

**MINUTES OF THE MEETING OF THE  
TECHNICAL ADVISORY COMMITTEE TO THE  
SUBCOMMITTEE TO STUDY DOMESTIC AND  
MUNICIPAL WATER WELLS  
(Assembly Bill 408, Chapter 636, *Statutes of Nevada 1999*)  
June 22, 2000  
Las Vegas, Nevada**

The sixth and final meeting of the Technical Advisory Committee (TAC) to the Subcommittee to Study Domestic and Municipal Water Wells (A.B. 408) was held on Thursday, June 22, 2000, at 10 a.m., in Room 4412 B and C of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Pages 2 and 3 of these minutes contain the "Meeting Notice and Agenda."

**TECHNICAL ADVISORY COMMITTEE MEMBERS PRESENT:**

Roland Westergard, Carson City, Chairman  
Paula Brown, North Las Vegas  
Don Dickson, Las Vegas  
Mike Goff, Las Vegas (Attending on behalf of Kay Brothers)  
Bruce Hamilton, Las Vegas  
John Hiatt, Las Vegas  
Ferron Konakis, Elko  
Bjorn Selinder, Fallon  
R. Michael Turnipseed, Carson City  
Steve Walker, Reno

**TECHNICAL ADVISORY COMMITTEE MEMBERS ABSENT:**

Jay Bingham, Las Vegas  
Kay Brothers, Las Vegas  
Tim Hafen, Pahrump

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Linda Eissmann, Senior Research Analyst, Research Division  
Kimberly Marsh Guinasso, Principal Deputy Legislative Counsel, Legal Division  
J. Randall Stephenson, Senior Deputy Legislative Counsel, Legal Division  
Paige Clyde, Senior Research Secretary, Research Division

**MEETING NOTICE AND AGENDA**

Name of Organization:	Technical Advisory Committee (TAC) to the Subcommittee to Study Domestic and Municipal Water Wells (Assembly Bill 408, Chapter 636, <i>Statutes of Nevada 1999</i> )
Date and Time of Meeting:	Thursday, June 22, 2000 10 a.m.
Place of Meeting:	Grant Sawyer State Office Building Room 4412 B and C 555 East Washington Avenue Las Vegas, Nevada

**A G E N D A**

- I. Opening Remarks and Introductions  
Roland Westergard, Chairman
- \*II. Approval of Minutes of the April 24 and May 25, 2000, Meetings
- \*III. Continued Discussion and Possible Action on the Issue of Disclosure to Prospective Buyers of Real Estate with Temporary Well Permits  
Matt DiOrio, Education Information Officer, Real Estate Division
- \*IV. Presentation, Continued Discussion, and Possible Action Regarding the Issue of Education and a Water Well Bibliography  
Steve Walker, Water Management Planner, Washoe County Water Resources
- \*V. Work Session – Discussion and Action on Issue of Expanding “Protectible Interest” Provisions for Domestic Water Wells (Reference: *Nevada Revised Statutes* [NRS] 533.024, 533.360, 533.370, and 534.110)
- \*VI. Presentation and Possible Adoption of the Technical Advisory Committee’s Final Report  
Linda Eissmann, Senior Research Analyst, Legislative Counsel Bureau
- \*VII. Discussion of Legislative Research Pertaining to Water Wells in Other States  
Bruce Hamilton, Nevada Well Owners’ Association and TAC Member
- \*VIII. Continued Discussion of Domestic Water Well Use  
Robert Tretiak, Vice President, Nevada Well Owners’ Association
- IX. Public Comment
- X. Adjournment

\*Denotes items on which the committee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Paige Clyde at (775) 684-6825 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue.

### **OPENING REMARKS AND INTRODUCTIONS**

Roland Westergard, Chairman, called the sixth and final meeting of the Technical Advisory Committee to order at 10:05 a.m. He then asked for approval of the minutes of the TAC’s April 24 and May 25, 2000, meetings.

### **APPROVAL OF MINUTES OF THE APRIL 24 AND MAY 25, 2000, MEETINGS**

**MR. WALKER MOVED FOR APPROVAL OF THE MINUTES OF THE TECHNICAL ADVISORY COMMITTEE’S MEETING HELD ON APRIL 24, 2000, IN LAS VEGAS, NEVADA. THE MOTION WAS SECONDED BY MR. HIATT AND CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT MR. HAMILTON AND MR. KONAKIS WHO WERE ABSENT FROM THE ROOM AT THE TIME OF THE VOTE.**

**MR. WALKER MOVED FOR APPROVAL OF THE MINUTES OF THE TECHNICAL ADVISORY COMMITTEE'S MEETING HELD ON MAY 25, 2000, IN LAS VEGAS, NEVADA. THE MOTION WAS SECONDED BY MR. SELINDER AND CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT MR. HAMILTON AND MR. KONAKIS WHO WERE ABSENT FROM THE ROOM AT THE TIME OF THE VOTE.**

**CONTINUED DISCUSSION AND POSSIBLE ACTION ON THE  
ISSUE OF DISCLOSURE TO PROSPECTIVE BUYERS OF  
REAL ESTATE WITH TEMPORARY WELL PERMITS**

Chairman Westergard noted that the issue of disclosure to prospective buyers of real estate with temporary well permits has been an ongoing concern of the Legislative Subcommittee to Study Domestic and Municipal Water Wells. As a result, action was taken at the TAC's meeting on May 25, 2000, recommending that the Legislature pass a resolution urging the Real Estate Division (Nevada's Department of Business and Industry), in consultation with the State Engineer, to ensure that an informational pamphlet is provided to potential buyers of property served by domestic, community, and quasi-municipal water wells.

***Matt DiOrio***

Matt DiOrio, Education Information Officer, Real Estate Division, offered to the TAC a historical perspective on the environmental disclosure issue, and noted what his agency perceives as important material regarding this topic. He stated that after discussing the subject with his agency's administrator they questioned whether the matter had been addressed with Clark County since it initially appeared to be a county-specific concern. However, following a conversation with Linda Eissmann, Senior Research Analyst, Research Division, Legislative Counsel Bureau (LCB), it appears evident that the issue of temporary permits could become a statewide concern over time, and perhaps should be addressed by a state agency. Mr. DiOrio stated that the disclosure matter has always been a question as to who should take the responsibility to implement it. Therefore, the addition of "Required Disclosures" (*Nevada Revised Statutes* [NRS] 113.060 through 113.150) to Chapter 113, "Sales of Real Property," of NRS in 1995 is considered one of Nevada's first efforts to: (1) identify which individuals should be held responsible for providing disclosure information; and (2) outline how this task might be accomplished in terms of material facts regarding the present condition of a piece of property. He opined that this concern is a national one and noted that most states' real estate divisions operate in an environment of disclosure, wherein a prospective seller becomes responsible to disclose what he might know about a piece of property for sale.

Continuing, Mr. DiOrio reported that the Nevada Association of Realtors endorsed the "seller real property disclosure law." This law identifies the seller as the person responsible for disclosing what he knows about a piece of property. In addition, this law places responsibility on the Real Estate Division to develop regulations that will illustrate what the disclosure form should look like, as well as placing obligations on the real estate licensee involved in processing residential transactions of single- to four-family properties. He explained that the responsibilities and obligations established are to ensure that both the seller and the buyer are aware of this law so that important information may be transmitted effectively between both parties. He noted that the real estate licensee must adhere to a standard of practice, which is explained in *Nevada Administrative Code* (NAC) 645.605, "Considerations in determining misconduct by licensee." This section of NAC states that grounds for disciplinary action may exist due to gross negligence or incompetence on the part of the real estate licensee. It includes the licensee's knowledge of federal, state, and local laws that protect consumers. The licensee is also required to transmit any knowledge of information to a prospective purchaser that is of customary importance, such as the availability of water to the property.

Mr. DiOrio addressed how to balance such disclosures and assign responsibility for them. From the Real Estate Division's perspective, it appears proper balance has come about. The real estate agent provides information so that the parties to the transaction can make informed decisions. However, he noted that it is not the real estate agent's responsibility to discover defects on a piece of property or its present condition, but it is the agent's responsibility to ensure that the seller understands the ramifications of the required disclosures in conjunction with, ensuring that such information is revealed to the purchaser.

Additionally, Mr. DiOrio noted that in an effort to simplify the disclosure process regarding residential property, the

1997 Session of the Nevada Legislature passed Senate Bill 260 (Chapter 217, *Statutes of Nevada*). This bill required Nevada's Department of Business and Industry to conduct a study relating to mandated disclosures for the sale of residential property and to report its recommendations and findings to the 70<sup>th</sup> Session of the Nevada Legislature. A copy of this report appears as Exhibit A of these minutes. Mr. DiOrio directed the committee's attention to Attachment Nos. 2 and 3 of Exhibit A, which are tables titled "Nevada State-Required Disclosures" and "Federal Disclosure Requirements," respectively.

Mr. DiOrio directed the committee's attention to page 2 of Exhibit B, which is a copy of a "Seller's Real Property Disclosure Form," and referred to the section that states:

**Other items:** Are you **aware** of any of the following . . .

7. Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 . . .  
(NRS 40.600 to 40.695 is concerned with construction defect claims).  
If the seller answers "yes," FURTHER DISCLOSURE IS REQUIRED.

He noted that NRS 40.600 through 40.695, "Actions Resulting from Constructional Defect," concern constructional defect claims as referenced by Senate Bill 32 (Chapter 353, *Statutes of Nevada 1999*), which revises the provision dealing with constructional defects and insurance for home protection. This law seeks to address historical claims when subsequent sales take place on a piece of property, he said. He noted that the disclosure form could be modified further to address temporary and permanent permits. Having conversed with a title company agent regarding the issue of whether well permit information would be included on a title report, he was informed that water right issues are not normally made public record. If they do become public record, the title company would exclude them from coverage under its current title insurance policy. As a result, a title report is not an effective means of communicating information concerning temporary and permanent permits between buyers and sellers.

Concluding his remarks, Mr. DiOrio stated that his agency would assist consumers and real estate licensees in an educational outreach effort to further promote this issue. He opined that as a result of the current educational efforts already in operation and with the implementation of additional changes to the existing disclosure form, current issues between sellers and buyers of property might be resolved.

Steve Walker, Water Management Planner, Washoe County Water Resources, Reno, Nevada, questioned Mr. DiOrio regarding property recourse actions. Responding, Mr. DiOrio explained that the Real Estate Division creates regulations and provides a disclosure form to various individuals. However, he noted that the division is not the proper place where a buyer might seek recourse when a misrepresentation has occurred or been discovered on the form. The only jurisdiction that his division currently upholds pertains to the real estate agent's standards of practice. Mr. Walker noted that some laws are not listed on the disclosure form. Therefore, he suggested that individuals with temporary well permits, who are selling their home, be required to disclose such information. In response, Mr. DiOrio agreed. He proposed that this information be petitioned to the Real Estate Commission, Nevada's Department of Business and Industry, for inclusion in its current regulations for the "Seller's Real Property Disclosure Form," and it will appear on the form. In addition, he noted that:

- New home sales are exempt from the disclosure requirement;
- The disclosure form is used in all sales transactions of single- to four-family improved properties; and
- If the information on the disclosure form is not applicable statewide, it should not be used.

Bruce Hamilton, a member of the Nevada Well Owners' Association, Las Vegas, stated that since certain nonpermitted uses are subject to revocation within Clark County, Nevada, the "Seller's Real Property Disclosure Form" should not only ask for information pertaining to permanent or temporary permits, but also for nonpermitted use and whether they would be subject to revocation should municipal water become available to that area.

Responding to Mr. Hamilton's comments, Mr. DiOrio noted that Chapter 113 of NRS deems the seller as obligated to disclose that which he knows about his property for sale. In addition, this statute is specifically applicable to improved properties with single- to four-family residential structures, he said.

Chairman Westergard asked Mr. DiOrio if the Real Estate Division provides training to real estate agents. In response, Mr. DiOrio reported that agents must meet continuing education requirements through an educational institution approved by the Real Estate Commission.

R. Michael Turnipseed, State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources, clarified that the issuance of temporary permits is now being recorded with the county recorder through the affidavit process. This began recently as a result of A.B. 408, in an effort to ensure that well owners on temporary permits know that their permits can be revoked. By recording these affidavits with the county recorder, newly issued temporary permits should now be included on a title report.

Mr. Walker agreed by stating that temporary well permit information on a property disclosure form is important. He questioned how this language could be effectively included in a state mandated disclosure form.

Kimberly Marsh Guinasso, Principal Deputy Legislative Counsel, Legal Division, LCB, explained that the laws authorizing the State Engineer to issue temporary permits apply to the entire state. Therefore, she suggested that the TAC deliberate in terms of how the law is currently written and applied, not by how it might be applied.

In respect to Ms. Guinasso's remarks, Mr. DiOrio referenced Senate Bill 208 (Chapter 452, *Statutes of Nevada*) of the 1997 Legislative Session, which revised provisions governing gaming licenses. Among other things, S.B. 208 requires an individual selling residential property in a county whose population is 400,000 or more to provide the initial purchaser with a disclosure document concerning gaming enterprise districts. He opined that this is one way in which state law is capable of creating a county-specific disclosure requirement.

Mr. DiOrio and Bjorn Selinder, Manager, Churchill County, Nevada, and a member of the TAC, briefly discussed the disclosure issue. Mr. DiOrio explained that if his office receives a complaint about a real estate agent, it must determine whether the agent: (1) was informed of the existing disclosure law; and (2) helped the parties involved understand their related benefits, obligations, and responsibilities.

Mr. Walker directed the committee's attention to page 2 of Exhibit B. He suggested adding "private well with temporary permit" to Item No. 9, which concerns water source.

In response to Mr. Walker's proposal, Mr. Hamilton explained that the majority of individuals who may be forced onto municipal water systems own domestic wells that are not subject to a permit but are revocable in a managed basin where municipal water is available. Therefore, he suggested using the following terms instead of "temporary permit": (1) municipal; (2) community well; (3) community well revocable; (4) private well; and (5) private well revocable. Mr. Hamilton stated that if the word "revocable" were used, the existence of a permit and the fact that a person could be forced onto municipal water sources (should they become available and his well fails) would be taken into account.

Mr. DiOrio recommended adding to the "Seller's Real Property Disclosure Form" a sentence that instructs the seller to call the Division of Water Resources within the State Department of Conservation and Natural Resources to determine the type of well he owns. Mr. Hamilton expressed support for this suggestion.

Referring to Mr. Hamilton's proposal, Mr. Turnipseed explained that:

- "Revocable private well" and "private well with a permanent permit" do not exist within Nevada's water law;
- Private wells are exempt from the statutes relating to certain revocable permits issued before and after 1955; and
- The only way the State Engineer can force a person off a private well is to deny him the right to redrill after his well has failed.

Mr. Hamilton clarified that he meant a person's right to access groundwater could be "de facto revoked" — a person could lose his right to access groundwater if his well has to be redrilled. He further explained that he is concerned about the limited amount of space available on the form for this information. According to Mr. Hamilton, his point is that there could be a: (1) community well to which there are water rights attached; (2) community well with a permit

that was issued before 1955; (3) community well which has a permit that was issued after 1955; and (4) private well to which a water right is attached.

John Hiatt, a member of the TAC, Las Vegas, Nevada, suggested that the committee organize the disclosure form and its rules in booklets, such as those offered by Clark and Washoe Counties so that the buyer may obtain information about water wells. In his opinion, a buyer should review such information prior to purchasing any property.

Reiterating an earlier recommendation made on this issue, Chairman Westergard queried the TAC on whether it sought to amend the current disclosure form and previous recommendation made by Mr. Walker (Exhibit C, page 3, Item 2.a., Action:) or to submit an alternative such as the passing of a motion recommending the Legislature urge the Real Estate Division, in consultation with the State Engineer, to ensure that information is provided to potential buyers of property served by domestic, community, and quasi-municipal wells including consideration of appropriate disclosure procedures.

Ms. Guinasso agreed and opined that the committee could use this approach. She suggested that the Subcommittee draft a letter to the State Engineer and the Real Estate Division stating that it appears to the Subcommittee through its Technical Advisory Committee that these agencies currently have the legal authority to ensure that information is provided to potential buyers of property served by domestic, community, and quasi-municipal wells, including consideration of appropriate disclosure procedures. This approach would eliminate the need to submit a resolution to both houses of the Legislature, she said.

Mr. Turnipseed and Mr. Hamilton agreed with Ms. Guinasso's suggestion. Mr. DiOrio reported that in the past, his office handled situations like this by task forcing with equal representation from the affected parties to ensure that they are given the opportunity to offer their own solutions, which he opined would help resolve such matters.

**MR. TURNIPSEED MOVED THAT THE TECHNICAL ADVISORY COMMITTEE RECOMMEND THAT THE SUBCOMMITTEE TO STUDY DOMESTIC AND MUNICIPAL WATER WELLS PREPARE A LETTER URGING THE REAL ESTATE DIVISION, IN CONSULTATION WITH THE STATE ENGINEER, TO ENSURE THAT INFORMATION IS PROVIDED TO POTENTIAL BUYERS OF PROPERTY SERVED BY DOMESTIC, COMMUNITY, AND QUASI-MUNICIPAL WELLS INCLUDING, CONSIDERATION OF APPROPRIATE DISCLOSURE PROCEDURES AS AN AMENDMENT TO ALL PREVIOUS ACTION ON THIS ISSUE. MR. SELINDER SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY. MR. KONAKIS WAS ABSENT FROM THE ROOM AT THE TIME OF THE VOTE.**

### **PRESENTATION, CONTINUED DISCUSSION, AND POSSIBLE ACTION REGARDING THE ISSUE OF EDUCATION AND WATER WELL BIBLIOGRAPHY**

Steve Walker, Water Management Planner, Washoe County Water Resources, Reno, noted that he had originally proposed to develop a bibliography regarding this issue and to distribute information to well owners statewide. However, following further discussion, he concluded that the information should be gathered specific to geographical concerns. This would entail the distribution of different educational pamphlets throughout Nevada in areas such as Clark County and eastern and northern Nevada. Although the TAC members discussed this suggestion it was never approved, he said. Therefore, he opined that dissemination of information available from the Cooperative Extension Service, as outlined on the bibliography, is best handled by local governments. Mr. Turnipseed agreed with Mr. Walker, noting that it would be virtually impossible to compile a statewide list of well owners from the 70,000 well logs in his agency's database.

**MR. WALKER MOVED THAT THE TECHNICAL ADVISORY COMMITTEE RECOMMEND THAT THE SUBCOMMITTEE TO STUDY DOMESTIC AND MUNICIPAL WATER WELLS PREPARE A LETTER TO LOCAL GOVERNMENTS IN NEVADA, WHICH EXPLAINS THAT THE SUBCOMMITTEE AND ITS TECHNICAL ADVISORY COMMITTEE HAVE CONCLUDED THAT INFORMATION CONCERNING DOMESTIC WELLS IS**

**GEOGRAPHICALLY RELATED AND SHOULD BE PROVIDED BY LOCAL GOVERNMENTS. THIS LETTER SHOULD INCLUDE A BIBLIOGRAPHY OF DOMESTIC WELL LITERATURE, WHICH IS TYPICALLY AVAILABLE FROM THE COOPERATIVE EXTENSION SERVICE, AND URGE THE LOCAL GOVERNMENTS TO MAKE THIS INFORMATION AVAILABLE TO THEIR RESIDENTS AS NECESSARY. MR. WALKER FURTHER MOVED THAT THE TECHNICAL ADVISORY COMMITTEE'S PREVIOUS RECOMMENDATION CONCERNING THIS ISSUE BE AMENDED. MR. TURNIPSEED SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY. MR. KONAKIS WAS ABSENT FROM THE ROOM AT THE TIME OF THE VOTE.**

Mr. Hiatt reported that Clark and Washoe Counties have specific mechanisms that the local government may use for distributing information. However, in terms of local wells, at the present time there is no such mechanism in Nye County, he said. Mr. Hiatt opined that an objective of the Nevada State Legislature is to become aware of difficulties pertaining to wells now versus later so people may be informed of potential problems and make educated decisions. He expressed his concern by stating that if this recommendation results in only a voluntary action by local governments, educational information will not be made available until a situation is acute. He cited Pahrump Valley as an example where the distribution of information will be critical.

Mr. Selinder suggested the following possible notification methods for promoting this issue:

- Placing all educational information on building permits;
- Informing people through the assessor's office by mailing assessment notices, containing educational information at the bottom of the form, to all well owners for their review; or
- Obtaining a list of all properties containing wells and mailing information directly to them. However, he said, this may be seen as an unfunded mandate with costs required for mailing such notices.

Mr. Walker agreed. In addition, he stated that the Pahrump area is an example of this situation, in which they are "parceling" land (as provided in *Nevada Revised Statutes* [NRS] 278.461, "Parcel Maps") in order to avoid state water law.

Steve Bradhurst, Tri-County Consultant for rural Nevada, appeared before the committee and reported that Nye County does not currently have a zoning program in effect. The county is trying to resolve its current zoning problem as development continues in Pahrump, which may possibly expand into adjacent valleys such as Amargosa Valley and a few northern valleys, he said. He noted that Nye County has a building permit process in effect, which could be an option to provide water well education information. However, there is a question of the cost involved from mailing notices, which is a potential problem for Nye County due to its current financial condition. Including information with building permits is an option, he opined, but this is limited to Pahrump since there are no building permits elsewhere in the county. The county will likely establish a water authority association, which may be completed in the next year or so, he said, and educating the public will necessarily be one of its responsibilities. Continuing, he questioned the TAC concerning the type of information it would like to convey to people throughout Nevada regarding this issue. In response, Mr. Walker suggested the following:

- Water quality protection information;
- Basic domestic well management;
- Basic education on aquifers for individual well owners;
- Describing what a well is;
- What a well's requirements are;
- How a well operates; and

- How groundwater aquifers function.

Mr. Bradhurst suggested adding, “water is not a limitless resource” to the educational information.

Commenting on the water well bibliography, Mr. Walker noted that it probably would not contain more than 12 literature references.

**WORK SESSION — DISCUSSION AND ACTION ON ISSUE OF EXPANDING  
“PROTECTIBLE INTEREST” PROVISIONS FOR DOMESTIC WATER WELLS  
(REFERENCE: *NEVADA REVISED STATUTES [NRS] 533.024,  
533.360, 533.370, AND 534.110*)**

Linda Eissmann, Senior Research Analyst, Research Division, LCB, reported that only one issue — “protectible interest” — was awaiting the TAC’s action. The members agreed that there are three basic options for addressing protectible interest. They pertain to Senate Bill 19 (Chapter 631, *Statutes of Nevada 1993*) (Exhibit C, Tab B). This bill put “protectible interest” into statute, giving protection to well owners in counties whose population is less than 400,000, as well as implementing notification requirements such as the 2,500-foot provision concerning a proposed well. The three options agreed upon by the committee at its May 25, 2000, meeting are: (1) take no action; (2) eliminate the provisions of S.B. 19; or (3) modify the provisions of S.B. 19. Ms. Eissmann noted that at the committee’s last meeting, Ms. Guinasso handwrote the changes to the statutes that would be affected with those suggested modifications (see Exhibit C, Tab C). She stated that such modifications would remove the 400,000 population limit, extend “protectible interest” to all well owners within the state, eliminate the requirement for applicants to notify domestic well owners within 2,500 feet, and require that the State Engineer consider the “protectible interest” of domestic wells when reviewing all water well applications.

Mr. Walker briefly reported on conversations he had with people in Washoe County’s Division of Utility Services. He stated they agreed that the 2,500-foot provision is arbitrary. He explained that, upon the State Engineer issuing a well permit he would require that the zone of influence within certain pumping regimes be revealed and that anyone with a domestic well who resides in that zone be notified.

Mike Goff, Hydrologist Technical Lead, Southern Nevada Water Authority (SNWA), stated that his organization is also in support of modifying the 2,500-foot provision. However, its primary concern pertains to removing the 400,000 population cap.

Mr. Hamilton stated that he supported implementing the changes suggested unless problems, undue effort, or expense become evident while administering this law. Further, he stated that the administration of this law mainly applies to the sinking of new municipal wells in areas already impacted by existing wells. In a situation such as this, the new well would only add to the current overappropriation of water and non-recharge problem. As a result, he opined that the theoretical problems previously raised by well owners will not be addressed, or even solved, since total groundwater management is not in effect. Mr. Hiatt agreed.

Continuing, Mr. Hamilton briefly discussed NRS 533.370, “Approval or rejection of application by state engineer: Conditions; considerations; procedure” (see Exhibit C, Tab C, Subsection 3). He stated that this law is already in effect in the State of Nevada, which suggests that the proposed driller and the State Engineer review the water condition at the site where the well is expected to be drilled, and try to define the impact it might have on adjacent neighbors. He explained that if the two parties agree that drilling a well will not adversely affect that specific area, they will go forth with issuing a well permit. However, if it does create a serious impact then no permit would be issued, he said.

Mr. Walker expressed his support for the previously discussed statute modifications, but opined that the domestic well advocate of Washoe County will oppose such a change.

According to Mr. Hamilton, the Nevada Well Owners’ Association would not support opposition to removing the 2,500-foot provision.

**MR. HAMILTON MOVED THAT THE TECHNICAL ADVISORY COMMITTEE (TAC)  
ADOPT ALTERNATIVE NO. 3, “MODIFY THE PROVISIONS OF S.B. 19,” WHICH**



**APPEARS ON PAGE 2 OF WORK SESSION DOCUMENT NO. 2 (EXHIBIT C). UNDER THIS ALTERNATIVE, THE TAC RECOMMENDS TO THE SUBCOMMITTEE TO STUDY DOMESTIC AND MUNICIPAL WATER WELLS, CERTAIN MODIFICATIONS TO *NEVADA REVISED STATUTES* 533.024, 533.360, 533.570, AND 534.110. THE MODIFICATIONS WOULD: (1) REMOVE THE 400,000 POPULATION LIMIT, THEREBY EXTENDING “PROTECTIBLE INTEREST” TO ALL NEVADA WELL OWNERS; (2) ELIMINATE THE REQUIREMENT THAT THE APPLICANT MUST NOTIFY DOMESTIC WELL OWNERS WITHIN 2,500 FEET (INCLUDING THE STIPULATION THAT SIX SUCH OWNERS MUST BE NOTIFIED); AND (3) REQUIRE THE STATE ENGINEER TO CONSIDER THE “PROTECTIBLE INTEREST” OF DOMESTIC WELLS IN REVIEWING APPLICATIONS. (NOTE: A COPY OF THE REFERENCED STATUTES, WITH HANDWRITTEN NOTATIONS OF THE PROPOSED CHANGES UNDER THIS ALTERNATIVE IS FOUND IN ATTACHMENT C OF WORK SESSION DOCUMENT NO. 2.) MR. WALKER SECONDED THE MOTION. MR. GOFF OPPOSED THE MOTION. THE MOTION CARRIED.**

Mr. Hiatt suggested including a definition of “protectible interest” in Alternative No. 3. He noted the importance of ensuring that “protectible interest” does not compromise the State Engineer’s ability to manage a water basin. In Mr. Hiatt’s opinion, the State Engineer must be allowed to allocate Nevada’s limited water resources in a fair and equitable manner based on state water law and the amount of water available.

Responding to Mr. Hiatt’s comments, Mr. Hamilton noted that he perceives “protectible interest” as a right to not having one’s piece of property affected, damaged, or impaired by another individual. Therefore, he opined that “protectible interest” does not “override” or “disable” the state’s ability to pursue the public’s interest concerning water management.

Mr. Turnipseed explained that the definition of “protectible interest” goes beyond what is already stated in NRS 533.024, “Legislative declaration.” Following is the language contained in subsection 2 of NRS 533.024:

2. In a county whose population is less than 400,000, to recognize the importance of domestic wells as appurtenances to private homes, to create a protectible interest in such wells and to protect their supply of water from unreasonable adverse effects caused by municipal, quasi-municipal or industrial uses.

Regarding Mr. Hiatt’s statement, Mr. Walker noted that it is not entirely the State Engineer’s responsibility to manage water basins. He advised that Chapter 278, “Planning and Zoning,” of NRS authorizes local governments to establish guidelines, which may expand upon or be more restrictive than the State Engineer’s policy.

### **PRESENTATION AND POSSIBLE ADOPTION OF THE TECHNICAL ADVISORY COMMITTEE’S FINAL REPORT**

Linda Eissmann, Senior Research Analyst, Research Division, LCB, reported that at the Technical Advisory Committee’s fifth meeting, it requested a draft report be created as a reference for possible adoption at its next meeting. A copy of this document, “Report of the Technical Advisory Committee to the Subcommittee to Study Domestic and Municipal Water Wells,” appears as Exhibit D of these minutes. Ms. Eissmann noted that once adopted, the report would be submitted to the Subcommittee for its assessment. She stated that the purpose of this report is to document, among other things, the issues, deliberations, testimonies, and other work completed by the TAC. Some of the responsibilities assigned to it by the Subcommittee were to develop issues and recommendations, review existing legislation to determine if any new language was necessary, develop credible statistics on the number of domestic wells in the state, and develop the number of temporary permits within Clark County (Exhibit D, page 2), she said. In addition, the Subcommittee requested that the advisory committee expand those issues so that water wells concerns in other parts of the state, beyond Las Vegas, may be addressed, and to consider the letter presented by Congressman Jim Gibbons regarding “protectible interest.”

She reported that at their second meeting, the members discussed the TAC’s status report, which specified three measures passed during the 1999 Legislative Session. They are Assembly Bills 234, 347, and 408 (Exhibit D, pages

3 and 4). Directing the committee's attention to Attachment B of Exhibit D, Ms. Eissmann advised that the information contained in this section lists 31 issues originally raised and discussed by the TAC. She also noted that after elimination of some and combination of others due to similar subject matter, 12 issues were adopted for further consideration. Ms. Eissmann stated that the TAC's recommendations resulted in the following three categories: (1) no action; (2) those about which the TAC wanted to provide additional comment to the Subcommittee, not necessarily resulting in recommendations for action; and (3) those resulting in recommendation for action by the Subcommittee. Therefore, she said, there are five issues recommended for action:

1. Expanding protectible interest;
2. Approving an interim study of water quality versus quantity;
3. Authorizing the Health Division, in Nevada's Department of Human Resources, to confirm adequate water rights before public water systems are expanded;
4. Urging the Real Estate Division to ensure that property buyers are informed about the status of a well; and
5. Encouraging county governments to educate their well owners.

Continuing, she directed the committee's attention to page 8 of Exhibit D, which addresses three issues resulting in additional information and comment, not necessarily recommendations for legislative action. They are: (1) hook-up costs; (2) the water recharge program; and (3) water conservation. Commenting further, she reported that there is a total of four issues of concern that did not result in recommendations (see Exhibit C, page 10).

Next, Ms. Eissmann directed the committee's attention to page 2 of Exhibit D to clarify credible statistics on the number of domestic wells in the state, as well as the number of temporary permits issued in Clark County as recorded by the State Engineer. She noted there are currently 948 quasi-municipal well permits and 161 other permits that are revocable.

Mr. Hamilton, Mr. Goff, Mr. Turnipseed, and Mr. Walker briefly discussed the number of current well logs recorded in the State Engineer's database. Mr. Turnipseed, Mr. Goff, and Robert Coache, P.E., Chief Engineer, Division of Water Resources, Southern Nevada Branch Office, confirmed that there are approximately 5,100 active domestic wells located in the Las Vegas Valley. Mr. Walker stated his opinion that the State Engineer's well logs overestimate the number of domestic wells in this state.

Continuing, Ms. Eissmann directed the committee's attention to page 11 of Exhibit D to clarify when the first well permit was revoked and how many acre-feet of water were revoked during 1992. She reported that the first well permit was revoked on January 1, 1972, and the number of current acre-feet of water rights revoked totals 109,900. Ms. Eissmann noted that she would incorporate this new language into the committee's final summary report.

Next, she referenced the following attachments within Exhibit D:

1. Attachment A contains Assembly Bills 408, 237, and 347 of the 1999 Legislative Session;
2. Attachment B is a summary of 31 issues considered by the TAC;
3. Attachment C contains a letter from the Southern Nevada Water Authority Board of Directors reaffirming its commitment to the Financial Assistance Guidelines to meet the requirements of A.B. 347 and A.B. 408 of the 1999 Legislative Session; and
4. Attachment D is a letter from Congressman Gibbons regarding "protectible interest."

Mr. Walker suggested that an executive summary regarding significant issues discussed by the committee be included in its final report and should reference the committee's agreement to not recommend any changes to the five-year sunset provision (setting forth criteria under which a permit may be revoked for well protection), which is contained in A.B. 408. Ms. Eissmann explained that this report eventually would become the Subcommittee's report, which will include a summary of the TAC's actions.

**MR. WALKER MOVED TO ADOPT THE PROPOSED FORMAT FOR THE REPORT OF THE TECHNICAL ADVISORY COMMITTEE. MR. DICKSON SECONDED THE MOTION. THE MOTION CARRIED.**

### **DISCUSSION OF LEGISLATIVE RESEARCH PERTAINING TO WATER WELLS IN OTHER STATES**

Bruce Hamilton, a member of the Nevada Well Owners' Association, Las Vegas, Nevada, explained that he reviewed the water laws of approximately 30 states in an effort to find a successful model by which to develop proposed legislation for Nevada. Mr. Hamilton explained that there are basically two approaches to water rights in the 30 states he researched: (1) water rights "are what they are" and a person either does or does not have one; and (2) in areas where there is a perceived conflict between an existing use of domestic wells, available water, and growth of municipal systems, users may be involuntarily connected to municipalities at the expense of the municipality.

According to Mr. Hamilton, Nevada is the only state of which he is aware that allows a domestic well owner to connect to a municipal water system at his own expense. He advised that Assembly Bills 237 and 408 of the 1999 Legislative Session provide financial assistance for the costs associated with connecting to a municipal water system. He further noted that although well owners throughout the nation may not be responsible for the costs associated with a mandatory connection to a public water system, they are dissatisfied because they value their freedom of choice. Therefore, well owners have formed national committees to express their concerns to the U.S. Congress. He advised that at least two national organizations exist specifically to address the rights of well owners; however, neither group has proposed such legislation in any state. These organizations have two bills pending before Congress, which propose to: (1) provide federal funding to qualifying individuals to maintain and repair their existing groundwater wells; and (2) deny federal funding to any program that requires an involuntary connection to a municipal water system.

Concluding his presentation, Mr. Hamilton read his testimony to the committee. (See Exhibit E for details.)

### **CONTINUED DISCUSSION OF DOMESTIC WATER WELL USE**

Robert Tretiak, Vice President of the Nevada Well Owners' Association, Las Vegas, explained that during the 1999 Legislative Session, his organization "recommended and promulgated" A.B. 408. He directed the TAC members' attention to language on page 11 of Exhibit D concerning a moratorium on the State Engineer's ability to revoke water well permits. Mr. Tretiak advised that the only exception his organization would take regarding the TAC's draft report is the members' agreement to not recommend any change to state law regarding this authority. According to Mr. Tretiak, the Nevada Well Owners' Association had actually attempted, through A.B. 408, to "place restrictions on the State Engineer's ability to revoke" permits.

Mr. Tretiak mentioned that, among other things, the TAC has been directed to: (1) specifically identify issues relating to wells; (2) make recommendations to address these issues; and (3) review recently passed legislation and suggest new language or legislation.

Referring to page 4 of the TAC's meeting minutes, dated January 12, 2000, Mr. Tretiak said the committee also is required to specify in state law, conditions under which the State Engineer can revoke a temporary well permit or deny the deepening or repair of a domestic well, thereby requiring the well owner to connect with a municipal water supply. Mr. Tretiak noted that despite requests by he and Mr. Hamilton, the TAC failed to meet this objective.

Mr. Tretiak then discussed the history of A.B. 408. Among other things, he noted that:

- The Nevada Well Owners' Association proposed A.B. 408 because the State Engineer had "absolute authority" to "shut down" any water well or deny a permit at will. Wells were being arbitrarily shut down and after already investing in the infrastructure to deliver water to their residences, well owners were being charged approximately \$5,000 to plug their wells, plus an estimated \$15,000 per home to hook up to the municipal system. Many homeowners essentially would be "taxed out of their home" because of the expense involved with the

condemnation of their wells and connection to a public water system.

- Through A.B. 408, the Nevada Well Owners' Association sought to require the State Engineer to have "just cause" before shutting down a well or denying a permit, and to allow a well owner due process.
- Assembly Bill 408 was passed unanimously by the Assembly.
- The Senate Committee on Natural Resources determined that "just cause" was overbroad and vague, and appointed a subcommittee to clearly define this phrase. Representatives of the Nevada Well Owners' Association who served on the subcommittee essentially agreed to accept the State Engineer's status quo conditions for just cause, as well as the sunset clause, and were of the opinion that just cause conditions should be studied further. The Nevada Well Owners' Association did not consider the sunset clause to be a "simple moratorium."
- It is the position of the Nevada Well Owners' Association that the report, titled "Division of Water Resources Southern Nevada Branch Office and the Las Vegas Ground Water Basin," which was presented by Mr. Coache to the TAC during its May 25, 2000, meeting is inaccurate and biased against well owners, and should be "totally disregarded" by the TAC. This report addresses: (1) the regulatory status of the Las Vegas groundwater basin; (2) the types of groundwater use; and (3) a pumpage inventory consisting of various methods used by the Division of Water Resources to monitor water levels within the basin. The association did not have an opportunity to examine the report before it was presented to the TAC.

### **PUBLIC COMMENT**

There was no public comment.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 1:50 p.m.

Exhibit F is the “Attendance Record” for this meeting.

Respectfully submitted,

Paige Clyde  
Senior Research Secretary

Linda Eissmann  
Senior Research Analyst

APPROVED BY:

\_\_\_\_\_  
Roland Westergard, Chairman

Date: \_\_\_\_\_

## **LIST OF EXHIBITS**

Exhibit A is a document titled, “Disclosures Required in Nevada Residential Real Estate Transactions, Recommendations and Findings — A report to the 70<sup>th</sup> session of the Nevada Legislature by the Department of Business and Industry,” February 10, 1999. This handout was provided by Matt DiOrio, Education Information Officer, Real Estate Division, Nevada’s Department of Business and Industry.

Exhibit B is a copy of a “Seller’s Real Property Disclosure Form,” which was provided by Mr. DiOrio.

Exhibit C, titled “Work Session Document No. 2 — Technical Advisory Committee Study of Domestic and Municipal Water Wells (Assembly Bill 408, Chapter 636, *Statutes of Nevada 1999*)” and dated June 22, 2000, was prepared by Linda Eissmann, Senior Research Analyst, Research Division, Legislative Counsel Bureau, for the Technical Advisory Committee’s use during this meeting.

Exhibit D, a draft document titled “Report of the Technical Advisory Committee to the Subcommittee to Study Domestic and Municipal Water Wells (Assembly Bill 408, Chapter 636, *Statutes of Nevada 1999*)” and dated June 22, 2000, was prepared by Ms. Eissmann.

Exhibit E, titled “Remarks to the Technical Advisory Committee,” is a copy of a presentation by Bruce Hamilton, a member of the Nevada Well Owners’ Association, Las Vegas, Nevada.

Exhibit F is the “Attendance Record” for this meeting.

Copies of the materials distributed at this meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Research Library at (775) 684-6827.