

MEMBERS PRESENT

Chairman Hickey
Vice Chairman Price
Mr. Dini
Mr. Fielding
Mr. Getto
Mr. Mann
Mr. Marvel
Mr. Tanner

MEMBERS EXCUSED

Mr. Chaney

GUESTS PRESENT

Ray Knisley, Good Legislation
William X. Smith, State Dairy Commission
Rod Wilkes, State Health Dept.
Lyle E. Campbell, Pershing County Concerned Citizens
Diane Campbell, Pershing County Concerned Citizens
Jack Armstrong, Nevada Dept. of Agriculture
Matt Benson, Nevada Cattlemen's Assn.
Nancy Caine, King's Nutrition Center
Carolyn Walsh, Self
Robert Pottenger, Pres. American Assn. of Medical Milk Comm.
Lois Betz, Excalibur Medical Foundation
Sidney J. Zimet, Excalibur Medical Foundation
Jenifer Amo, Raw Milk
Paul J. Virgin, Alta Dena Dairy
Assemblyman Polish
Thomas W. Ballow, Nevada Dept. of Agriculture
Harry Swainston, Deputy Attorney General

Chairman Hickey called the meeting to order and said the hearing on A.B. 600 would continue from the April 6, 1979, original hearing.

A.B. 600 - Permits sale of raw milk under certain conditions.

The first speaker was William X. Smith, Executive Director for the Nevada State Dairy Commission. Mr. Smith read into the record his letter to Chairman Hickey dated April 3, 1979, which stated the position of the Dairy Commission in regard to A.B. 600 and A.B. 555. A copy of the letter is attached as Exhibit A.

Mr. Smith informed Chairman Hickey that he had read A.B. 600 in its revised form and had discussed it with Mr. Frank Daykin, Legislative Counsel. Mr. Smith said it would appear that all of the provisions of NRS 584.325 to 584.690 would be in force and effect, and anything done by a County Milk Commission would be over and above the force and effect of those statutes. In

other words, if there are fees to be charged as the bill specifies those fees would be in addition to any fees the commission presently collects from producers and distributors.

Dr. Jack Armstrong, Supervisor of the Animal Disease Laboratories for the Nevada State Department of Agriculture, appeared in opposition to A.B. 600. Dr. Armstrong gave a summary of documented evidence relative to human diseases attributable to the consumption of raw milk and quoted the following:

Ingestion of raw domestic dairy products has been cited as the cause of 31 cases of human brucellosis in the United States from 1970 to 1975. In the 1978 report of the National Brucellosis Technical Commission, 33 states or territories are listed as prohibiting the commercial sale of raw unpasteurized milk while 19 do not. Brucellosis incidence reports from Nevada, Utah, Idaho and California indicate that currently there are approximately 52 dairy herds and 82 beef herds under quarantine because of brucellosis infection in those four states. Pasteurization destroys the milk borne brucella organism.

Tuberculosis of humans contracted from cattle has practically been eliminated in the United States. Pasteurization destroys the milk borne bacteria that cause tuberculosis in man.

The most significant milk borne disease that constitutes a hazard to human health is Salmonellosis. Between April 1, 1971, and March 31, 1974, 79 people in California were reported as having Salmonella dublin infection. Consumption of unpasteurized milk was incriminated as the cause. Salmonella bacteria are destroyed by pasteurization.

Mr. Price asked if the risk of using certified raw milk was any greater than the use of cigarettes, alcohol or other thing man was exposed to. Dr. Armstrong said he did not believe it was, but he did believe the consuming public should be made aware of the hazard. He also suggested that a disclaimer such as that printed on a package of cigarettes might be in order.

Documents supporting Dr. Armstrong's testimony are available in the Assembly Agriculture Committee files, Legislative Building, Carson City.

Nancy Caine, operator of a health food store in Reno, supported A.B. 600. She said that people suffering from cancer and other diseases were unable to digest pasteurized milk in many instances and she received many requests for raw milk products from these individuals. Mrs. Caine said she sends many of her customers to Truckee where they may obtain these products. In response to a question by Mr. Getto, Mrs. Caine said there was no problem with the shelf life of these raw milk products.

Lois Betz, a nurse practitioner and nutrition counselor for Excalibur Medical Foundation and Community Services Agency in Reno, also supported A.B. 600. One of Ms. Betz' main concerns is for her patients who are not able to assimilate pasteurized milk products. She stressed the nutritional difference in certified raw milk products.

Dr. Sidney J. Zimmet, a physician at Excalibur Medical Foundation, also favored A.B. 600, basically on the freedom of choice. He said that "certified" was an important factor in discussing raw milk since many of the statistics relating to salmonella were based on only raw milk.

Dr. Robert Pottenger said he was an allergist, a physician in California, the President of the American Association of Medical Milk Commissioners and the Secretary of the Los Angeles Milk Commission. He said there was no way that brucellosis could be contracted from a certified herd. Regarding tuberculosis, Dr. Pottenger said there had consistently be no reactors in the herd and no positive reactor would be allowed in the herd. Dr. Pottenger discussed the history of certified raw milk and told of the health inspections for employees. He suggested that salmonella attributed to raw milk was often caused by beef.

Chairman Hickey asked Dr. Pottenger what the shelf life was for certified raw milk. He answered that the shelf life from the dairy to ultimate disposal is 6 days, but the average is 12 to 14 days before the milk sours.

Jennifer Amo also appeared in favor of A.B. 600 and felt that she should be allowed to have freedom of choice and choose the products she desired for health purposes.

Assemblyman Polish asked the committee to pass A.B. 600 in order that raw milk would be available in the State of Nevada since he believes that all food value is lost in pasteurization.

Mr. Paul Virgin of Alta Dena Dairy expressed his support of A.B. 600. He said that raw milk would keep as long as pasteurized if refrigerated. Chairman Hickey asked if Alta Dena Dairy would have any problems in conforming to the regulations as set forth in the bill. Mr. Virgin said they would like to have lines 41 through 43 on page 2 deleted as there should be no difference in regulations between certified raw milk and pasteurized milk. This provision would mean that Alta Dena Dairy would have to dual date which would cause problems. It would be difficult to custom package a product for Nevada only.

Mr. Dini suggested that if lines 41 through 43 were deleted on page 2, there would still be adequate protection under Section 3, page 3, subsection (d).

Chairman Hickey explained that his only concern was the protection of the people of the State of Nevada. Mr. Virgin assured him that Alta Dena had a clean product produced on the highest standard in the entire dairy industry.

Chairman Hickey requested Mr. Tanner to obtain the amendment to A.B. 600 as discussed.

Edna Ewing of Incline Village expressed her support of A.B. 600 and Alta Dena products.

A.B. 724 - Limits appropriation of water for agriculture and watering livestock.

Assemblyman Dean Rhoads said that the attorney who assisted in the preparation of this bill was unable to attend this meeting and he hoped that Chairman Hickey would hold further hearings on A.B. 724 since it was very important to Nevada. Mr. Rhoads further stated that numerous changes had to be made in the proposed bill.

Mr. Rhoads' primary concern was the Bureau of Land Management's decision to file for 5000 to 9000 water rights in the state. He questioned the Federal Government's requirement for beneficial use of this water.

Roland Westergard, Director of the Department of Conservation and Natural Resources, appeared with Mr. Bill Newman, State Engineer. Mr. Westergard said that there were problems with A.B. 724 as it was worded, particularly Section 1, paragraph 3. He felt that under this paragraph there would never have been a reclamation project in the state. He also felt the irrigation districts would be precluded from obtaining water under this section. Mr. Westergard also referred to the United States Supreme Court decision in the New Mexico case and said that was a rather tenuous decision since it was so close.

Mr. Westergard said he was afraid that if anything was done to encourage the Federal Government to resort back to a claim under some guise of reserved rights, it might detrimentally affect the Nevada water law and the western water law collectively.

Chairman Hickey asked Mr. Westergard if there was a way to clean up the language in A.B. 724. Mr. Westergard said he had no immediate suggestions but would be glad to consider it.

Mr. Newman said he had concern with the administration of the bill. He felt that paragraph 3 precludes anyone from starting in the agricultural or stock watering business since a person purchasing a 5-acre parcel would not be permitted to irrigate it unless they were directly engaged in agriculture.

Mr. Newman further felt that the provisions of paragraph 2 were already covered by the Nevada Water Law under Chapter 533.

Mr. Dini asked if it was the intention of Nevada to challenge the BLM filings. Mr. Westergard said it would be his intention to process the filings in accordance with the Nevada Revised Statutes. It would further be his intention to hold extensive hearings on both the adjudication and application process to determine if BLM could meet the Nevada Water Law. Mr. Westergard further stated it was his opinion that two alternatives should be considered. One, let the statutory process as set forth in the Nevada Water Law run its course and if a determination is made that they can't be allowed, they will be denied under the Nevada law. The Federal Government would then be committed to an appeal through the State Court process and would be hard pressed to remove it to the Federal Court. Two, if there was a situation where an application had to be approved, the State Engineer would have the authority and jurisdiction to require that the BLM enter into an agreement that would protect the stockmen's interest. Mr. Westergard felt that Nevada should not be put in a position where the Federal Government would be avoiding State jurisdiction. Mr. Mann agreed with this thinking.

Mr. Lyle Campbell, speaking for Pershing County Concerned Citizens, appeared in support of A.B. 724, but agreed that the bill needed some changes.

Mr. Matt Benson of the Nevada Cattlemen's Association felt that some legislation was necessary to restrain the BLM from further encroachment. The association has instructed members to file on water rights as much as possible but this is a very costly procedure. Mr. Benson hoped that an amended version of the bill which would protect Nevada farmers could be passed.

Mr. Tom Ballow, Nevada Department of Agriculture, also expressed grave concern regarding the Bureau of Land Management's filing for water rights. He feels it will just be a matter of time before the Federal Government will start charging for the water if the rights are obtained. If the Bureau of Land Management has control of the land as well as the water, it could be auctioned to the highest bidder so that an established rancher would no longer have any tenure or security. Mr. Ballow further said that the Water Engineer has estimated it costs approximately \$700 to file an application for water rights. If the Bureau of Land Management files 7,000 that would amount to almost \$5 million of the taxpayers money.

Chairman Hickey said the committee was still waiting for Mr. Rowland's answers to questions that were asked at the March 26, 1979, meeting, and that he would write Mr. Rowland in this regard.

Mr. Harry Swainston, Deputy Attorney General, discussed the law with regard to the Federal Government's right to file for water rights. A copy of Mr. Swainston's remarks is attached as Exhibit B.

In response to Chairman Hickey's question, Mr. Swainston said he shared Mr. Westergard's concern regarding A.B. 724. He also told Chairman Hickey he would work with Mr. Westergard and Assemblyman Rhoads and preparing amendments to the bill.

COMMITTEE ACTION

A.B. 14 - Mr. Price moved that A.B. 14 be amended by adding two additional members to the State Board of Agriculture, one from the nursery industry and one from the pesticide industry. Seconded by Mr. Fielding and unanimously carried. Mr. Tanner moved Do Pass as Amended. Seconded by Mr. Mann and unanimously carried.

A.B. 34 - Mr. Marvel moved Indefinitely Postpone. Seconded by Mr. Tanner and carried unanimously.

A.B. 408 - Mr. Price moved Indefinitely Postpone. Seconded by Mr. Getto and carried unanimously.

A.B. 410 - Mr. Marvel moved Indefinitely Postpone. Seconded by Mr. Tanner and carried unanimously.

A.B. 441 - Mr. Dini moved to amend by changing 10 acres to 20 acres and 20 acres to 40 acres. Seconded by Mr. Marvel and carried. Mr. Getto abstaining. Mr. Dini moved Do Pass as Amended. Seconded by Mr. Tanner and carried. Mr. Getto abstained.

A.B. 600 - Mr. Tanner moved to amend by deleting Lines 41 through 43, Section 3, Page 2. Seconded by Mr. Mann and carried. Mr. Tanner moved Do Pass as Amended. Seconded by Mr. Mann and carried unanimously.

There being no further business to come before the committee, the meeting was adjourned by Chairman Hickey at 7:30 p.m.

Respectfully submitted,

Jane Dunne
Assembly Attache

THE STATE OF NEVADA
DAIRY COMMISSION

April 3, 1979

WILLIAM W. SMITH
DIRECTOR

Honorable Thomas J. Hickey, Chairman
Assembly Agriculture Committee
Legislative Building
Carson City, Nevada 89710

Dear Mr. Hickey:

I respectfully ask that you please enter the following information as testimony from the State Dairy Commission relative to A.B. 555 (raw goat milk) and A.B. 600 (raw cow milk.) Either bill upon approval would be subject to the provisions of NRS 584.325 to 584.690, inclusive. Among the sections included are the following which we consider very important for someone contemplating the production and marketing of raw milk:

- NRS 584.355 "Fluid milk" defined. (Page 7)
- NRS 584.370 "Producer" defined. (Page 7)
- NRS 584.510 Licensing of distributors and registration of producers. (Page 14)
- NRS 584.583 Sales of milk, cream, butter, fresh dairy byproducts below cost by distributors, retailers.
Subsection 2. (Filing of Cost) (Page 21)
Subsection 5. (Filing of Prices) (Page 21)
- NRS 584.595 Necessity for license; application; form and contents; term; renewal. (Page 23)
- NRS 584.600 Bond: Amount; form and conditions; proceedings for enforcement. (Page 23)
- NRS 584.633 Distributors' assessments on butter, fresh dairy byproducts. (Page 26)
- NRS 584.635 Assessment of sellers to distributors; penalties for delinquent payments. (Page 26)

We are enclosing a copy of those sections of Nevada Revised Statutes under which the Dairy Commission functions should you care to read into the record any other sections you may feel those proponents of the bills under consideration should be made aware of.

EXHIBIT A - Pg. 1

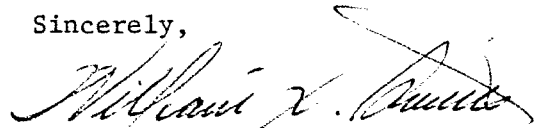
Honorable Thomas J. Hickey
Page 2

We have enclosed a copy of the Stabilization and Marketing Plans for the Western and Southern Nevada Marketing Areas. These plans are applicable to producers, distributors and retailers involved in the production and sale of raw milk products. The plans are the regulations of the State Dairy Commission and, as such, give support and clarification to Nevada Revised Statutes.

I hope you will be able to read into the record as testimony the fact that the Dairy Commission is a regulatory agency charged with the enforcement of the Statutes and Stabilization and Marketing Plans. Any person entering into the dairy industry in Nevada as a producer, distributor or retailer will become subject to the provisions of these laws and regulations.

Thank you for your assistance.

Sincerely,



William X. Smith
Executive Director

WXS:bp

Enclosures

STATEMENT OF MR. HARRY SWAINSTON, DEPUTY ATTORNEY GENERAL,
RE A.B. 724

My name is Harry Swainston, I'm a Deputy Attorney General. I have a number of remarks to make. I just might mention that since the Desert Land Act of 1877, there was a severance of land and water on the public domains and the water became strictly under the jurisdiction of the state. The only exception to that rule was in the case where the United States reserved portions of the public domain and the courts have held that the United States by implication also reserves so much water to satisfy the purposes for which the land was withdrawn. This normally applies to Indian reservations, forests, military reservations and things of this nature. That's the Winters Doctrine. That's the implied reservation of water doctrine. That is really the main basis for the Federal Government's claim to water in the western states, is under that doctrine. They simply do not have any other right under any other doctrine that I know of. The New Mexico case last summer reaffirms that concept.

If the United States wants additional water for any secondary purpose of the reservation, or if they want water for use on the public domain lands, they must apply to the State Engineer. But, in addition, there is a further requirement I think we are overlooking here. This requirement stems from Article 1, Section 8, Clause 17 of the Constitution. It is a very weighty doctrine. That is when the United States acquires any kind of real property, land or water within the state, it must get the consent of the state legislature before it does so.

Now, our legislature in 1947 set up the procedure by which the United States gets the consent of the state. Simply it is contained in Section 328.030 to 328.150 for our purposes. It amounts to getting the consent or the recommendation of the Board of County Commissioners in the locality where the land is to be acquired, and with that consent they also must get the consent of the Tax Commission. They must show that they are ready, willing and able to pay the taxes on this property to be acquired.

The argument can be made, however, that the water law is a form of giving the state's consent; that the United States is a person and come in under the water law and make an application with the State Engineer. But my interpretation of NRS Chapter 328 would be that before the Water Engineer's application is ready for action, before the State Engineer can actually rule on that application, the United States must show the State Engineer that it has acquired the consent as required by the legislature of the state.

It is my understanding that the Tax Commission, on information that they have this obligation and jurisdiction, has reaffirmed in their own public hearing that indeed they do have this jurisdiction, and has sent letters to the BLM and to the Department of Conservation and Natural Resources to that effect.

I think it is a very desirable thing for the United States to do. Not only is it compliance with the United States Constitution but it gives our state legislature and our state a chance to review the kinds of applications that the United States is bringing before the state. If these applications are truly bona fide, if they are to the benefit of the state, then we've got the aspect of local control with the County Commissioners to give a first level interpretation, and we also have the ability of the Tax Commission and the hearings that are provided for before the Tax Commission to further establish conditions on the use of that water. I think this would probably be an adequate safeguard before the State Engineer has to address the problem of whether or not to grant the application.

The State Engineer acts on a set stage and that stage is essentially the water law. If the water is available for appropriation, if it doesn't interfere with prior and existing rights, if its not against the public policy of the state, then essentially he is obligated--at least according to my interpretation of the law--to grant the permit. This is subject to review if he denies the application in state court. But the Federal Government is not going to be satisfied with a state court determination, particularly where they usually hide behind the doctrine of sovereign immunity whenever they are in state court litigations. They can remove a state court case immediately to the federal court without any other effort than filing a petition for removal. To get it back in the state court, the state officials have to file a document in federal court asking it to be removed. Normally this is unsuccessful. So I am not sure that the state court forum argument is necessarily controlling.

We do have types of specialized proceedings in which state courts do have jurisdiction. That's proceedings under the McCarren amendment. What these amount to are general adjudications of a stream system in which all of the relative rights to the water within that stream system are adjudicated.....

In regard to A.B. 724, I think we've got a problem that needs a solution. I think we need to assure ourselves that the 6,000 to 9,000 applications that the BLM is contemplating are cut off at the pass. I think the dual technique--but at a minimum the technique working through NRS Chapter 328 is necessary because if we can require that the government come in and get that consent, they'll soon find out what kind of applications they can get through the tax commission and which kind they can't. Then they'll only bring in the cases where they have a substantial reclamation project or a significant federal purpose.

60TH NEVADA LEGISLATURE
ASSEMBLY AGRICULTURE COMMITTEE
LEGISLATIVE ACTION

Date April 18, 1979

Subject A.B. 34

MOTION:

Do Pass Amend Indefinitely Postpone Amend & Do Pass

Moved by Mr. Marvel Seconded by Mr. Tanner

AMENDMENT:

Moved by _____ Seconded by _____

AMENDMENT:

Moved by _____ Seconded by _____

VOTE:	<u>MOTION</u>		<u>AMEND</u>		<u>AMEND</u>	
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
Chaney	Absent	_____	_____	_____	_____	_____
Dini		_____	_____	_____	_____	_____
Fielding		_____	_____	_____	_____	_____
Getto		_____	_____	_____	_____	_____
Hickey		_____	_____	_____	_____	_____
Mann		_____	_____	_____	_____	_____
Marvel		_____	_____	_____	_____	_____
Price		_____	_____	_____	_____	_____
Tanner		_____	_____	_____	_____	_____
TALLY:	<u>8</u>	<u>0</u>	_____	_____	_____	_____

ORIGINAL MOTION: Passed Defeated _____ Withdrawn _____

AMENDMENT: Passed _____ Defeated _____ Withdrawn _____

AMENDED & PASSED: Passed _____ Defeated _____

Attached to Minutes of April 18, 1979

60TH NEVADA LEGISLATURE
ASSEMBLY AGRICULTURE COMMITTEE
LEGISLATIVE ACTION

Date April 18, 1979

Subject A.B. 600

MOTION:

Do Pass Amend Indefinitely Postpone Amend & Do Pass x

Moved by Mr. Tanner Seconded by Mr. Mann

AMENDMENT: See Minutes

Moved by _____ Seconded by _____

AMENDMENT: _____

Moved by _____ Seconded by _____

	<u>MOTION</u>		<u>AMEND</u>		<u>AMEND</u>	
	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>No</u>
NOTE: Chaney	Absent	_____	_____	_____	_____	_____
Dini		_____	_____	_____	_____	_____
Fielding		_____	_____	_____	_____	_____
Getto		_____	_____	_____	_____	_____
Hickey		_____	_____	_____	_____	_____
Mann		_____	_____	_____	_____	_____
Marvel		_____	_____	_____	_____	_____
Price		_____	_____	_____	_____	_____
Tanner		_____	_____	_____	_____	_____
TALLY:	<u>8</u>	<u>0</u>	_____	_____	_____	_____

ORIGINAL MOTION: Passed x Defeated _____ Withdrawn _____

AMENDMENT: Passed _____ Defeated _____ Withdrawn _____

AMENDED & PASSED: Passed _____ Defeated _____

Attached to Minutes of April 18, 1979

