

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Third Session
May 11, 2005**

The Committee on Government Affairs was called to order at 8:09 a.m., on Wednesday, May 11, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4412 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Rod Sherer, Assembly District No. 36 Esmeralda, Lincoln, Mineral, Nye, and Churchill (part)
Senator Dean A. Rhoads, Northern Nevada Senatorial District
Senator Warren B. Hardy II, Clark County Senatorial District No. 12
Senator John J. Lee, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Susan Scholley, Committee Policy Analyst
Nancy Haywood, Committee Attaché

OTHERS PRESENT:

Hugh Ricci, P.E., State Engineer, Division of Water Resources,
Department of Conservation and Natural Resources, State of
Nevada
Michael Howell, Private Citizen and Rancher, Wells, Nevada
Steve Walker, Legislative Advocate, representing Truckee Meadows
Water Authority (TMWA)
Gorden DePaoli, Legal Counsel, Truckee Meadows Water Authority
(TMWA), Washoe County, Nevada
Andrew Belanger, Management Analyst, Las Vegas Valley Water District,
Southern Nevada Water Authority, Las Vegas, Nevada
Perry DiLoreto, President, DiLoreto Construction, Inc., Reno, Nevada
Harley Kulkin, Private Citizen, Pahrump, Nevada
Mark James, Esq., Former Senator, Nye County, Nevada
Norman Frey, County Commissioner, Churchill County, Nevada
Bjorn Selinder, Legislative Advocate, representing Churchill County,
Nevada
Laura Billman, Legislative Advocate, representing Nye County, Nevada
Bruce Scott, Principal, Resource Concepts, Inc., Carson City, Nevada
John Erwin, Director, Water Resources Division, Truckee Meadows Water
Authority (TMWA), Washoe County, Nevada
Edwin James, General Manager, Carson Water Subconservancy District,
Carson City, Nevada
Nicole Lambolely, Legislative Relations Manager, Office of the City
Manager, Reno, Nevada
Dan Thompson, Member Downtown Enforcement Team, Reno Police
Department, Reno, Nevada
Alex Woodley, Code Enforcement Manager, Community Development,
City of Reno, Nevada
Buffy Dreiling, Legislative Advocate, representing Nevada Association of
Realtors

Chairman Parks:

[Meeting called to order and roll called.]

Senate Bill 62 (1st Reprint): Clarifies provisions governing duties of State Engineer concerning water rights. (BDR 48-681)

Hugh Ricci, P.E., State Engineer, Division of Water Resources, Department of Conservation and Natural Resources, State of Nevada:

When this bill was introduced, we had quite a hearing on the Senate side. As a result, there were some amendments made to the original bill. We support this bill right now as it is written. I understand that there is one additional amendment that Mr. [Michael] Howell would propose.

Chairman Parks:

Senator Rhoads has entered the room, and I would like him to make some opening remarks.

Senator Dean A. Rhoads, Northern Nevada Senatorial District:

This bill was brought to my attention by Mr. Howell, a young rancher who had bought a ranch and found out he didn't have any water rights on it. He went through the court procedure and went clear up to the State Supreme Court and still didn't have any water rights. We looked at it, and in the Senate, we think we worked out a solution. This is the rendition we think will work.

There is an amendment ([Exhibit B](#)) Mr. Howell will explain.

Michael Howell, Private Citizen and Rancher, Wells, Nevada:

I am in favor of S.B. 62. My family's ranch lies along Bishop Creek in the Wells area of Elko County. The area was settled in the 1860s, and the water rights were appropriated to this ranch in 1876. The water rights were adjudicated to the ranch by the Humboldt adjudication in 1938; the water rights on this ranch were allotted a priority of 1876. From the early 1900s to the 1970s, the ranch and was owned by the Knudsen family. Pacific Reclamation Corporation, an upstream Carey Act Project, built a dam about 1910. In 1943, their dam had a partial washout, and, rather than repair their dam, they filed an application with the State Engineer to transfer adjudicated water rights, which they owned, to their dam, but they also included in this application two water rights which they did not own. They were the water rights to the Knudsen ranch, which we later purchased, and the water rights to Dalton Livestock's ranch. They filed this permit application in 1943 and the State Engineer approved it in 1944.

It is important to note that throughout all the years, even though the State Engineer had approved this permit, the State Engineer continued to provide water to both the Dalton Livestock ranch and the Knudsen family ranch. In 1995, Dalton Livestock became aware of Pacific Reclamation's 1944 permits

and filed a chain of title with the State Engineer to show that they correctly owned the water rights which had been inappropriately filed. The State Engineer corrected Dalton Livestock's water rights. In 1997, as part of our purchase of the old Knudsen ranch, we had the Hawkes—who then owned the ranch—file a chain of title with the State Engineer's office in the exact same manner as Dalton Livestock. The State Engineer recognized our chain of title at that time and corrected it, but 45 days later, they rescinded our chain of title and diverted the water rights back to Pacific Reclamation.

[Michael Howell, continued.] In April of 2000, they closed our head gate and ended our continuous use of water. We appealed the State Engineer's decision through the judicial review process at district court. Deputy Attorney General Paul Taggart, representing the State Engineer's Office, stipulated three key points in our case. I would like to review those.

With the exception of the permits that were approved by the State Engineer's office in 1944, we can demonstrate a clear chain of title to our water rights. The second point: Pacific Reclamation has never filed any deed or contracts with the State Engineer which would properly vest title to these water rights in their name. The third point: The State Engineer has no evidence that we have not continuously and openly irrigated on our ranch—or our predecessor—since 1876 until April 2000, when the State Engineer closed our head gate.

At district court, Judge Wagner in the Sixth District Court ruled against us on two counts. He ruled that Pacific Reclamation's permits had successfully created a conflict in our otherwise clear chain of title. He also ruled that we were procedurally barred from challenging these permits.

We appealed the decision to the Nevada Supreme Court ([Exhibit C](#)), which upheld Judge Wagner's decision, and at that point we appealed it to the United States Supreme Court, which refused to hear our case.

What we have here is a type of loophole in Nevada water law in which people in the past have filed questionable permits in an attempt to gain ownership of water rights they are not entitled to. Since testifying on [S.B. 62](#) to the Senate Natural Resources Committee, I have been made aware by ranchers of two other instances when permits of this type have been filed on water rights by people who don't own the water.

[Senate Bill 62](#) is an attempt to close this loophole by which people file for permits on water rights that they do not own. The key paragraph that I would like to go over on [S.B. 62](#) is the third paragraph, lines 10 through 15. It states, "The procedures in this chapter for changing the place of diversion, manner of

use or place of use of water, and for confirming a report of conveyance, are not intended to have the effect of quieting title to a water right and that only a court of competent jurisdiction has the power to determine conflicting claims to ownership of a water right." Basically, what that is saying is that a permit application cannot be used in a manner to quiet title of a water right.

[Michael Howell, continued.] In discussing this with my attorney and also with Senator Rhoads, we determined that we could add an additional four words to this paragraph that would make it clear a permit application could not be used in an attempt to divest ownership of a water right from its rightful owner. We would like to amend this paragraph to insert the four words in line 13, which would then read, "The procedures in this chapter for changing the place of diversion, manner of use or place of use of water, and for confirming a report of conveyance, are not intended to have the effect of quieting title to"—and then add, "or changing ownership of"—"a water right and that only a court of competent jurisdiction has the power to determine conflicting claims to ownership of a water right."

I think the key point in all this is that we believe it is improper for the permitting process to be used as either a means of quieting title or attacking or changing the ownership of a water right. There are other means of attacking or changing the ownership of a water right through water law. The permitting process should not be used for that purpose.

Assemblyman Goicoechea:

I just need to go back and clarify a little bit. I think you said that in 1943, Pacific Reclamation, in fact, filed on the water rights on the Knudsen property. Is that correct?

Michael Howell:

Correct. Their dam had a partial washout, and the State Engineer imposed storage limits on their dam. They no longer had enough water with that restricted storage to irrigate their entire property. So, they filed to change the point of diversion and place of use of all the adjudicated water rights they owned. They also included in that permit two water rights that they didn't own, our water right and a water right to another ranch.

Assemblyman Goicoechea:

In that time, then, the owners or whoever was on the Knudsen property didn't protest that action. Is that correct? There was no action taken at the State Engineer's office?

Michael Howell:

That is correct.

Assemblyman Goicoechea:

And now, as you have gone back and reviewed it since you have acquired title, that puts a break in your chain of title. The fact that the State Engineer had, in fact, made changes showed a break in title. Isn't that where you are coming from?

Michael Howell:

It showed what the State Engineer characterized as a conflict in our clear chain of title.

Assemblyman Goicoechea:

This rectifies up to the point, then, that just because the State Engineer made a ruling and it wasn't challenged in court, it doesn't preclude you from coming back with a subsequent court action and give the State Engineer's Office the force of law or the right to appeal? I think I see where you are.

Michael Howell:

In subsequent paragraphs in this bill, it makes it clear that if a conflict is inflicted upon your clear chain of title, you have the option of coming back and going through the judicial process—for instance, a quiet title action to remove the conflicting permits that have been inflicted upon your clear chain of title.

Assemblyman Goicoechea:

At present, under existing statute, you don't have the ability to do that. No court of competent jurisdiction will hear it?

Michael Howell:

I am not sure if that is the case or not, but this clarifies this situation.

Assemblyman Goicoechea:

You haven't been able to get it into court, anyway.

Michael Howell:

We pursued it through judicial review, and apparently we are barred from using the judicial review process, the process by which you can go through court as a review of State Engineer actions. Apparently, one is barred from that process after 90 days of the approval of a permit. That forces you into a different type of judicial action, which would be like a quiet title action.

Assemblyman Goicoechea:

When you proceeded with the quiet title action, did you say Judge Wagner ruled?

Michael Howell:

No. We haven't proceeded in that action. We went through the judicial review action and left it at that until something like this cleans up the procedure.

Assemblywoman Pierce:

Could you explain what a quiet title action is?

Michael Howell:

A quiet title action is where you go before a district court judge or whatever judge is ruled to be the proper jurisdiction, and two disputing parties present to that judge the chain of title to your property. Water rights are considered an appurtenance to a property. When you own a house, you don't buy specifically a house. You buy a lot, and the house is considered appurtenant to that lot. A water right is considered the same type of appurtenance. You would go through the deed to your property, and you would go through it deed by deed and, in our case, from the adjudication. You would determine deed by deed who owns the water right.

Assemblyman Grady:

I believe you said it was 1942 or 1943 when the State Water Engineer made his determination. Has the ownership of your ranch continued to irrigate from that time through when your gate was shut off?

Michael Howell:

We can show continuous irrigation and beneficial use from 1876 until April 2000, when the State Engineer closed our water gate.

Assemblyman Munford:

I am in complete sympathy with your case, because ironically and oddly enough, I sort of had a little confrontation with the State Engineer over water rights. Mine is not so much water rights but, rather, a permit to operate a well. Even though I am urbanized and live in Las Vegas, my property is located on a community well.

I don't know if my case would parallel yours, but we just received a letter this past week regarding our situation and what our status is with our well rights. So, I am listening and watching what you say very closely. My case is focusing on a water permit to operate the well. My water rights are intact. My deed says I have water rights. I wish you well and hope everything works out for you.

Assemblyman Christensen:

As you can imagine, it is important for us to be able to put a face with an issue. Hearing directly from you the experience that you went through, I can't imagine what these last few years must have been like.

I can say that I am glad you have made the sacrifice to come here to work this out, and not just for yourself, but for everybody else that may be affected in a similar way or ten years down the road.

I have two questions to help me understand the 360 degrees of what you have been through. What does your ranch do? Is it livestock or is it a crop? From the time you said, April 2000, when the water was closed, what has happened since then? What does someone in your position do? Outside of the judicial process, what do you do with your ranch?

Michael Howell:

Our operation is a cattle operation. We raise cattle and then we irrigate native meadow hay. Our water season is very short. Water only runs a couple months out of the year, so during the time the water is running we irrigate like mad. This isn't our only water right that we have. We also have two permits on another creek that we use.

Our water having been shut off on this one water right has affected about three-quarters of our water rights. Luckily, for a good portion of that, the water comes up from below and irrigates. It's basically an old wetland. It has had a drastic effect on us, especially through these drought years. We have had to buy hay on a number of occasions since 2000. When cattle prices were down several years ago, it had a drastic effect on our income. It changes a paying operation into a break-even operation. Hopefully, this will allow us to correct our water right to where we can show ownership. This would allow us to get it back in our name and then continue the irrigation as the ranch had irrigated previously for the 130 years prior to when our water was shut off.

Assemblyman Goicoechea:

Because the Humboldt River depends on return flow for some water rights on the downstream, does this shutting of the head gate impact any other water rights below you?

Michael Howell:

When they shut our head gate, rather than us being able to divert water on to our meadows and irrigate the meadows, the water just continues on down the creek. Below our ranch had no effect, and I don't think it bothered anyone down below us, but it sure played havoc with our place.

[Michael Howell, continued.] This is not the first time permits like this were issued that have affected people. Two neighbors of ours have also mentioned to me after this became an issue that permits have been issued in the past that had adversely affected their ownership of water rights. This is a continuing problem.

I want to thank you for listening to me. I would like you to consider S.B. 62 plus the amendment ([Exhibit B](#)) that we made in the middle of paragraph 2.

Senator Rhoads:

Thank you very much for you taking the time to hear this story. I think it is a really personal story and I hope you act positively on it. I think it is a good bill.

Hugh Ricci:

I have no objections to the amendment as Mr. Howell proposed. However, I want to try to put this in the proper context. It sounds like the State Engineer's Office is a cold-hearted group that sits there and tries to undermine anyone. We didn't say that Mr. Howell did own this water right. We never said that. We said that 55 years later, what the State Engineer did, I could not go back and undo. That's exactly what Mr. Howell said that Judge Wagner had said. He said he was the proper court in which to determine the ownership. That was the entire case, where we went to the Humboldt District Court and to the Nevada Supreme Court. It was a problem of undoing something that happened 55 years earlier, where it really was an ownership problem. We mentioned right up front we were probably in the wrong court to try to determine who owned that water right.

Assemblyman Goicoechea:

Do you feel the language in S.B. 62 will, in fact, assist you and facilitate so we do not have this happening again in the future? The way I read the language, the bill clearly says that there is an issue, and then you wouldn't necessarily have to wait for a State Engineer's ruling or anything else to go ahead and quiet title in a court of competent jurisdiction.

Hugh Ricci:

Yes. The amendment under Section 2, subsection 4, gives a specific direction as to what is to happen if there is a conflict in the chain of title that is submitted to us. Someone can surely go to court to quiet title now before they even come to us and say who owns or who doesn't own this particular water right. All this does is just set out the procedure. Now, one can conceive that this is not going to happen until a quiet title is done, if there is a conflict.

[Hugh Ricci, continued.] This language was just taken from what exists in subsection 3 today. If the report of conveyance is deficient in any way, we can send it back. Also now, this just says if there's a conflict, we can send it back.

Assemblyman Goicoechea:

Do you think this is going to bring more litigation before you actually have a ruling from the State Engineer's Office?

Hugh Ricci:

No, this is not anything in which the court action is dealing with us on. If the court asks us to supply what chain of title we have to date, we will give it to them, but we are not a party to this action.

Assemblyman Goicoechea:

I understand that, but again, it looks to me like we will see some more litigation prior to the time the application gets before you.

Hugh Ricci:

I am not so sure of that. I think with the passage of this conveyance statute in 1995, it has really cleared up a lot of what we in the State Engineer's Office need to do in dealing with title. I really believe that with the 1995 statute, it's very clear what one needs to do.

Assemblyman Grady:

If this bill passes, would this bill not have any effect on Mr. Howell's case under this new legislation? You can't go back and say that there is a new law that will make Mr. Howell's case stronger or weaker. Is that correct?

Hugh Ricci:

That is correct. This is the method that should have been attacked from the very beginning, as opposed to going to the Humboldt Decree court to try to change the ownership. That is why Judge Wagner did what he did.

Assemblyman Hardy:

If I understand this right, we are creating a bill that will correct a problem that really won't help Mr. Howell. How long will it be before Mr. Howell can go through whatever process it is, or do we have any kind of idea what he can expect?

Hugh Ricci:

I really do not know how long it would take. You are correct that this bill does not help Mr. Howell. If this bill were in place in 1999, it would have been very

clear on the direction Mr. Howell should have taken. Probably by today, this issue would have been resolved through the right court.

Assemblyman Hardy:

It would take as long as five to six years?

Hugh Ricci:

I really do not have any idea how long a quiet title action takes. I think it depends on the complexity of the issue. Maybe in this issue it would have been done much quicker.

Steve Walker, Legislative Advocate, representing Truckee Meadows Water Authority (TMWA):

We are in support of this bill. I think it would solve issues that are going to come up in the future or are alive right now. I would ask that our counsel, Gordon DePaoli, answer any questions and explain the bill. He was the principal author of the amendment.

Gordon DePaoli, Legal Counsel, Truckee Meadows Water Authority (TMWA), Reno, Nevada:

Let me just quickly explain what this bill is saying and then maybe put a slightly different face on for Mr. Howell's case.

This bill really confirms two principles of Nevada's water law, which I think have been clear but apparently not as clear as they needed to be to the courts. It confirms that the process for changing the point of diversion, place of use, or manner of use does not and was not intended to have the effect of quieting title or changing ownership of conflicting claims to a water right. The second thing it does is confirm that the process for confirming report of conveyance does not and is not intended to have the effect of quieting title to conflicting claims to a water right.

Those procedures in the first case—a change application—are done upon limited notice—notice by publication—and in the second case, by no notice at all. Someone else who is interested in that water right cannot be constitutionally divested of their ownership interest in that kind of a proceeding. Only a court case, where actual notice is given in conflicting claimants and where they have an opportunity to come in and present their case, can decide those conflicting claims.

In putting a face on this problem, Truckee Meadows Water Authority, as the water purveyor for Reno and Sparks, accepts dedication of water rights for purposes of providing municipal and industrial service. Recently, a water right

was offered to the TMWA for municipal service, which had gone through the change process in the State Engineer's office. Unbeknownst to the State Engineer at the time, there were some early deeds, which, in effect, the result was—and it was clear to the Water Authority—that the original owner of the water right had essentially sold it twice and, in one case, three times. The State Engineer was not aware of that and so went ahead and approved the change petition. The Water Authority refused to accept the water right, knowing there were conflicting claims to ownership and that someday, someone else might come in and claim ownership. In effect, the Water Authority, having accepted the water right and provided the water service, would be left holding the bag. The district court in Washoe County ruled that the State Engineer change process, in effect, changed the ownership of that water right. We are in a spot of potentially having to accept a water right when we know someone else has a claim, too.

[Gordon DePaoli, continued.] This bill will confirm that the change process does not change that ownership. I don't have a problem with the amendment proposed by Mr. Howell. Someone earlier suggested to me, and you may hear from them later, that the provision on page 3, lines 23 through 26, suggested that the only way a conflict and a chain of title could be resolved was through a quiet title action. This would require persons who have conflicting claims to go to court in every case. They couldn't settle up their claims. In other words, Mr. Howell could not deal with whoever had the other claim, reach some accommodation, get some deeds, and go back to the State Engineer to have the problem fixed. That clearly is not what is intended here. This is not intended to prevent people from resolving their conflicting claims short of litigation, if they can do that. If that is not clear and there needs to be a change, I would suggest the bill is going to be amended and you give some consideration to line 25, on page 3, after the word "final," adding a comma, then "or until the conflicting claims are otherwise finally resolved."

Assemblyman Goicoechea:

I agree with it completely, because as it is drafted presently, I think the only way you are going to resolve it to the satisfaction of the State Engineer would be to enter into a court. If we put the language in that states it is finally resolved, then how is the State Engineer assured that it truly has been resolved? What kind of document would be used?

Gordon DePaoli:

I am assuming the conflict relates to Party A having some basis for a claim, and Party B having a basis, and whichever one is giving up would do a deed to the other that said, "I, Party A, hereby convey any interest I have in these water

rights to Party B.” The State Engineer would have that, and if that was the conflict, the State Engineer would look at it and say that it is fixed.

Assemblyman Hardy:

If we processed this bill with your suggested verbiage, would there then be an opportunity to have an agreement flexible in deed conveyance from one party to another that would help Mr. Howell?

Gordon DePaoli:

Yes.

Assemblyman Hardy:

That’s what I wanted. Thank you.

Assemblyman Rod Sherer, Assembly District No, 36, Esmeralda, Lincoln, Mineral, Nye, and Churchill (part):

I am bringing an amendment ([Exhibit D](#)) on S.B. 62. I had a talk with Senator Rhoads, and then I changed my amendment that I gave to you, Mr. Chairman, yesterday after my meeting with the State Water Engineer. It didn’t necessarily fix everything I wanted to have fixed, and it kind of tied his hands a little bit. I will talk a little bit about that.

The reason I am bringing this amendment forward is because of a dairy in Amargosa Valley. To put things in perspective, we are looking at doing a point of diversion, and if we change the water from one side of the field to the other side of the field and it is any more than 300 feet, it has to be filed with the State Engineer’s Office. Any time that takes place, the Death Valley National Park puts a protest against it. What I am trying to do is get the State Engineer to put this through a little faster. At the same time, if we lived in California, you could get all the water you wanted. So less than a couple miles away, you could go over the California border and get all the water you wanted, but in Nevada, we have a water law that we have to follow.

So, what I was looking at in a proposed amendment is in NRS [*Nevada Revised Statutes*] 533.370, Section 3 of your bill, “within six months after the final date of filing the protest.” It would then give the State Engineer a total of six months to be able to work through the bill as far as the process. Otherwise, we would have cut out another 72 days. A couple of lines down, it says, “...the water right being changed or proposed point of diversion is on real property proven to be owned by the applicant that is contiguous to the permit place of the use of the water being changed.” What I am trying to say is that it is on the same field, but just from one side of the field to the other side of the field. It is not a water right he has 7 or 8 miles away, and then is going to change it to be on

his field. It's from one side to the other side of the field, so that he can make that ruling within six months.

Assemblyman Goicoechea:

I look at the language and I need some clarification under subsection 3 (a). The State Engineer then may postpone the action beyond the six months if there is a protest?

Assemblyman Sherer:

If it goes to court, I wanted to not tie his hands, but at the same time I think he is going to testify on one water right that he is going to be fixing here shortly, because it's been a couple years since he has ruled on it.

Assemblyman Goicoechea:

I am concerned, because I believe under law the State Engineer has to act and hear a protest once it is filed, and I am assuming that he will address that.

Hugh Ricci:

I do not have anything more to add to what Mr. Sherer has already said. I will address Mr. Goicoechea's question about subsection 3(a). It almost mirrors subsection 2 that exists in the law today about any other applications. Under subsection (a), it has to be if there is a willingness by both the applicant and the protestant to push it past the six-month period. It must be done by both. It just can't be unilaterally done by one. So, if the applicant doesn't want it and the protestant does, then it doesn't fit in this definition.

**Andrew Belanger, Management Analyst, Las Vegas Valley Water District,
Southern Nevada Water Authority, Las Vegas, Nevada:**

We are in support of the bill. We have not reviewed the amendments but do not anticipate any problem with them. We would like to have a chance to look them over before we make a comment.

Chairman Parks:

I will now close the hearing on S.B. 62 and open the hearing on S.B. 466.

Senate Bill 466 (1st Reprint): Makes various changes concerning sale or lease of water rights by local governments. (BDR 20-1351)

Senator Warren B. Hardy II, Clark County Senatorial District No. 12:

I have asked the desk to hand out an amendment ([Exhibit E](#)) that is an amendment to the bill in its entirety. I would like to give you a little history on

this. Notice the high number on this is because I introduced this bill just before the deadline.

[Senator Hardy, continued.] It came to my attention that Washoe County had some water rights that they owned in conjunction with some land. They sold the land and then realized they had these water rights that were also for sale, or a commodity that they could sell. The appraised value of those water rights was about \$10,000. They auctioned those water rights, and I want to make very clear from the very beginning that I do not believe Washoe County acted inappropriately. I believe Washoe County acted exactly as the current law provides that they act in disposing of excess property.

Water rights are considered a property right, and therefore, they have a couple of options on how to dispose of them. The most responsible way to dispose of them is through auction, and that is what they did. These water rights were in an area of high demand. There were a number of government entities that bid on those water rights, but because they have restrictions in terms of how much they can bid with regard to appraised or fair market value, they were not even in the ballgame. The water rights ended up selling for \$42,000 an acre foot, when they were appraised for \$10,000 an acre foot. Reno subsequently took that windfall and built a park, and that's great. In existing law, that is appropriate.

However, I do not believe that it is an appropriate use of our most precious natural resource to dispose of that for purposes of generating revenue in lieu of taxes. Again, that is not what Washoe County intentionally did, but in practice, that could occur. I felt it was important that we introduce legislation to prevent that from happening in the future. It is possible—in fact, Mr. Chairman, it is even likely—that the scenario I just described will never occur again. I thought this was an important enough policy issue that we address it.

The intent of my legislation and the intent of the concept are to simply prohibit local governments who are not purveyors of water from selling those water resources at more than the appraised value. They should not sell it for more, as a matter of public policy, than the appraised value. The potential result of that is a local government recognizing they have a commodity that is potentially very valuable. They will sell our water off to buy police cars, a new city hall, or for any number of legitimate governmental functions. I think, as a public policy point, that is an inappropriate use of our most precious natural resources.

We heard the bill in the Senate, and one of the local governments testified and said, "This is a property right, and we want to be able to sell it for as much as we can, because it's a commodity we ought to benefit from." I said, "That is

exactly the point of my legislation.” He said, “It’s a water property right just like land, and we auction land off.” My point was, I do not need dirt to survive, but I do need water to survive.

[Senator Hardy, continued.] So, Mr. Chairman, I took a run at drafting some language to accomplish this end, and in retrospect it wasn’t a very good run. We had a number of things that came up during and after the hearing we tried to address. One of the last things somebody said to me was, “Well, if we are not allowed to auction it, then how are we allowed to sell it?” That was a good point. I threw some verbiage in there in regard to a priority of sale. I was looking at the bill as it was on General File and rereading it, and as I was pressing the “yes” button, I realized that was not going to work. Very shortly thereafter, a number of water purveyors and local governments came to me and expressed the same concern. I recognized your concern, so about two weeks ago—on a Tuesday afternoon—I had an open invitation to anybody who had any concern of any kind about this bill to come into my office and discuss it. I think we had 20 or 25 people there from every corner of the state to express their concerns. What we finally decided to do is reflected in the amendment ([Exhibit E](#)). It backs way off, and I don’t think it’s necessarily appropriate for us to get involved in the priority of sale. I think local governments are perfectly capable of deciding who they are going to sell it to.

In addition to that, it was not my intent to limit—in any way, shape, or form—the water purveyor. I think I can state with confidence based on history that our water purveyors are not going to be selling water for profit to build infrastructure. If it does, that’s going to take a whole other piece of legislation.

It was not my intent in this law to put restrictions on how the purveyors of water dispose of their water. This amendment is an attempt to take care of this at its most simple fundamental level. That is to say governments—the State and any agency of the State or a local government—shall not sell or lease water for more than five years. We put that in there because water is leased for more than five years. If it is a 100-year lease, it’s similar to a sale for more than the appraised value of the water right.

I did have an individual approach me just prior to this meeting and say that he thought “any agency of the State” can be interpreted to mean a “water agency.” That is probably accurate, so we either need to address that and make one more little final adjustment to this, or at least put that on the record that it is not the intent of the sponsor to impact the purveyors of water.

Now again, I have been around this building in one capacity or another for 15 years, and I have never in my career worked more diligently to make sure

the concerns of every single individual were met. I do not want to interfere with the way purveyors of water in northern and rural Nevada purvey that water. I have tried to be responsive, and I have listened to every concern. This amendment had 25 people in my office nodding their heads in agreement. I was told last night about 5:30 that there were some local governments that were going to oppose this bill. I was told this morning that there were people who were going to put concerns on the record. Mr. Chairman, at this point, with what we have done, I asked them why. They said that we have a fiduciary responsibility to sell their property for as much as they can possibly get out of it. That is a concern I cannot fix. That is the concern the bill endeavors to address.

[Senator Hardy, continued.] The only reason anybody would oppose this legislation at this point is because they intend to sell our most valuable natural resource at a profit, to build infrastructure for whatever purpose, in lieu of taxes. I cannot in good conscience leave this Body if they are able to do that. I am going to do everything I can to prevent that from happening. I have addressed every concern to the minutest detail with regard to the ability of any purveyor of water in this state to be able to purvey that water. I state again: the only reason anybody will oppose this bill is because they want to do exactly what the bill endeavors to prevent, which is selling our water for revenue in lieu of taxes. I can't fix the bill any further, with the exception of clarifying that this is not intended to limit, in any way, shape, or form, the purveyors of water and how they sell their water.

Assemblyman Goicoechea:

My first comment would be that I would be looking for another appraiser if I had a \$10,000 appraisal and then the water rights came in at \$42,000. My real question is, at the point local government makes a determination that they are going to sell that water for appraised value—or whatever the market will bear in an open bid process—I think realistically, in the way I see the amendments in the bill, those water rights are in fact for sale to the highest bidder with the amendments in the bill. Is that not right?

Senator Hardy:

Then can do it by bid if they so choose, but they would have to put a cap on that. The reason we didn't go with the language of "fair market" is that these particular water rights that were sold in Washoe County were in an area where no other water rights were available. If you wanted to develop in this area, you had to acquire these particular water rights or it was not going to occur. The effect of that is the appraised or fair market value of water in Washoe County is, in fact, \$10,000. That was an accurate appraisal. However, this anomaly drove the water up to \$42,000 an acre foot. Now the consequence, because of

that anomaly, is that it drives up the fair market value of water. That is what we are trying to get at. Fair market is whatever the market will bear.

[Senator Hardy, continued.] The appraised value and why we specified appraised value, and why it is entirely appropriate for local governments: if Reno, Washoe County, Clark County, or Las Vegas said that they sold this land off, and it turns out they had a thousand acre feet of water to benefit—but not to auction it off in an effort to raise money in lieu of taxes—I think we are going to start seeing very nice police cars start rolling around our state, purchased with proceeds of water sales and we are going to see very nice city halls pop up, and I think that is an inappropriate use of our most precious resource.

Assemblyman Goicoechea:

The way I see the bill as amended, how are you going to have this room full of people that are bidding for this precious commodity? We are saying it is appraised at \$10,000, but clearly there is an anomaly there that says that water is worth \$40,000. We have this room full of people bidding, so how do I—as a county commissioner—say that Fred Howell is going to get it or Norm Frey is going to get the bid?

Senator Hardy:

That is a good question, and we discussed that at length. The original language that is not workable, with regard to the priority, was an attempt to deal with that issue. At the end of the day, we simply decided we have confidence in that governing board to say, “We have 1,000 acre feet of water here and the school needs it, and we checked with our legal counsel, who said that local governments have that ability to make that determination.” There is some concern there might be legal action because of it, but we thought that our legal counsel felt there was enough of a precedent for that to be able to occur. If the local governing body wanted it to go to a development in that area, such as I did in Washoe County, they could sell it to that developer at fair market value.

Assemblyman Goicoechea:

That is where I get nervous, because all of a sudden you have a governing body making a determination: “Yes, I will give it to this developer,” and there could be some hurt involved in that. I think realistically, water rights are like any other property right and it should be driven by the fair market value and whatever it will bear. That is my opinion.

Senator Hardy:

I am open to any effort to try and clarify that, but it is either going to be the local governing body deciding the priority, or it is going to be this governing body deciding the priority. It is not my intent here—in any way, shape, or

form—to impact privately held water rights. That is not the point, and those ought to be sold for whatever the market will bear and whatever they can get out of them. I am simply talking about a local government, who has a specific mission. If this precedent is allowed to go forward and our water rights are driven up because of that concept, there will be no such thing as affordable housing in our state.

Assemblyman Goicoechea:

My concern, if I may follow up and counter: I look at the bill, and what really does concern me then, Senator Hardy, would be that we don't see a continuation of this public-private partnership to hold water, because then the private sector is not encumbered by this bill. I think that would be a mistake to drive public water purveyors or local government to that point.

Senator Hardy:

I agree, and that was a concern, as you know, I had last session. I think leaving this unchecked, though, will have a greater impact than trying to address it through this.

Assemblyman Christensen:

I think Assemblyman Goicoechea at the end touched on what I wanted to ask you. I am sure you have addressed this in the number of conversations that you have had. I am wondering how those who buy the water are unencumbered by the bill the same as the local jurisdiction would be. What keeps someone from buying the water and then becoming a professional salesman of water out there after they have bought it? If someone can go and buy it for \$10,000, because that was the appraised value, and then they can somehow auction it off and get really good at doing that—what were some of the points of discussion there?

Senator Hardy:

That is a great question. The answer to the question is really why I tried—in my small, ineffective way—in my stay here in the Legislature to protect our water law, which is really western water law, but is a model of water law throughout the West. While there is no law that prohibits speculation, it has been the practice of our State Engineer to not approve water rights for speculation purposes. That water law works and it works well. I have the utmost confidence in our State Engineer's Office to ensure that water is used for the purposes that the state water law provide. The laws regarding prior appropriation and beneficial use work well. Those laws prevent that kind of problem from occurring and have successfully done so.

I do not want to fix something that is not broken. If that becomes an issue and the State Engineer is less effective in preventing that, then maybe we need to

address that. That hasn't been the case so far. Our State Engineers historically have done a wonderful job—and that continues to this day—of being apolitical and focusing on the mission that they are assigned. That is not an issue.

Assemblyman Christensen:

I, too, applaud our State Engineer for his work. I have worked with him on a number of issues, and I know that water is one of the topics that you focus on a great deal as a legislator. So, you would probably be able to tell me as well as anyone if we have anything like this. While this bill hasn't been put in place yet, I am just curious if you have any precedence, or is there any kind of parallel issue where something like this has happened, where something has been capped? Could you address my concern about what we do about speculators? If this bill went into place, then we could be back here dealing with this in two years. Maybe we wouldn't and maybe it wouldn't become an issue, but I know that you talked about it. So, are there any parallels?

Senator Hardy:

I am not aware of any place where we have had to go in and do this kind of a cap. I am not posing that in any other area. What we are talking about here is water. We are talking about something we all need to survive. I am not aware of any other area that we have done this, and I indicated this in my earlier testimony. We may be fixing something here that might never occur again. I, for one, have to ask myself why there is opposition to it at this point, if people haven't figured out that this is a great way to raise money in lieu of taxes. I think the potential is there and I think is being considered for this. These are individuals that supported the concept initially and supported the bill initially. They sat in my office and agreed to the amendment and subsequently thought about it and decided that it wasn't such a good idea. Now, I have to extrapolate from that there are some local governments out there who have figured out this is a way to raise money instead of raising taxes.

Assemblyman Sibley:

My concerns are similar to Mr. Christensen's about reselling the land, and I get concerned with the issue of whether we sell with the priority issue. We have seen in Clark County how they dealt with priority with some of their land sales. It happened to be the same buyer numerous times. So I have a concern with that.

The other thing is, if we sell the water rights for an appraisal, the one thing the bill doesn't address and we need to look at is how current the appraisal has to be. These water rights were appraised for \$10,000 and sold for \$40,000, so something changed in the market to warrant that. The other thing this does is that, when they sell the water rights, Washoe—in this case—was left with land

that they then sold afterwards at auction, and it was less valuable because the water rights had been taken out. I hate to see us sell the water rights for \$10,000 and then we take this hit on the land when we dispose it, because it has no water right.

[Assemblyman Sibley, continued.] My biggest concern is the priority issue, so that Mr. Christensen does not buy all the water rights and then sell them.

Senator Hardy:

First of all, with regard to the project—and that was a kind of an interesting anomaly—they had a golf course that had these water rights associated with it, and they developed a water treatment plant right next to the golf course and, in a good public policy decision, decided to irrigate the golf course with the upflowing water, making the ground water available. They didn't dispose of the land, but they just didn't need the water anymore. They sold the water and built a park with the proceeds. So that is issue number one. That's why this is such a unique anomaly, because any local government that owns land that has water associated with it will probably hold on to both assets. They will need the water to develop the land or to use the land—if it's a park—to use the water. The circumstances that brought this to a head were very much an anomaly.

With regard to the priority question, my preference would be—and I think the responsible position of any government agency that finds themselves in possession of water is—that they sell it at fair market value to the purveyor of water. We discussed that and there was some opposition to that, so I decided, for purposes of the next two years, I would agree to this and see how it worked. At some level we have to have some confidence in our local governing boards to make appropriate decisions. I have no reason to believe they won't, but again I think they need an appropriate decision. For example, Las Vegas just found themselves in possession of water rights, and an appropriate decision would be to prioritize and sell that to the Southern Nevada Water Authority and the Las Vegas Valley Water District for the appraised value. That would be the appropriate decision. I do not want to limit their hands, and I do not want to micromanage this from Carson City.

Assemblyman Sibley:

How about the possibility that the funds that they receive from the sale of these water rights be used for only water-related issues?

Senator Hardy:

We discussed that at great length as well. Mr. Sibley is hitting on a lot of the issues that we discussed, and in fact, we went through numerous drafts of this. At the end of the day, I agreed that those were all issues, but I didn't want to

cast too broad of a net, because I don't know what the consequences of that are. So, I wanted to cast this very narrow net, look at it in two years, and see if we need to broaden the net a little bit. I didn't want to cast the broadest net with the first cast.

[Senator Hardy, continued.] Those are all issues that were brought up and all issues that were concerns that we initially attempted to address, and at the end of the day, we decided to just do it the way we drafted it here and see what happens.

Assemblyman Goicoechea:

I have a couple of more questions. I just want to make sure that when we are talking about these water rights that are going to be sold and the State Engineer's ability to address water speculators, we are talking perfected water rights here, and clearly, if it's a change in the manner of use and it goes to a higher priority use, the State Engineer's hands are tied. That water will be converted. I just wanted to clarify that the State Engineer wouldn't really have a position on our perfected water rights.

The other thing I had a question on: under subsection 2(a), it shows counties, towns, cities, school districts, and other districts. Is that every district, including Southern Nevada Water Authority and everyone that are captured in these?

Senator Hardy:

That is the wide net that I spoke of. Again, the amendment replaces the bill in its entirety. So essentially, the bill will just be the amendment, and I am going to seek clarification from legal counsel to make sure we are not bringing in water districts. I am willing to trust water districts will do the right thing with our water rights. I have no reason not to believe that. They have never acted inappropriately to this day.

Assemblyman Goicoechea:

I am just making sure I am clear on the bill. Subsection 1 is gone?

Senator Hardy:

The amendment amends the bill as a whole and replaces the bill with just this language.

Assemblyman Goicoechea:

Okay. Even the bottom portion is deleted too. So, this is actually the bill as we see it today?

Senator Hardy:

We need to go back and probably define what an agency of the State is.

Assemblyman Munford:

Since you are here, you possess this knowledge and expertise. I have a private matter and have domestic well rights. Are we given the opportunity to sell our well rights also? My well rights are still with my property. Do I have the opportunity to sell them?

Senator Hardy:

This does not impact your ability to do anything in any way, shape, or form with privately held water rights. That is all left untouched. That is a process of the State Engineer. If you were to apply for a point of diversion in water, it would all be handled by current law. This does not impact that in any way.

This just speaks to a local government—who is not a purveyor of water—who has water rights and wishes to dispose of them, not an individual or privately held water right at all.

Chairman Parks:

Did you have other individuals you wish to speak in support of your bill?

Senator Hardy:

I believe there are a number of people here in support, and I would like them to have an opportunity to come forward. I think we have some neutral folks, and as of 5:30 p.m. last night, I understand there are some people here that wish to sell their water at a profit to fund infrastructure.

Chairman Parks:

As of 8:00 a.m. this morning, there were quite a few who did sign in and noted that they were against the bill.

Senator Hardy:

I'd like to say that it is a frustrating thing for any legislator to go through, especially when I was as open as I have been. I called an open meeting in my office and I have listened to every concern, and I have spent months trying to address every concern. I got quite an education in how rural and northern Nevada purveys their water as opposed to how we do it in southern Nevada. We'll serve letters or a simple way to do it, and that's how it is done in southern Nevada. That's not how it's done throughout. I have made every attempt and I believe that it's inappropriate, and I will just leave it at that.

Perry DiLoreto, President, DiLoreto Construction, Inc., Reno, Nevada:

I can assure you that there is a lot of confusion and chaos going on in the water rights market as it exists today in Washoe County and northern Nevada. A lot of what I heard is not what I thought was happening. I would like to give you some background as to how we got here and why we got here.

Almost four months ago, I called together a group of my contemporaries in the housing and development business. They represented by far the vast majority of the construction and development activities in the greater Washoe County area and came to discuss common problems that we all have. Some of those sounded like the water rights we have. We were having problems getting processed through the State Engineer's Office in a timely fashion, and then we moved on to the subject of the water rights that we didn't have.

The situation that exists in northern Nevada is unique in that we, as the developers, are responsible for providing the resource. The analogy I use a lot in some of our discussions is, if I went to the power company and said, "I would like to hook up to electricity," the power company would say to me, "Fine. Go find a generating capacity and bring it to us, and then we will set a meter and charge you for it." The situation continues to be exacerbated by the fact that the water rights market has become very difficult and very tight.

The value of the commodity has been accelerating. In this auction that Washoe County conducted, I also do not think they did anything wrong. I have talked to just about everybody that was involved in it, from the governmental perspective that made the decision. What I heard almost universally from those people was, "We had no idea that this was going to happen." That is a big part of the problem, when you do take an action and you don't have any idea of how significant it could be. The significance is not just that they sold water rights for \$43,000 an acre foot in an isolated basin—and under a very unique circumstance—but its impact on the rest of the water rights market.

As a developer or homebuilder that is trying to build homes and get a map recorded, I have to deliver water rights to the purveyor of water. Governments have a lot of water. Purveyors don't have any water. Washoe County Utilities does not have any water rights to issue "will serve" letters against if I as a developer don't bring them to them. TMWA [Truckee Meadows Water Authority] has no water rights. As a matter of fact, TMWA put out a memo recently—which has since been retracted—saying that not only do they not have any water rights for us, don't bother to go to them anymore for "will serve" letters until we have full perfected water rights from the State Engineer, because they are basically out of the business. At the same time this is going on, an auction takes place and sets and breaks all the records for what the price

of these water rates should be. The water rights that may have been in play now are further taken off the market. People are going to say, "If I was selling my water for \$4,000 or \$5,000 an acre foot and someone just paid \$43,000 an acre foot..." Trust me; they do not listen to the explanation about the isolated basin and the special circumstance. What they are after is the most money they can get for their water rights.

[Perry DiLoreto, continued.] I guess that is our system. It is a property right, and you should be able to do it, but should government be able to do this? Where did the government get these water rights? By and large, they came about by default, and I am not talking about the ones that Washoe County sold. Washoe County sold water rights because they converted from groundwater use to effluent use, and they had a surplus of water rights that they did not need to put into service.

Our water authority, TMWA, had the ability to buy those water rights from Washoe County, but they choose to let this free market experience take place. I am all for free market. I think at some point, when government has assets that they acquired—because roads were dedicated or streets were dedicated—why are they sitting on these water rights? They have accumulated those, and as the supply in the open market continues to dwindle down, we know how many there are left. Reno and Sparks have a lot of water rights. I am not going attempt to codify them for you, but it is worthy to look at.

Another perspective on that is, if they have all these water rights, what is the right thing to do with them? Throw them out into the open market to have an auction? It seems to me the responsible thing would be to turn those water rights, at appraised value, over to the purveyor of the utility. In our case, it is either TMWA or it is Washoe County Utilities. They are the entities that have the organized process for dealing with the distribution of water rights that are going to go into municipal and industrial service. There is a process. It's a fine process when you have a final map that needs to be signed. You have to have a will serve letter. It's like when you are hungry, you show up to eat. If you're not, you don't go there. We, as developers, are not going to hoard water rights. We just want access to them as we need them.

So, if government has water rights and they want to do something with them, do you throw them out into the market and have an auction? I can promise you there is a lot of what I call "reckless money" in the marketplace today. Our housing costs and our land prices are escalating at phenomenal rates. Reno, three years ago, had one or maybe two public building companies in the marketplace. Today we have seven of the largest ones in the world that are up there. They are well-capitalized home-building companies that are doing

beautiful jobs. I do business with these people on a daily basis. They have capacity and capabilities to buy whatever they need and pass it through the market. It is a lot like the reference to the Las Vegas land sales. Isn't it interesting that the same people are buying it over and over again, because they are the ones that have the ability to put all this money together and do that? I am not saying it is bad, but at some point government has to step in and decide the right thing to do with something as precious as water.

[Perry DiLoreto, continued.] In my opinion, if you don't have the provision in this bill that when government disposes of water it goes to the purveyor, then I don't think the bill means anything. I understand what Senator Hardy has been through and what he is trying to accomplish by compromising with everything, but the only place you can put this water when it goes from government into service is with the authority that then hands it out. We, as developers, get in line with our maps on a first-come, first-serve basis. We only get the water that we need for that particular map. I can promise you that situation does not exist in Reno and Sparks today. You have to go get the water, and we can't find any.

I mentioned the fact that the water basically came by default. There is a lot of water on the books in Reno and Sparks that could be freed up. We have had discussions with the local entities, and I believe that they are interested in freeing up some water. They could solve the short-term problem, but before we encourage and we have discussions with the local entities, I believe that they are interested in freeing up some water. They could solve the short-term problem by looking at their water inventory very responsibly, deciding what it is that they may or may not need in the future for any public project. The City of Reno just handed out some water rights a couple of weeks ago to a couple of redevelopment projects. I think that is great. They should recognize that, but then they need to recognize that they have an asset that we, as taxpayers, are entitled to see turned into something other than just sitting on it and hoarding the asset.

If you are going to take that leap, you have to have a process. We strongly support the notion that they get their water rights appraised and then, at market value, they transfer them to the utility. Then the utility—in TMWA's case, under Rule 7—is allowed to mark that water right up based on their cost of overhead. That's what they charge developers when they come in to get their "will serve" maps.

I cannot overemphasize the seriousness of the situation as it exists in the Reno market today. When I say Reno, I am generically speaking of greater Washoe County. There have been maps turned away when we have shown up to have them signed. We have been told, "Sorry. There is no water. Go out and

find it." At the same time, there is no availability and no balance in the marketplace. There is no continuity and there is no consistent, reliable supply. A good part of the short-term solution is to have our governmental entities cut loose with some water. Before we do that, we need legislation that sets the ground rules. We need to make sure it is just not those that have the most financial resources who can come in and grab them. They go to the purveyor and let the purveyor system work. It's a good system and it works.

[Perry DiLoreto, continued.] Then, we have to have our purveyors help us identify additional resources. There are some good things going on, and I do not want to appear all negative. Washoe County has a wonderful wastewater treatment project that we are the beneficiaries of on our ranch. We use considerable amounts of it. There are new treatment plants being built. We are working with the State Engineer's Office to utilize a lot of the creek rights that have not been utilized before.

This is an important piece of legislation. I understand the attempts to compromise. In summary, if you don't make them sell it to the purveyor, I don't think you are going to end up with anything.

Assemblywoman Kirkpatrick:

Do you support the amendments to S.B. 466? In my opinion, you were all over the board for me to try to understand where you stand on this bill. Do you support the bill by the first amendment, or the bill with the second amendment, or do you support the bill in its original form?

Perry DiLoreto:

I apologize for the confusion. I did not see the amendment. I am looking at a bill draft that has a list of priorities in it. That is what I support. Do I support the bill as I understand it now to be amended? If it does not require a priority list, then I do not.

Assemblywoman Kirkpatrick:

You support the original bill as written. Correct?

Perry DiLoreto:

Yes.

Assemblywoman Kirkpatrick:

I am just trying to get this straight, since I have a lot of amendments and a lot of different forms, and I am just trying to clarify what your position is.

Assemblyman Grady:

I understand through your testimony that you would like the local governments that have the water to turn it over to TMWA or someone of that nature. Is that correct?

Perry DiLoreto:

Yes, essentially. If I have 5,000 acre feet of water and I only have a responsible projected use for 1,000 acre feet, which is a lot of water, then I have to ask the question: why are you sitting on the rest of it when you have this situation that occurs? I am not saying they would go out and put it on the market all at once. They would make it available and let the marketplace know that there is a consistent supply of water flowing in that is going to be sold at an appraised value. Also, it is going to go to the purveyor of the utility.

Assemblyman Grady:

If these water rights were available and they are on the Truckee River, what would your feeling be about downstream users—such as Storey County or Lyon County—being in the process of purchasing these waters for other uses? They are in the other counties that are on the river.

Perry DiLoreto:

I could only answer that if I were one of the government officials in the City of Reno and it was a City-owned water right. I would be looking out to see that those water rights stayed within the service territories that they were in now. This is another good reason for this provision, that you sell to the purveyor of the utility. You take care of where they are right now. The downstream trading and upstream storage and all this other stuff is driving this market out of whack. There are fundamentals that are starting to develop here that do not have anything to do with taking a natural resource and putting it into use for municipal and industrial purposes. It is becoming so highly speculative and traded off that I wonder how people are ever going to keep track of what they are doing.

I am sure you understand the pressures on the prices of land that is being sold downstream to simply strip the water right off of it. What is that going to leave down there when you get done doing that, a dust bowl?

Assemblyman Goicoechea:

You kind of piqued my interest with the fact that Washoe County did, in fact, sell those water rights, when we have the Washoe County water district that probably should need those water rights in the future.

Perry DiLoreto:

They could have used them, and TMWA could have used them. I think the whole issue of two purveyors of the utility is a whole other subject. Right now, what we have is one homebuilding company—which is a great company with a lot of money—that owns those water rights. They increase the price of houses at least \$20,000 apiece just to cover the cost of their water. Also, Washoe County is going to get a new park. Several of us would have given them the money for the new park if they wouldn't have upset our water rights market.

**Andrew Belanger, Management Analyst, Las Vegas Valley Water District,
Southern Nevada Water Authority, Las Vegas, Nevada:**

We did attend the meeting in Senator Hardy's office regarding this bill. We agreed to the compromised amendment, and we are going to stand by that position.

I do have a couple of comments that I want to make. It's a fundamental principle of water law that water belongs to the public. It should be used for a number of different beneficial uses. Those uses vary, but there is a list of those that the State Engineer relies upon and can make determinations on what is good use of water in the state of Nevada.

We do believe that local governments should use water that they have rights to for the benefit of the public. As a matter of policy in southern Nevada, we would never dream of a situation where we would take permanent water rights that the Las Vegas Valley Water District has and sell those rights to anyone else. That water is used and held in trust for the citizens of southern Nevada. We use that water for their benefit, and we would never contemplate or imagine taking that water and using or selling that water for another purpose. It is our business to provide water to the people of southern Nevada.

I can tell you that the Southern Nevada Water Authority Board of Directors has, as a matter of policy, made a ruling that said they would not purchase water rights for more than a specific amount. As a result of that, it has tended to keep the lid on the price of water in southern Nevada. That is a positive thing. People on the private market who want to buy water aren't going to pay inflated prices for water. The reason why that works in southern Nevada is because we do have several water districts that provide water to customers. As a result of that, people have a place to go for water other than the open market, in purchasing a limited supply of a finite resource.

We are supportive of the bill, and we support the amendment that we agreed to in the Senator's office ([Exhibit E](#)).

Harley Kulkin, Private Citizen, Pahrump, Nevada:

I am here for a proposed amendment ([Exhibit F](#)). Going back a little bit in history, water law in Nevada is quite antiquated and was formed many years ago. It would be safe to say it was pretty much put in place to protect the interest of the people that had water rights.

What is government? What are you people here for? You represent the public. Sometimes when we do things, we forget about our own selves, and when the water law was formed, I think that is what happened. The government forgot about itself.

I currently reside in Pahrump. I moved to Nevada in the 1970s and lived here in Carson City, and then I moved down to Minden, but the last 11 years I have lived in Pahrump. Nye County is a poor county and it is getting poorer all the time with the growth. Growth does not pay for itself. Even though we get a shot in the arm from the federal government of about \$11 million per year, we have already spent it all, and now we want to borrow another \$6 million.

We have about 400 acres of fairground land that was given to us by an act of Congress. We have had it for over 4 years, and we can't do anything with it because we do not have any water rights. It is interesting to hear about Washoe County having so many water rights, but Nye County doesn't have any. Water rights a couple of years ago were about \$2,500 apiece. The County could not afford to buy them then, and now they are \$15,000 to \$20,000 apiece. Obviously, we can't afford to buy them.

The water utility is a community-owned company. They had purchased 40 acres of land and about two hundred water rights a few years back for \$1 million. They were entertaining the idea of selling the County ninety of the water rights for \$1 million, but they can get more money for it, so that fell through. We do not have the money anyway.

I believe a government entity comes first. The government is the people. That comes before me as an individual. I, as an individual, have a right to take a lot and put a well on it. I don't believe I come before the well, being of the public. I believe a government entity should have a right to put in a well, just as a private individual can on their own private property, and use that water for the beneficial use of the public. I think that right comes before any other thing about water. Some people are concerned if you are on a water system or within, whatever water that government entity uses could be deducted from the water company's usage—reverse the meter, so to speak—and it doesn't go against that water company's usage.

[Harley Kulkin, continued.] There might be some concerns that the three large counties—Washoe County, Carson City, and Clark County—may be too far along in the water issues, so maybe this would cause a problem for them. Definitely in no rural county could this possibly impact the water to any degree at all, if any rural county was allowed to sink a well to serve a school, a park, or whatever to serve the public.

I think this is just common sense. Where did water come from in the first place? Water came from the State. It did not sell it to anybody. They simply gave it to people. Most people used it for farming. When that dwindled, they then get it converted by the State Engineer to residential use. It should have gone back to the State, but they get it converted, and now they start subdividing the land, and the more that happens, then the more the water rights are worth. It just gets away from a government entity trying to buy anything for themselves. Our federal government is giving away our industry and the average guy doesn't make much money anymore. The good paying jobs supplemented property tax. Property tax has never made a person living there pay for itself.

If you don't approve this, what happens is that if the government has to come up with the money to buy water rights, with the expensive prices, they then are taking away from things like senior issues, roads, and all of the basic things that people need. This will be a great shot in the arm. If a government entity doesn't have to spend so much for water rights, then it is not putting a demand on the State's budget, either. I think this is the right thing to do.

Chairman Parks:

Is this your proposed amendment ([Exhibit F](#))?

Harley Kulkin:

Yes. I did not author the actual verbiage, so I hope it covers what I am trying to accomplish—at the very minimum, if a government entity could at least put a will in to serve the public for that facility.

Mark James, Esq., Former Senator, Legislative Advocate, representing Nye County, Nevada:

I was asked by Nye County to come here today to try to help with this issue. They just asked me to come, and so unfortunately, I did not receive the benefit of the meetings Senator Hardy referred to earlier. I would have liked to have attended those meetings and perhaps have had some input in the process.

I had the benefit of serving on the Senate Committee on Natural Resources for ten years and chairing the statewide water committee that did the redraft of the water law that was referred to earlier by our State Engineer, Hugh Ricci. I had

spent some time with the water law, and what I am here to tell you today is that I very much appreciate and understand the concern that Senator Hardy is attempting to address with this bill. I think the way that it is currently drafted, with the amendment that has been proposed by the Senator, would have some unintended consequences.

[Mark James, continued.] I am here to suggest to you some additional language ([Exhibit G](#)) to the bill that would alleviate and remove those unintended consequences. It would make this a bill that could be supported by Nye County and by probably a lot of others on the Committee who have indicated concerns and opposition.

Previously, the water law—including both the statutes that are passed by this Legislature and the cases that have been fashioning and interpreting those statutes since the beginning of the last century—treats water as a real property and not as personal property. It attaches to land and is conveyed with the land as an appurtenance. In an interesting case that is referred to often by water law attorneys—*Zolezzi v. Jackson* [72 Nev. 150, 297 p.2d 1081 (1956)]—it was determined by the court that even if you don't mention a water right in a deed, and you convey that deed, the water rights go with the land. This is different in western water law than the eastern water law. You have to treat water as real property and you have to treat water the same as you do a real property. The precious nature of water as a natural resource and the fair allocation of water by water purveyors are protected by other laws throughout the statutes. The obligations that the public officials on those boards have to the public and to serve the public are in place. They prevent those boards or local governments from wasting, dissipating, or abusing water rights. When a government owns a water right, the government and the taxpayers whom that government represents have an asset that should be sold for its fair market value.

The amendment that has been suggested by Senator Hardy ([Exhibit E](#)) says that the water right would have to be sold for its appraised value. Well, I guess I would suggest to you that in the case of the Washoe County sale that was discussed earlier, I suppose the appraised value should have been \$43,000 per acre foot. The objective of an appraisal is to determine fair market value. I think by using the term "appraised value" in the statute, you are going to confuse things. Appraised value really isn't the term that is used in the statutes when we talk about the value of property that is either sold or acquired by government. Chapter 37 is the part of our statutes that deals with eminent domain, as this Committee is well aware. That statute requires the government to pay a fair market value for water rights. Since the government is the only one buying them in that case, fair market value has to be determined by an appraisal. When it goes the other way and the government is selling something,

the fair market value can be determined by an appraisal, or it can be determined by other legal or appropriate means. An example would be a public sale.

[Mark James, continued.] As Senator Hardy indicated, a public sale is the fairest way to allocate or to allow people to acquire something from the government. It is fair from two standpoints. It is fair from the standpoint of the government, because the government gets a fair market value price, current to the asset it is selling that is owned by the taxpayer. It's fair for those acquiring that, because there is a method of determining who has made the best bid and who is entitled to obtain that water right. Otherwise, you get into arbitrary allocations of the water rights. If the government is selling to private individuals and not to water purveyors, the government is going to have to choose which of two private developers, both of whom are ready and able to pay something called "appraised value," to buy that water right. That is the inherent unfairness in this system. That is why that very system was eliminated by Congress in the bill that was passed that governs the sale of federal lands in southern Nevada, the Southern Nevada Public Lands Management Act [of 1998]. The idea that we would rely on appraisals to determine the value of a public asset was soundly rejected by Congress in the bill that was sponsored by Senator Ensign and Senator Bryan. It passed and now governs land sales in southern Nevada.

That bill essentially requires, when the government is going to sell federal land, that it sell at its market value at a free, fair public auction. In that process, the BLM [U.S. Bureau of Land Management] goes out and gets an appraisal of the property. Very often that appraisal is the beginning of where the bidding occurs. The market sets the true value of the property that is owned by the government. The same thing should be true if a local government has determined, in its fair, open meeting process, it is going to be divested of that asset.

If you are going to have a statute like this, the wording would have to be that the State or an agency of the State or local government shall not sell or lease for a term of 5 years or more a water right. Also, this sale would not be for more than the fair market value of the water right, as determined by appraisal or other means allowed by law. That gives the local government the ability to say that they are not going to hold an auction, if the law otherwise allows them to do this and to sell for an appraised value. It also gives them the option and the discretion to determine that a sale by auction—and there are various kinds of auctions—is the most appropriate means of selling those water rights.

An interesting point came up in Senator Hardy's testimony. I was unable to speak with him before this hearing. Why would water purveyors not be included in the definition of a State agency? Let's assume a water purveyor had acquired

a water right in a remote county and were going to convey it by pipeline or other means for use. They acquire that water right and hold it for some period of years. They then determine that it is too expensive to convey it. If this bill were to pass, they would be free to hold a public auction to sell those water rights. No other government entity would be able to do that.

[Mark James, continued.] The other thing to reexamine is that if you draft the statute as I have suggested, it will be line with all the other parts of NRS [*Nevada Revised Statutes*] that require the government to get fair market value and, under the *Nevada Constitution*, to pay fair market value for property.

I think Mr. Christensen and Mr. Goicoechea brought up a very good point earlier. You are going to interpret this statute as having the appraised value be some sort of a cap on the value, such as Washoe County, who relied on the appraised value of \$10,000 per acre foot. Then you get into the situation of whoever is lucky enough to acquire those water rights at far under their obvious market value, as determined by the auction. They can then turn around and do exactly what the bill says shouldn't be done. That is speculating in water rights, and not only speculating in water rights, but speculating in water rights that used to belong to the taxpayers. That is something that has occurred in other places in government and something we are trying to avoid in other legislation before this Session of the Legislature.

I think that summarizes the position, and I hope I have been clear about what I would suggest as an amendment to the amendment. I want to ensure this statute is in line with other parts of our statute and ensures that the government and the taxpayers will both give and receive fair market value for the assets they own.

Assemblyman Hardy:

Do we have the amendment in writing somewhere?

Chairman Parks:

I was given a copy of a proposed amendment yesterday afternoon in my office.

Mark James:

I apologize if there was some confusion in you receiving the suggestion. Again, I became involved at the last minute. The amendment you have in front of you from the Senator says, "...shall not sell or lease for a term of more than 5 years a water right for more than the..." and then my suggested language would be to add "...fair market value of the water right as determined by appraisal or other means allowed by law."

[Mark James, continued.] At the beginning of my testimony I addressed the concern that was raised by the Senator, but I ensured that it addressed the other issues I raised.

Senator Hardy:

I do not disagree with anything Senator James said with regard to the disposal of property. I have been a supporter of making sure property is disposed of by governments at fair market value. That is an appropriate fiduciary responsibility our governing bodies have to their constituents and to the taxpayers of this state. This is an attempt on my part to acknowledge that, in terms of what we need to survive, there is a difference between water and every other type of property the government may need to dispose of.

I would submit that there is necessarily a difference here that should be acknowledged in law. I wouldn't endeavor to make this change in any other area of property because nothing else has this unique situation. As I indicated earlier, I don't need dirt to survive.

Regarding the priority process, we struggled with that a lot, and I would be open to any suggestions that we might have. It was not my intent that the local governments would decide on an ad hoc basis to whom they should sell the water. They should develop a policy internally on how that would occur. It would not be random or enable them to show favoritism, but we allow, then, that latitude in other areas.

The final point with regard to why we are not including the water districts: I think Senator James answered the question himself when he articulated that there are numerous laws at the federal, state, and local level that govern the conduct of purveyors of water in these circumstances. I understand his point, but I was willing to acknowledge that fact there is voluminous case law and other ordinances relative to the conduct of water purveyors of these matters. That is the reason for the distinctions. There are certainly very few people in this state I respect more than Senator James, both on water law and other issues.

I am willing to talk with Senator James; however, using the term "fair market value," because of the other ways that can be determined, does violence to the intent of the proposal.

Norman Frey, County Commissioner, Churchill County, Nevada:

I am a farmer by trade, and therefore, I do own water rights and have some involvement in them. I respect Senator Hardy and his passion for this bill, but I find myself today coming in opposition to S.B. 466.

[Norman Frey, continued.] I do believe that going by appraisal encumbers the fair and open market value of Nevada's most important commodity, which is water. I do believe that in the future, this could bring legal action against the communities that do find themselves in a position of disposing of this asset. I do not foresee Churchill County disposing of water, but we do lease water. It is one of the methods we use to keep our water rights current.

I am somewhat of an expert in the forfeiture of water rights, after being involved in the transfer procedure before the State Engineer for 20 years, trying to move water from one portion of my farm to another. Forfeiture claims were brought against it in protest. We would like to avoid that in Churchill County. It does hold surface water rights that we have acquired through our water rights dedication ordinance. Every year we lease those waters out to farmers, because they are still agricultural rights. This bill would preclude us from doing so. We lease them to the farmers so that we can keep our groundwater aquifer recharged, which is our current water system. We are building a municipal water system. We are also trying to keep these water rights active and out of a forfeitable position. This bill, as written, would impede our ability to do that.

We also have the fiduciary responsibility that Senator Hardy spoke of—that is, taking care of the assets of the taxpayers within Churchill County. We recognize in Churchill County that an auction is the fastest and simplest way to determine fair market value. Every Tuesday and Wednesday is the way livestock and the fair market value of livestock is determined. Then it is posted in the newspaper as to what the fair market value for livestock is. It is also a commodity, just as water is. Water is only a unique commodity because of its scarcity in this state.

I think this also sets a dangerous precedent for the disposal of assets by a county. It scares me to think that if we had to go to appraisal for the sale of a road grader or a computer, how cumbersome that would become if this were to take precedence.

As I have said, I think the most important thing is that limiting who we can sell it to is detrimental to the open market. The appraised values do not always reflect fair market value of the right. I think Mr. James was quite clear on that. I would like to see more study on this. I don't want to see this bill killed outright. It is an issue that does need to be reviewed. I would recommend it go on to an interim committee, spending a lot more time looking at it. I would love to participate in any further discussions that Senator Hardy may have in his office. I would like to see more consideration given before S.B. 466 is passed.

Bjorn Selinder, Legislative Advocate, representing Churchill County and Eureka County, Nevada:

I have just one quick comment. You will note there is testimony that I have prepared ([Exhibit H](#)), as well as an email ([Exhibit I](#)) the Chairman received from John Hutchins, Ph.D., from the Eureka County of Natural Resources, and I just wanted to make sure that was entered into the record.

Laura Billman, Legislative Advocate, representing Nye County, Nevada:

In the interest of time, I would just like to clarify that we have turned in Mr. Mark James' amendment ([Exhibit G](#)) to the bill, and Nye County currently stands opposed to the bill as written and the amendment Mr. Hardy has turned in as written. We would like to see wording more like Mr. James' amendment.

Bruce Scott, Principal, Resource Concepts, Inc., Carson City, Nevada:

I signed in as neutral because I wasn't supportive of the original bill. I am supportive of Senator Hardy's amendment. I am here on behalf of the Town of Minden, who is a water right holder in northern Nevada. The Minden Town Board is involved in a portion of the Carson Valley. There are other water purveyors in the valley. The Town is selling small blocks of water for specific developments, as approved by Douglas County. They attempt to facilitate the orderly growth in accordance with Douglas County's master plan.

The Minden Town Board supports the concept of appraised value, feeling that it is inappropriate to determine the price and not to create the open market office situation, which I think Senator Hardy is trying to avoid. The Town of Minden has established strict guidelines on the basis they would sell their water, that it cannot be used for speculation, and it must be tied to a specific project. If that project does not go forward, the water right would have to be sold back to the Town at the price that was paid. It is a responsible way of facilitating growth, and I think that is in keeping with the concerns Senator Hardy has tried to address.

It is a difficult area, I would represent, and I don't think any local governments are losing money on the sale of water. It is a question not of losing money, but rather of how much additional funds or how much money is made over the actual cost of the water. I think it does a lot to use the appraised value approach, to keep the market from going wild in the water area. That is definitely something as Mr. DiLoreto said, and his term was "lose money" available for speculation in water. I do believe for local governments, as defined in the proposed legislation, "appraised value" is a more appropriate distinction than "fair market value."

John Erwin, Director, Water Resources Division, Truckee Meadows Water Authority (TMWA), Washoe County, Nevada:

We are a water purveyor. We engage in the process of buying water rights in the open market process and then take those water rights and do some processing, and then we turn around and sell a “will serve” commitment against those water rights for our cost. We do not mark them up, and we don’t speculate with them. We sell them to the first project that comes in the door that needs water rights.

As Mr. DiLoreto pointed out earlier, the water rights market has changed substantially in the Truckee Meadows region, for more than the sale of the Washoe County Parks water rights. There has been an increase in the number of buyers and interested parties in water rights. As noted earlier, other counties are interested in main stem water—the Truckee River. There is the Pyramid Lake Paiute Tribe, who is interested in the waters of the Truckee River. The City of Fernley is interested, and there are wildlife interests, and many interests are demanding resources for their various applications.

Just some background on the Washoe County Parks water: there are approximately 174 acre feet of groundwater rights in that basin. That basin has not had a significant number of water rights available to it in the past 30 years. They were appraised at a value of \$15,500 an acre foot, and they sold at an average price of over \$40,000 an acre foot. That did raise everyone’s expectation on the sale of a water right, particularly those who own a water right.

Just as a comment on the Truckee Meadows basin: the water rights themselves are spread out over some 32,000 different parcels, and there are some 45,000 to 46,000 different owners of those parcels. The water rights have been sliced and diced in some 46,000 different pieces. Aggregating those pieces into usable water rights for commitments is a major and costly undertaking by government and by local individuals. It is being done in the marketplace.

With respect to the sale of those rights by the park, I think the current law did what it was meant to do—that is, the public agency could maximize its return to its citizens. In this instance, the buyer got what he wanted, which were rights—so he could continue to build—and those rights would be dedicated to the Truckee Meadows Water Authority for a “will serve” letter. In addition, the county parks are able to succeed and exceeded expectations, and now they have additional dollars to complete not just the original park project, but others.

[John Erwin, continued.] Had this bill been in effect that is being put before you today, the benefit gained by the residents of Washoe County would have been transferred from the citizens of Washoe County to these anxious buyers. That has an inefficiency in the market. That transference of benefit is a cost that would be borne by the owners of that water right. In this particular case, it would be the local government. Another example: NDOT [Nevada Department of Transportation] has numerous rights-of-way in and around the Truckee Meadows area. Attached to that land and those rights-of-way is between 700 and 900 acre feet of water rights available that could be used for development or other wildlife interests, such as the Pyramid Lake fishery enhancement project. Under current law, NDOT would be able to auction those to the highest bidder. That makes sense from NDOT's perspective.

The bill itself also creates an administrative problem in terms of setting priority of buyers. If you have an appraised value, the first argument is going to be over whose appraised value are you going to use—how often do you have to appraise it—and the priority of which buyers at that appraised value would be a successful buyer. The bill itself, in my opinion, creates certain inefficiencies that result in cost, and those costs would be borne by the government or the owner of those water rights. The interruption of the market forces by government imposing certain restrictions on the movement of transactions of commodities immediately creates inefficiencies and inequities in those transactions, particularly if a commodity is sold and purchased at a price below the market-clearing price as established in an open bid process. This sends the wrong signal both to those looking to invest in the right and those selling the right. By that, I mean the developers, being faced with commodities priced below market prices, create two things. One, it increases the number of entrants competing for those rights. Secondly, it increases the consumption of those water rights well ahead of planned or progressive development. To put it in another context, who among us who have been selling our home, upon receiving an appraised value, would not accept an offer above that appraised value? The same concept applies here. Water rights and property rights should be transacted in a similar fashion.

This proposed amendment, in our opinion, creates certain inequities and inefficiencies—in resulting costs and the transfer of benefits—that need more clarification and study. TMWA would recommend that the bill be tabled for the time being and we look to an interim committee to examine this issue. I think the testimony today and the numerous attempts to try to tinker with a market such as water rights has illustrated to us that it's almost impossible to completely adjust and manage a free market commodity, such as we see in private property exchanges.

Chairman Parks:

I am quite confident we will have an interim committee, and hopefully, this will be one of those issues that we take up.

Assemblywoman Kirkpatrick:

Did you work with Senator Hardy and did you attend these meetings? It seems like you of all entities would have been there first.

Steve Walker, Legislative Advocate, representing Truckee Meadows Water Authority:

I did attend the meeting in Senator Hardy's office, and I did offer some suggestions and did say that the meeting outcome would be taken back to Truckee Meadows Water Authority, and they would give me an opinion.

Assemblywoman Kirkpatrick:

I am learning that it is very frustrating to have people in your office and work with them and then, all of a sudden, find out that they are not on the same page. Was he aware this morning that you were not supporting it?

Steve Walker:

We ended the meeting with, basically, the language that we had and the language was picked up on a Friday, with the agreement that we would mull it over to see if we had problems with that language. If we had problems with the language, we were to get back to Senator Hardy on that Monday. That's the procedure we used. I picked it up on Friday, conveyed it to TMWA, and got an opinion they need to go to "fair market value," and so we can't support "appraised value." That was then conveyed to Senator Hardy on Monday.

John Erwin:

We did testify in the Senate committees, and we continued to oppose the amendments at that time. We still continue to oppose.

Edwin James, General Manager, Carson Water Subconservancy District, Carson City, Nevada:

When it was on the Senate side, we did testify that we had some concerns. I also didn't send an email to Senator Hardy on my concerns. However, somehow I did not receive notice of the meeting, so I was unable to attend that meeting.

The amendments are getting closer to alleviating some of our concerns, but I want to express that we do regional watershed planning for the entire Carson watershed. We own some water rights, and we lease those water rights to different entities throughout the watershed.

[Edwin James, continued.] Our goal is to balance resources between environmental needs, agriculture, and domestic needs. When we have these water rights, we try to move it up and down where the needs are in the watershed. We own water rights in Alpine County. We keep the waters in those reservoirs during the summertime for recreational purposes in Alpine County. We release those waters in late fall for instream flows for fish. The water is picked up by Carson City to meet their water demands. This is a supplemental water supply that we release. This cannot be used for permanent growth. It just supplements water, so we have entities like Carson City pumping the groundwater resources, and this actually alleviates some of their needs. They can take our water and rest their groundwater rights. This water can be released anywhere from Alpine County all the way down to Churchill County. We try to keep that flexibility. The revenue we generate from that is used to enhance our regional water system. So, it is an important resource.

We currently lease the water and probably do so below market value. Again, our goal is to balance all the needs. There is no one out there paying for a lot of the environmental things, so we try to utilize these funds for that purpose. Our concern is that if we had to get an appraisal every time we do it, then it adds more costs to our program. This takes away from our benefits of other programs that we try to do.

The other question is, what appraisal would you use? The value in Churchill County is quite different than what it costs in Lyon County. If we were to market the water in Churchill County because there was a need for it, and they said, "We need it for a period of five or six years—we don't do a long-term lease; our leases are typically running five to ten years—if Lyon County pays more for their water, then is that an impact?"

Our concern is the leasing portion of this bill, and the amendments are getting closer on that. We think at least a ten-year lease will alleviate most of our concerns. The original bill really impacted us, because we may lease it to a farm or something else. These are concerns, and it impacts our planning for the regional area and will benefit the watershed.

Assemblyman Christensen:

What is the cost of the appraisal?

Edwin James:

It is tough to give an amount. At times when we have appraised water, it has been up to \$8,000 per appraisal, and we did that in Churchill County. We generate currently in summer water rights only \$4,000. That would cost more than our appraisal, so we are balancing with all the fees. We have to pay the

State Engineer and everything else, and we are hardly making any money on that, if we were looking at an investment. Our investments are not the best investments, but we are balancing the needs for environmental needs and everything else. Our last appraisal for water in Churchill County cost us \$8,200.

Senator Hardy:

I have no closing remarks. In response to Mr. James, I would only say that my amendment would not apply to him, because he is a purveyor of water.

Assemblyman Goicoechea:

I would like to be the first to apologize to Senator Hardy. I didn't make the meeting in his office, but I had been sent word that it was amended and was fixed. I apologize, but I had been opposed to S.B. 466 in its original form.

**Gorden DePaoli, Legal Counsel, Truckee Meadows Water Authority (TMWA),
Washoe County, Nevada:**

I was concerned about both the bill and the amendment that has been discussed, from the standpoint of an irrigation district. Again, an irrigation district's primary mission is to make water available to farmers, and sometimes, the rules being proposed here would not work very well.

I don't think one size will fit all for what Senator Hardy is trying to do and what other people are concerned about. There needs to be a careful look at it. First of all, there are two kinds of water rights in this state: surface water rights and groundwater rights. In a lot of the areas, you have a water purveyor that relies almost wholly on groundwater, and a lot of water rights are surface water rights that local governments may, in fact, own. If you want to restrict a local government from making a sale of a water right that is not used for municipal purposes by the purveyor of water in provisions like this, this needs to be looked at.

I would encourage you take the more careful look at this. You will find that a statewide blanket provision that applies to all water rights is not going to work entirely across the state for everyone. That needs to be taken into account.

Chairman Parks:

I will close the hearing on S.B. 466 and open the hearing on S.B. 422.

Senate Bill 422 (1st Reprint): Makes various changes relating to regulation of businesses and occupations by governing body of local government. (BDR 20-533)

Senator John J. Lee, Clark County Senatorial District No. 7:

In S.B. 422, I would like to discuss pages 3, 7, and 11. Basically, this is a friendly amendment to the bill. In southern Nevada, Clark County was starting to try to access contractors for every specialty license. If you were a trucking company, they would say, "You have a big truck, so there is a special license for that, and then you have a pickup truck, and there is a license for that also." It would be like a framing contractor being able to frame, sheetrock, paint, and texture, and those were his trades. Now they want to say, "Since you have a specialty license in all of those categories, we want you to be charged a business license for each one." Although they use the same set of books and are bidding the same jobs properly, it seems like they are taking this extra revenue from small contractors.

Clark County stated their belief was that the City of Las Vegas, North Las Vegas, and Henderson all require the same. That wasn't true. I will read this one statement.

[Senator Lee read a prepared statement, [Exhibit J](#), which is incorporated herein.]

This is a friendly amendment on the bill to make sure the contractors are not getting licensed to death, because of their specialties they have to do for the Contractor's Board to prove competency in those areas. That is not the main agenda of the bill, but a friendly amendment onto the bill.

Assemblywoman Kirkpatrick:

I just want to clarify that if they have different business names, then they pay separate fees. Is that right?

Senator Lee:

A personal example would be that I own two construction companies that are independent of each other, and I pay a license fee on each one of them. However, if I did tile, marble, and granite all in the same field—but different specialties—then you would only pay one license.

Assemblywoman Parnell:

Senator Lee, was this proposed on the Senate side? [Senator Lee responded in the affirmative.] I was a little surprised when I was reading the bill and how it jumped into Chapter 24, and it is out of text with the rest of the bill. Is there a reason why you put this issue into this particular bill?

Senator Lee:

This is just a host carrier. We were at the end of our time period and trying to get things over here. This was the vehicle that we were able to find that everybody agreed with.

In Section 10 it covers the counties, and we did not want to exclude the cities from this amendment, so in Section 14 it picked up the cities, because we have two entities we work with. So, North Las Vegas and Clark County would both be covered.

Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, Reno, Nevada:

This is a bill draft that we submitted, and I am going to turn it over to two of my colleagues to explain to you the genesis of this bill and why we are asking for this enabling legislation. This would allow the City of Reno and any other city or county government to adopt an ordinance that would require certification of property managers of particular units. It is tied to the business license. We are not attempting to create a new form of licensure. We do feel that there are specific rights of both landlords and tenants that need to be protected. We think that this is a good way to go about it.

There is going to be one friendly amendment ([Exhibit K](#)). We have been working with the various interested groups in northern Nevada, such as the Apartment Association, the Motel Association, the Association of Realtors, and other affected entities. We have worked with them to generate ideas from them on how we could craft an ordinance. We explained to them that we needed permission of the Legislature first to adopt such an ordinance, and then we worked with them in the construction of the ordinance in order to develop something that is workable for everyone. It cleans up some of our problem properties and makes sure the rights of the tenants are protected.

Dan Thompson, Officer, Downtown Enforcement Team, Reno Police Department, Reno, Nevada:

For the last three years, I have been assigned to what we call the Downtown Enforcement Team. It is a geographically specific patrolled area, which incorporates the downtown core and adjacent areas. Over the last three years we have been noticing an increase through our policing policies, going toward the root of the problem more than reactive policing. A lot or the majority of our prostitution and drug sales have been occurring in motel and hotel industry that is located within our area of operation. There are in excess of sixty of these types of businesses, and there is a very high density.

[Dan Thompson, continued.] As we have done different enforcements, applying crime prevention through environmental design and through education processes with the managers, we have seen a change in the trend. The trend is that a majority of the managers, or a large portion of the managers, have no education as far as managing the properties that they are in charge of. We have found these managers to basically be residents of these establishments, and for a reduction in rent or no rent, they run the property.

The problem is that these people of low income and low education have worked in cooperation with the drug dealers, pandering things for a profit. During specific operations, we have learned that several managers were informing the criminals that we are doing operations and we were conducting surveillances, and this has occurred on several occasions.

By addressing somebody's problems, we have reduced our call for services from up in the seventies and, by making notification, brought them down to four. Then, for the remainder of the year 2004, we brought these calls for services down to zero at these problem properties.

All it took to do this was to educate the owners and the managers about the necessity of applying certain principles while managing their properties. During this time we had quite a bit of success, but it is a continuing battle. We have quite a few absentee land owners, and so they have no direct knowledge of what their manager is doing. A prime example of this was a week ago today, as reported in the *Reno Gazette-Journal*. Members from my team were doing enforcement operations at a local motel and found, during their investigation, that the manager of the property had possessed a felony warrant from the state of Minnesota. He also had in his possession an assault rifle with ammunition. This is a prime example of what we are trying to combat. We are trying to provide the managers of these properties with a certain level of education, so they can adjust to criminal problems that are occurring on the properties.

We have worked in conjunction with the different associations: the Northern Nevada Motel Association, Northern Nevada Apartment Association, and also the Northern Nevada Board of Realtors. So basically, we want to adopt their governing education and apply it to everyone within the local municipality.

Alex Woodley, Code Enforcement Manager, Community Development Department, City of Reno, Nevada:

The City of Reno, with regard to code enforcement, has numerous issues we deal a lot with, and they are predominately rental properties.

[Alex Woodley, continued.] I will give you an example of what took place recently. I am sure everyone is aware of the increased snow we had back in January. We had a property that had nine buildings and was an apartment complex with approximately 200 units. Their boiler went out, and for approximately two weeks, a lot of the units had no heat. When my staff received a phone call, we went out there and saw numerous tenants that were immigrants, some of whom did not speak English. Fortunately, I was able to use my staff and translate. A lot of these individuals had no idea—including the property manager—that they were required to provide them with supplemental heating until that boiler was fixed. These individuals during January had no heat for two weeks. They also had no space heaters. This landlord who was in charge of over 200 units had no idea she was required to provide them with some form of heat until the boiler was fixed. That was a prime example of the type of issues we would like to address with this certification.

What we envision is that we will be able to partner with the Realtors Association and the apartment associations. They provide education as it is, and we could piggyback onto that education and supplement our own issues we think are important, especially with regard to the police department's code enforcement and housing laws within our state. These ensure that individuals who rent these properties and also control these properties provide the citizens with the proper services they should receive.

We think this will really assist us in dealing with these types of issues. Also, from the fiscal standpoint, it will be a savings for the City and for the property owners themselves. If the cities now have individuals who are informed and educated as to what the codes and laws are, then the City will not have to spend as much staff time and resources addressing those issues. It may have been addressed by the manager themselves, because they had the knowledge about violations of the code or violations of the law.

On the other side, we also have the issues of the citations that they can receive. If they have a landlord that has no idea that they shouldn't have a dumpster overflowing with five feet of trash and they receive a \$200 citation, it would be nice for them to avoid the cost by having them aware of potential violations. It would be a winning situation for both parties.

Assemblyman Goicoechea:

As I read this, is this just enabling legislation?

Nicole Lamboley:

Yes. It is only enabling.

Assemblyman Grady:

I have some real concerns with this, but I think this addresses counties, general law cities, and charter cities, and none of them are here. Where are the rest of them? Have you run this by NACO [Nevada Association of Counties] and the League of Cities?

Nicole Lamboleley:

We have talked about this for a number of months, and I know my colleagues have talked with their various colleagues through their personal professional trade associations, and there is a great deal of interest. There was no opposition in the Senate to this bill. We have had verbal commitments from a lot of people that they would be looking at something similar.

In the course of doing some research, I think we had some conversations with the City of Las Vegas on how they were addressing this issue. Did they feel that this would be something worthwhile in considering? I have mentioned to the League that if, perhaps, we are going to this authority by the Legislature, it would be a good exercise for the various jurisdictions to work together in developing some model ordinances that are uniform throughout the state. That would help everybody understand what the process is.

I did refer to one amendment ([Exhibit K](#)) that the realtors are going to be providing, and we are okay with it. They just changed one section a little bit, based on some previous conversations we had.

We really do feel this would be something that is optional, but for the City of Reno, we feel very strongly that it would improve our city.

Buffy Dreiling, Legislative Advocate, representing Nevada Association of Realtors:

We have been working on the amendment ([Exhibit K](#)) that Ms. Lamboleley spoke about for quite some time. You will see in the amendments that it changes four sections, but they all say the same thing.

We were trying to avoid double certification and licensing requirements for real estate licensees. There are people who have a real estate license under NRS 645, and they are already highly regulated. They are required to take pre-licensing education, post-licensing education, and then continuing education. We are asking that it encompass all those licensees under NRS 645, because their post-licensing education does deal with property management and landlord/tenants.

[Buffy Dreiling, continued.] Finally, in support of the amendment, we are requesting the properties Ms. Lamboley and the other members from the City of Reno are speaking of are not targeting those properties that are managed by licensed real estate people or owned by licensed real estate people. We would hate for this bill to be too broad, and we would like that to eliminate the double-licensing requirement.

Chairman Parks:

I will close the meeting on S.B. 422.

Senate Bill 52 (1st Reprint): Revises provisions relating to adoption and enforcement of certain ordinances by local governments. (BDR 14-369)

Not heard.

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Chairman Parks:

This meeting is adjourned [at 11:06 a.m.].

RESPECTFULLY SUBMITTED:

Paul Partida
Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Committee on Government Affairs</u>			
Date: <u>May 11, 2005</u>		Time of Meeting: <u>8:09 a.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A	*****	Agenda
	B	Senator Rhoads	Mock-up proposed amendment of S.B. 62
	C	Michael Howell / Private Citizen	Nevada Supreme Court ruling
	D	Assemblyman Sherer	Proposed amendment to S.B. 62
	E	Senator Hardy	Proposed amendment to <u>S.B. 466</u>
	F	Harley Kulkin / Private Citizen	Proposed amendment to <u>S.B. 466</u>
	G	Mark James and Laura Billman / Nye County	Proposed amendment to <u>S.B. 466</u>
	H	Bjorn Selinder / Legislative Advocate, representing Churchill County and Eureka County	Prepared testimony on <u>S.B. 466</u>
	I	Bjorn Selinder / Legislative Advocate, representing Churchill County and Eureka County	Email from Jon Hutchings
	J	Senator Lee	Testimony from Russell Rowe
	K	Nicole Lambolely / Office of the City Manager, City of Reno; and Buffy Dreiling / Legislative Advocate, representing Nevada Association of Realtors	Proposed amendment to <u>S.B. 422</u>