

SENATE NATURAL RESOURCES COMMITTEE

MINUTES OF MEETING  
Monday, April 18, 1977

The twenty-first meeting of the Natural Resources Committee was called to order on the above date at 2 p.m.

Senator Gary Sheerin was in the Chair.

PRESENT: Chairman Sheerin  
Senator Echols  
Senator Dodge  
Senator Neal  
Senator Glaser

OTHERS

PRESENT: Paul Lumos, Carson City  
Roland D. Westergard, State Engineer  
Nancy Minaheny, Panther Valley  
Pam Wilcox, Lemmon Valley Improvement Association  
Beverly Youngberg, Lemmon Valley  
Kay Bingham, Lemmon Valley

AB 229 Makes technical amendment to section providing for investigation of prices by state dairy commission.

Senator Dodge moved this bill be re-referred to the Senate Commerce and Labor Committee.

Senator Echols seconded the motion.

The motion carried unanimously.

Other bills considered by the Committee were SB 497 and AB 509.

SB 497 Provides procedure for reviewing certain decisions of state engineer.

CHAIRMAN SHEERIN requested the record show that Attorney Bill Shaw, Carson City, was notified of the hearing of this bill on this date; and that an attempt was also made to notify Mrs. Marie Wolfe, who was out of town at the time.

ROLAND WESTERGARD, state engineer, testified in opposition to SB497. He said Chapter 534 NRS is pretty comprehensive and includes many facets of administration of the ground water law. He said he wonders about the comparable qualifications of a proposed three-member review board as opposed to the staff of the state engineer's office that works on such problems on a daily basis. His staff includes 16 professional people that are capable of reviewing the factors that must be weighed in these decisions. The greatest impact of this bill would be the review of approval and denial of water rights. He said the major thrust of SB497 would be directed towards the review of the decision of his staff. Mr. Westergard said he does not feel it will provide

any user type protection, but will impose more of a burden on the people that are going to be effected by the decisions being made, so he believes this bill is not in the best interest of water administration.

SB 509 Makes requirement for permits to appropriate water applicable to certain domestic wells and establishes procedure for issuance of permits.

PAM WILCOX, representing Lemmon Valley Improvement Association, testified in support of SB509. She said under the existing water laws, domestic wells are totally exempted from need of permit. This bill would: 1) set up a permit system for domestic wells which would be optional and simplify procedure over the existing procedure; and 2) would make this procedure optional throughout the state except in designated basins where permits would be required for domestic wells. Domestic well exemption in Nevada is traditional and was to encourage people to settle in more rural areas. In areas where there has been extensive suburban subdivisions, the state engineer cannot control the drilling of domestic wells. Building has been accelerated in Lemmon Valley due to the moratorium on building in the Reno/Sparks area. Mrs. Wilcox said SB509 would enable the state engineer to deny more building in overbuilt areas.

ROLAND WESTERGARD, state engineer, said his office does have an associated responsibility where there is some control, but it has just been the last few years where every subdivision plat that comes in is reviewed. His office would not review an area like Lemmon Valley because it is entirely on domestic wells.

MRS. WILCOX said the state water law is incomplete in the jurisdiction that it gives the engineer.

WESTERGARD said if his office had to process every domestic well application in a basin, the work load would be tremendous.

Lengthy discussion followed in search for a solution.

FRANK DAYKIN, Legislative Counsel, was summoned for legal assistance.

CHAIRMAN SHEERIN outlined SB509 saying domestic wells at the present time are not regulated at all, either in a designated or non-designated basin. What this bill proposes to do is in a designated basin, domestic wells could be under the control of the state engineer---one would have to file for a permit which the engineer would have the ability to deny. In a non-designated basin, a person could apply for a permit, but the state engineer could not deny in a

non-designated basin. Lemmon Valley people want to give the engineer the ability to act to limit further building in any designated area.

MR. DAYKIN said, "To designate an area and then to prevent."

CHAIRMAN SHEERIN said the policy in the state in the past has been that the engineer does not have that ability and if we grant him ability to grant and deny on a designated basin, that is a great change in the policy. He is concerned because the bill was entered late in the Session and now there is not sufficient time to alert other people who might have an interest in testifying. The question of Mr. Daykin by the Committee is are there any other ideas with which to solve the problems for Lemmon Valley.

MR. DAYKIN said the general current law is that underground water is like a wild animal---there is no property in it. We have modified that to the extent of permitting appropriation of ground water, but where we have provided no mechanism of the law up to now, provides them to formally file upon and appropriate these domestic wells, I don't think they would have a recourse.

SENATOR DODGE said can we give them a statutory jurisdiction authority in a case like that.

MR. DAYKIN said this we clearly could do. We could provide for registration of existing wells and whether or not you permit him to deny an application and the registration of new wells which would then constitute an appropriation to that extent of the underground water, then you would perhaps have a claim. The common law won't help. We could supplant the common law by giving the court a jurisdictional authority.

SENATOR DODGE suggested hearing a restraining action that would be based on injury to a property right, then if you don't have the property right in common law, then that is something else.

MR. DAYKIN said, "I think we would be creating one as well as conferring the jurisdiction. We would be saying that in Nevada, there is a property right in the flow of an underground well and that if your neighbors actions diminishes, then it would be a matter of proof whether he did and in our artesian basins, I think the proof would be made."

SENATOR DODGE stated the Committee was wondering about extending a moratorium. Whether a limited moratorium could be granted which would permit the engineer to exercise a temporary moratorium subject to some sort of finding.

MR. DAYKIN replied, "I think that we could. In fact I drew legislation to that affect relating to the artesian basin in the Las Vegas Valley about 10 years ago, based upon certain findings.

SENATOR DODGE referred to Sec. 12 of this Act which is the present law, saying apparently there is a void in that his jurisdiction making the orders that he deems essential for the welfare of the area are not extended to domestic wells which are not appropriated. He has taken some action where there was an alternative water source.

MR. DAYKIN: "His authority there, where they can hook onto water supply, is specifically conferred here by the statutes so he has some reason for distinguishing the two cases.

SENATOR DODGE said the Committee was interested in some alternatives by statute: 1) moratorium; 2) extending authority under Sec. 12; 3) enunciate a statutory jurisdiction and claim property damage.

MR. DAYKIN said, "Legislatively, you could declare a moratorium. You could make a finding, but your problem would be to choose the areas to which your finding would apply, unless you thought it truly applied statewide. The depleted artesian basins are the greast problem in Nevada now." Mr. Daykin continued, saying, "Domestic use has always had priority over any other, but that does not mean that conditions do not change. Independently of the state engineer, I suppose it would be constitutionally permissable to confer upon boards of county commissioners the power to act where the ground water was being effectively depleted. That would permit local option in response to local conditions, but they would lack the expertise that Roland has in knowing fact. They might very well know the pratical result, an inference could be drawn. I think the present law probably dosen't specifically so empower the commissioners, but that could be changed."

MRS. WILCOX said they have already been through that and it could not be solved quickly or simply.

MR. DAYKIN said solutions might include development of an ordinance; inertia; the matter of developing under your standpoint, the standards under which they would act. Of course reduction of the ground water table below the average depth of wells established in the area would be a standard which, this would address only a part of the problem, but it would address the one that is before us right now.

CHAIRMAN SHEERIN suggested establishing a ground water

level that once the water got below such a level, give the state engineer the expertise to say it has or has not happened, and once he makes that finding then the county would have the power to deny building permits.

MR. DAYKIN said this could be done and that would bring in the expert knowledge while keeping the actual control at the local level.

SENATOR DODGE said some thought is going to have to be given to water no matter what the common laws have been in the past. He said whether there is a better approach rather than having to give a permit for every domestic well, the engineer could make a finding that the water is being depleted, then he could not issue any more water permits.

MR. DAYKIN said the latter would be simpler and it would solve the problem much more quickly than would registering the wells as a prelude to water right.

SENATOR DODGE said the engineer has got to take the application and then deny each one rather than in one fell swoop. He could set up some kind of standard where a finding is made of the fact that he is endangering all present domestic users in an area because the water supply is being depleted to a dangerous degree.

MR. DAYKIN said that would be consistent with our historic Western water law, "The priority in time gives priority of right."

SENATOR NEAL asked if Mr. Daykin was taking the position that the state does not have the right to proceed in terms of limited development in a given area whereby it would affect the water table.

MR. DAYKIN replied, "No, sir, I am not taking that position. I am taking exactly the opposite, that they can limit in order to protect the people who are there now."

SENATOR DODGE said the engineer has a handle on anything in the future because on the subdivision plats now, the quality and quantity of the water has to be certified. But now here sets 2400 lots which were approved before that provision went into affect.

MR. DAYKIN said somebody over extended beyond the water.

SENATOR DODGE pointed out Senators Glaser and Sheerin have both expressed some reservation about trying to act on this

bill today on the grounds that it was just introduced last weekend and it has significant impact over probably many areas in Nevada and we haven't given time for anyone to evaluate it. We understand the problem before us, but we may have a lot of other people come with some other views and problems.

MRS. WILCOX asked if some kind of hearing procedure could be set up before the state engineer so that he could declare a critical situation within a designated basin, halting all drilling in that area.

SENATOR GLASER said he would be amenable to putting in a two-year moratorium in Lemmon Valley.

MR. WESTERGARD said he did not have the power now on domestic wells.

CHAIRMAN SHEERIN noted a notice should go out to others this may affect.

SENATOR DODGE said a hearing should be set up for making findings. That is a very fundamental decision in Nevada. He suggested introducing general legislation which would let the state engineer declare a moratorium during this interim period in an area he thought there was danger of depleting the existing domestic water supply.

CHAIRMAN SHEERIN suggested a draft in terms of a two-year term, power-type thing.

SENATOR DODGE inquired if there were any other areas where this thing could possibly come up. He asked specifically about Carson City.

MR. WESTERGARD said, "I don't think this is a problem in Carson City, this particular issue. I don't think it is a problem here. I think it is primarily related to those outlying areas of Washoe County."

CHAIRMAN SHEERIN said, "If we are talking about a moratorium, the evidence we are hearing, it is the one area where there is a serious problem . . . . I don't mean Washoe County, I mean that particular water basin."

SENATOR GLASER said in view of the drought situation, and because of his confidence in the state engineer, he would suggest granting the state engineer that power the next two years to put a moratorium on an area where there is a critical water problem.

Senator Dodge so moved.  
Senator Echols seconded the motion. Motion died.

CHAIRMAN SHEERIN inquired as to the location proposed for such a moratorium.

SENATOR GLASER replied statewide. Grant the state engineers office the power to declare a moratorium in any area of critical concern, relative to underground water and domestic water supply for the next two years. Put an automatic repealer on it then see how it works.

MR. WESTERGARD said he thought there should be an appeal procedure to be consistent with the rest of the provisions of the law. It is inherent anyway. Administrative decisions should be subject to appeal. Under NRS 233B, hearings, findings, etc. are already provided for.

SENATOR GLASER suggested amending everything out so there is not the conflict with "Raggio's bill," and then just add this one little terminology saying the state engineer is granted the opportunity to review the water situations and grant a moratorium in areas of critical concern, with an automatic repealer in two years.

SENATOR DODGE said it should be tied to situations where there is a dangerous depletion of existing domestic supply.

MR. WESTERGARD said he would hate to see it written so that somebody could force him to come in in another part of the state and say look, the statute has been passed, you better move here!

SENATOR DODGE asked if he would rather try to limit it to the Lemmon Valley situation.

MR. WESTERGARD said, "Not necessarily, Senator. If you are going to give moratorium, I would like enough descretion so that I didn't have to move in someplace where I didn't think I should." Mr. Westergard said he thought Senator Glaser's expression could function. "The authority to propose a moratorium, after hearing, in an area where domestic supply would be seriously threatened by additional development."

Chairman Sheerin requested Mr. Westergard to join him in the bill drafter's office to complete the amendment.

Senator Dodge moved to amend SB509 and "DO PASS."  
Senator Glaser seconded the motion.  
The motion carried unanimously.



Natural Resources  
Minutes of Meeting, April 18, 1977  
Page Eight

There being no further business, the meeting was adjourned at 4 p.m.

Respectfully submitted,

  
\_\_\_\_\_  
Billie Brinkman, Secretary

APPROVED:

  
\_\_\_\_\_  
Gary A. Sheerin, Chairman



GUEST REGISTER

SENATE NATURAL RESOURCES COMMITTEE

Those wishing to testify should identify themselves before giving testimony.....

DATE: April 18, 1977

NAME	Do you wish to testify	Bill No.	REPRESENTING
<u>Paul Kumor</u>	<u>NO</u>		<u>Carson City</u>
<u>Colan D. Futterger</u>	<u>Yes</u>	<u>SB 497</u>	<u>State Engineer</u>
<u>Nancy Minshery</u>	<u>NO</u>	<u>SB 509</u>	<u>Panther Valley</u>
<u>Pam Wilcox</u>	<u>yes</u>	<u>SB 509</u>	<u>Lemmon Valley Improvement Assoc.</u>
<u>Beverly Youngberg</u>	<u>yes</u>	<u>SB 509</u>	<u>Lemmon Valley</u>
<u>Nancy Ringland</u>	<u>No</u>	<u>SB 509</u>	<u>Lemmon Valley</u>

SENATE BILL NO. 509—SENATOR WILSON

APRIL 16, 1977

Referred to Committee on Natural Resources

SUMMARY—Makes requirement for permits to appropriate water applicable to certain domestic wells and establishes procedure for issuance of permits. (BDR 48-1739)

FISCAL NOTE: Local Government Impact: No.  
State or Industrial Insurance Impact: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to water; making the requirement for permits to appropriate water applicable to certain domestic wells of limited draft in designated basins; establishing procedures for issuance of permits for those wells; and providing other matters properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

- 1 SECTION 1. Chapter 533 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 and 3 of this act.  
3 SEC. 2. *As used in this chapter, "domestic well" means a well from*  
4 *which water is appropriated for domestic use and the draft does not*  
5 *exceed a daily maximum of 1,800 gallons.*  
6 SEC. 3. *Each application for a permit to appropriate water by means*  
7 *of a domestic well shall contain the following information:*  
8 1. *The name and post office address of the applicant.*  
9 2. *The name of the source from which the water will be appropriated.*  
10 3. *A substantially accurate description of the location of the pro-*  
11 *posed well.*  
12 4. *The signature of the applicant.*  
13 SEC. 4. NRS 533.335 is hereby amended to read as follows:  
14 533.335 Each application for a permit to appropriate water, *other*  
15 *than by means of a domestic well*, shall contain the following information:  
16 1. The name and post office address of the applicant and, if the appli-  
17 cant is a corporation, the date and place of incorporation.  
18 2. The name of the source from which the appropriation is to be  
19 made.  
20 3. The amount of water which it is desired to appropriate, expressed  
21 in terms of cubic feet per second, except in an application for a permit to  
22 store water, where the amount shall be expressed in acre-feet.  
23 4. The purpose for which the application is to be made.

Original bill is 7 pages long.  
Contact the Research Library for  
a copy of the complete bill.