning or master plan designation must NOT be a determining factor in Interbasin Transfer criteria. The existing statues allow us to look at any factor that may be relevant and that may include those two items.

With the exception of a few minor changes, we are neutral to the language in Section 8 that provides our office additional discretion when it comes to reviewing water right applications for 10 acre-feet or less AND also the language on the reconsideration of a State Engineer's decision within a set amount of time after the decision has been rendered.

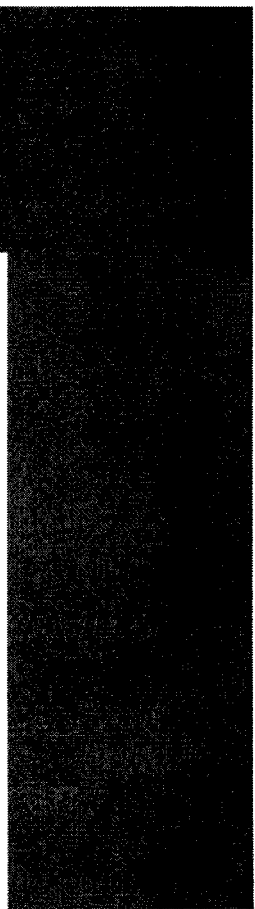
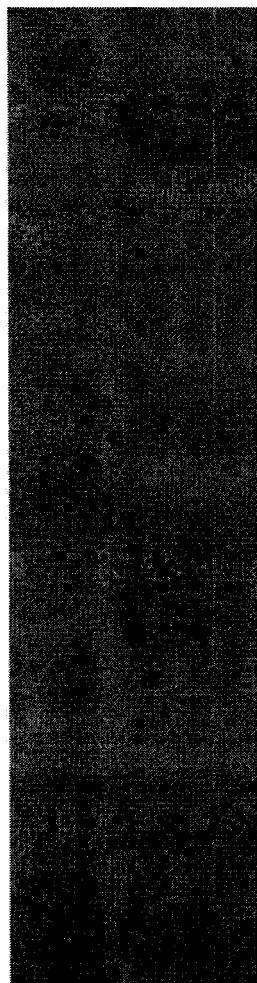
We are neutral to the Section 9 regarding extensions of time for water rights that are subject to a judicial proceeding.

With that, I'd be happy to answer any questions.

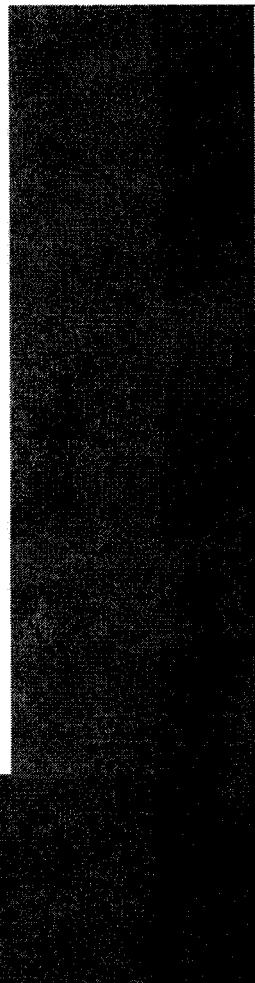




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## MOCK-UP

PROPOSED AMENDMENT 3489 TO  
SENATE BILL NO. 405PREPARED FOR SENATOR AMODEI  
MARCH 31, 2007

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1     **Section 1.** Chapter 532 of NRS is hereby amended by adding thereto  
2 a new section to read as follows:  
3     1. *Except as otherwise provided in subsection 2, the State Engineer*  
4 *has full, exclusive and final authority with respect to:*  
5     (a) *The appropriation, allocation and availability of water; ~~and~~*  
6     (b) *The ~~place~~ point of diversion, manner of use and place of use of*  
7 *appropriated water ~~to~~;*  
8     (c) *The administration of the powers and duties conferred upon him*  
9 *by law; and*  
10    (d) *The ability to administer those powers and duties, and any related*  
11 *provisions of law or regulation, on the basis of priority.*  
12    2. ~~The orders and decisions of the State Engineer preempt the~~  
13 ~~authority of a political subdivision regarding planning, zoning and~~  
14 ~~management of growth within its jurisdiction only if the political~~  
15 ~~subdivision takes any action that directly or indirectly conflicts with or is~~  
16 ~~otherwise inconsistent with the orders and decisions of the State~~  
17 ~~Engineer or the purposes and objectives of chapter 532 of NRS.~~

LEGISLATIVE COUNSEL BUREAU  
RESEARCH LIBRARY

As the designated custodian of various records of the Nevada Legislature, I hereby certify that this is a true and correct copy of the document maintained in the Research Library.

Dated this 27 day of August, 2015

TERESA WILT, Legislative Librarian

By: Teresa Wilt

- 2 -

provisions of subsection 1 do not authorize the State Engineer to act in his capacity as the State Engineer or to carry out any provision of law or regulation in a manner which conflicts with any federal or state compact or decree relating to the appropriation, allocation or availability of water in this State.

Sec. 2. Chapter 533 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 ~~to 6, inclusive,~~ and 4 of this act.

Sec. 3. 1. The State Engineer shall, before limiting the transfer of a water right to its consumptive use in any hydrographic basin:

(a) Conduct a public hearing to:

(1) Establish the historical consumptive use for each beneficial use of water in the basin; and

(2) Evaluate any future uses and corresponding consumptive uses of water in the basin; and

(b) In conjunction with a protested application, make a finding that limiting the transfer to its consumptive use is appropriate.

2. If the State Engineer conducts a hearing pursuant to paragraph (a) of subsection 1, the State Engineer shall:

(a) Provide reasonable public notice of the hearing; and

(b) Allow any holder of a water right in the basin or service area to appear at the hearing and present testimony or any other evidence relevant to the hearing.

3. To assist the State Engineer in making a determination required pursuant to subsection 1, the State Engineer may investigate or study or cause the investigation or study of any subject necessary to make that determination.

4. Any order or other decision of the State Engineer issued pursuant to this section is subject to judicial review pursuant to NRS533.450.

5. As used in this ~~chapter,~~ section, "consumptive use" means that portion of an annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor incorporated into products, or that otherwise does not return to the ground water or surface water source. ~~from which it was taken.~~ The term does not include any water that ~~falls~~;

(a) Falls as precipitation directly on the place of use ~~f.~~; or

(b) Is used or subject to use in accordance with a federal or state compact or decree.

Sec. 4. ~~The State Engineer shall be the only public agency to analyze and manage the water resources of this State on a basin by basin basis, a regional water flow basis or a statewide basis.~~ 1. The State Engineer may approve an application to appropriate water for an amount of water less than the amount requested in the application and provide that the entire amount requested may be approved at a later date if additional evidence demonstrates to the satisfaction of the State



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1 Engineer that the additional amount of water is available and may be  
 2 appropriated in accordance with the provisions of subsection 5 of NRS  
 3 533.370. In making that determination, the State Engineer may establish  
 4 a period during which additional studies may be conducted or additional  
 5 evidence provided to support the application.

6 2. In any basin in which an application to appropriate water is  
 7 approved pursuant to subsection 1, the State Engineer may approve,  
 8 deny or otherwise act upon any other pending application to appropriate  
 9 water in that basin or flow system for that basin that the State Engineer  
 10 believes:

11 (a) May affect any future economic growth in the basin; or

12 (b) Constitutes a minimal amount of water.

13 ~~Sec. 5. [A state agency or political subdivision, including, without~~  
 14 ~~limitation, the Public Utilities Commission of Nevada, shall not take any~~  
 15 ~~action that directly alters, changes or diminishes any right regarding the~~  
 16 ~~appropriation of water or the place of diversion of water that is granted~~  
 17 ~~to a utility by a decision of the State Engineer.]~~

18 ~~Sec. 6. [If the State Engineer approves an appropriation of an~~  
 19 ~~amount of water less than the amount requested by the applicant, the~~  
 20 ~~State Engineer:~~

21 ~~1. Shall make a specific declaration in the decision that:~~

22 ~~(a) The State Engineer is denying the remaining amount of the~~  
 23 ~~requested appropriation temporarily and without prejudice; and~~

24 ~~(b) The applicant may resubmit the original application at any point~~  
 25 ~~in the future to request an increase in the amount of water appropriated;~~  
 26 ~~or~~

27 ~~2. Shall make a specific declaration in the decision that:~~

28 ~~(a) The State Engineer is denying the remaining amount of the~~  
 29 ~~requested appropriation with prejudice; and~~

30 ~~(b) The applicant:~~

31 ~~(1) May not resubmit the original application at any point in the~~  
 32 ~~future to request an increase in the amount of water appropriated; and~~

33 ~~(2) May file a new application to request an increase in the~~  
 34 ~~amount of water appropriated.]~~

35 Sec. 7. NRS 533.365 is hereby amended to read as follows:

36 533.365 1. Any person interested may, within 30 days from the date  
 37 of last publication of the notice of application, file with the State Engineer  
 38 a written protest against the granting of the application, setting forth with  
 39 reasonable certainty the grounds of such protest, which ~~[shall]~~ **must** be  
 40 verified by the affidavit of the protestant, his agent or attorney.

41 2. On receipt of a protest, the State Engineer shall advise the applicant  
 42 whose application has been protested of the fact that the protest has been  
 43 filed with him, which advice ~~[shall]~~ **must** be sent by certified mail.

44 3. The State Engineer shall consider the protest, and may ~~[, in his~~  
 45 ~~discretion,]~~ hold hearings and require the filing of such evidence as he may

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1 deem necessary to a full understanding of the rights involved. The State  
2 Engineer shall give notice of the hearing by certified mail to both the  
3 applicant and the protestant. The notice must state the time and place at  
4 which the hearing is to be held and must be mailed at least 15 days before  
5 the date set for the hearing.

6 4. ~~If the protestant:~~

7 ~~(a) Is a bona fide owner of water rights who has demonstrated or~~  
8 ~~provided technical data regarding injury or impairment of a permitted,~~  
9 ~~vested, decreed or otherwise adjudicated water right, the protestant may~~  
10 ~~fully participate in any hearing conducted by the State Engineer on the~~  
11 ~~application.~~

12 ~~(b) Has a concern relative to any public policy issues that may attend~~  
13 ~~the application, the protestant may provide a written protest of the~~  
14 ~~application and any supporting documentation and may offer oral~~  
15 ~~comments during a time set by the State Engineer but may not otherwise~~  
16 ~~participate in any hearing conducted by the State Engineer on the~~  
17 ~~application.] In addition to the provisions of subsection 5, the State~~  
18 ~~Engineer may refuse to consider the protest if the protestant fails to~~  
19 ~~provide any information relating to the protest required by the State~~  
20 ~~Engineer.~~

21 5. Each applicant and each protestant shall, in accordance with a  
22 schedule established for that purpose by the State Engineer, provide to  
23 the State Engineer and to each protestant and each applicant ~~fall~~ :

24 (a) All technical data regarding an application or an application  
25 protest ~~not later than 60 days before the date set for the permit~~  
26 ~~application hearing.] ; or~~

27 (b) Any other information specified by the State Engineer relating  
28 the application or application protest.

29 6. The State Engineer may ~~at his discretion,~~ communicate with  
30 any applicant, protestant or person interested for the purposes of  
31 obtaining information which the State Engineer deems necessary to  
32 conduct a hearing ~~if the State Engineer:~~

33 (a) Provides notice of the communication to each applicant,  
34 protestant or person interested with whom the State Engineer did not  
35 communicate; and

36 (b) Provides an opportunity to respond to each applicant, protestant  
37 or person specified in paragraph (a).

38 7. If ~~there is~~ a dispute arises regarding any technical data relating  
39 to ~~a permit~~ an application, the State Engineer shall, at least once,  
40 invite technical representatives of the applicant and of the protestant to  
41 meet with the technical staff of the State Engineer ~~one or more times,~~  
42 ~~not less than 30 days before the date set for the permit application~~  
43 ~~meeting.] to settle or attempt to reach an agreement regarding~~ settle the  
44 dispute.

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1 8. ~~The~~ If the State Engineer holds a hearing pursuant to  
 2 subsection 3, State Engineer shall render a decision on each ~~permit~~  
 3 application not later than ~~120~~ 240 days after the ~~hearing on the~~  
 4 application, later of:

5 (a) The date all transcripts of the hearing become available to the  
 6 State Engineer; or

7 (b) The date specified by the State Engineer for the filing of any  
 8 additional information, evidence, studies or compilations requested by  
 9 the State Engineer. The State Engineer may, for good cause shown,  
 10 extend any applicable period.

11 9. The State Engineer shall adopt rules of practice regarding the  
 12 conduct of such hearings. The rules of practice must be adopted in  
 13 accordance with the provisions of NRS 233B.040 to 233B.120, inclusive,  
 14 and codified in the Nevada Administrative Code. The technical rules of  
 15 evidence do not apply at such a hearing.

16 Sec. 8. NRS 533.370 is hereby amended to read as follows:

17 533.370 1. Except as otherwise provided in this section and NRS  
 18 533.345, 533.371, 533.372 and 533.503, the State Engineer shall approve  
 19 an application submitted in proper form which contemplates the  
 20 application of water to beneficial use if:

21 (a) The application is accompanied by the prescribed fees;

22 (b) The proposed use or change, if within an irrigation district, does not  
 23 adversely affect the cost of water for other holders of water rights in the  
 24 district or lessen the efficiency of the district in its delivery or use of water;  
 25 and

26 (c) The applicant provides proof satisfactory to the State Engineer of:

27 (1) His intention in good faith to construct any work necessary to  
 28 apply the water to the intended beneficial use with reasonable diligence;  
 29 and

30 (2) His financial ability and reasonable expectation actually to  
 31 construct the work and apply the water to the intended beneficial use with  
 32 reasonable diligence.

33 2. Except as otherwise provided in NRS 533.365 and this subsection  
 34 and subsections 3 and 8, the State Engineer shall approve or reject each  
 35 application within 1 year after the final date for filing a protest. The State  
 36 Engineer may:

37 (a) Postpone action upon written authorization to do so by the  
 38 applicant or, if an application is protested, by the protestant and the  
 39 applicant.

40 (b) Postpone action if the purpose for which the application was made  
 41 is municipal use.

42 (c) In areas where studies of water supplies have been determined to be  
 43 necessary by the State Engineer pursuant to NRS 533.368 or where court  
 44 actions are pending, withhold action until it is determined there is  
 45 unappropriated water or the court action becomes final.



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3. Except as otherwise provided in subsection 8, the State Engineer shall approve or reject, within 6 months after the final date for filing a protest, an application filed to change the point of diversion of water already appropriated when the existing and proposed points of diversion are on the same property for which the water has already been appropriated under the existing water right or the proposed point of diversion is on real property that is proven to be owned by the applicant and is contiguous to the place of use of the existing water right. The State Engineer may:

(a) Postpone action upon written authorization to do so by the applicant or, if the application is protested, by the protestant and the applicant.

(b) In areas where studies of water supplies have been determined to be necessary by the State Engineer pursuant to NRS 533.368 or where court actions are pending, withhold action until it is determined there is unappropriated water or the court action becomes final.

4. If the State Engineer does not act upon an application within 1 year after the final date for filing a protest, the application remains active until acted upon by the State Engineer.

5. Except as otherwise provided in subsection 8, where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectible interests in existing domestic wells as set forth in NRS 533.024, ~~for where the proposed use or change increases the historic amount of consumptive use under the existing use or otherwise enlarges the use of the right,~~ or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit. If a previous application for a similar use of water within the same basin has been rejected on those grounds, the new application may be denied without publication ~~[, with the exception of surface water sources that are tributary to the Colorado River.]~~

6. In determining whether an application for an interbasin transfer of groundwater must be rejected pursuant to this section, ~~the~~ ~~the~~

~~(a) The~~ State Engineer shall consider:

~~(a) (1)~~ Whether the applicant has justified the need to import the water from another basin;

~~(b) (2)~~ If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;

~~(c) (3)~~ Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;

~~(d) (4)~~ Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and

~~(e) (5)~~ Any other factor the State Engineer determines to be relevant.