

The meeting was called to order at 2:00 p.m. Senator Neal was in the Chair.

PRESENT: Chairman Neal  
Vice-Chairman Glaser  
Senator Faiss  
Senator Jacobsen  
Senator Sloan

ABSENT: Senator Lamb

OTHERS

PRESENT: Ross DeLipkau, Attorney  
John Holmes, Sierra Estates General Improvement District  
Sam Mamet, Clark County Water District  
M. Douglas Miller, Consultant, Mining & Realty  
Pat Glenn, Realtor  
Les Berkson, Incline Village General Improvement District  
Gene Milligan, Nevada Assoc. of Realtors  
Kermit McMillan, Incline Village Gen. Improvement District  
Marlene Lewis, Lewis Realty  
Stan Martin, Cave Rock Water Co.  
Richard Arden, SEA Engineers  
George Peek, Valley Water Co.  
Debbie Sheltra, Virginia Foothills Property Owners Assoc.  
William J. Newman, State Engineer  
Pete Morros, Department of Conservation

Chairman Neal announced that at this time we would be taking testimony on S.B. 13 and S.B. 15, and noted that a quorum was present.

S.B. 13 - Provides for an extension of time within which underground water appropriated for a subdivision must be put to beneficial use under certain circumstances.

Senator Jacobsen stated that Senator Raggio, who introduced the bill, was unable to be at this hearing, but had asked him to mention the fact that the bill did not come out the way it was intended, and therefore an amendment was prepared. He wondered if because of the changes made to the bill by the proposed amendment, the committee would want to postpone the hearing to a later date. Senator Neal commented that he had intended to schedule further hearings on this bill at a later date, and the bill would not come out of committee today, so the committee could continue to hear testimony.

Mr. Ross DeLipkau, an attorney from Reno, Nevada representing Lemmon Valley Ranch Co., Valley Water Co., Byers Construction, Mt. Rose Water Co., Cave Rock Water Co., Mobile Water Co., and Silver Lake Water Co., testified in favor of S.B. 13 if amended as recommended (see Exhibit "A" attached). He indicated that the proposed amendment is needed because S.B. 13 as written was limited to ground water, and the proposed change directs itself to both ground water and surface water. Water companies and utilities service customers from both sources, therefore, both sources should be affected. However, many of the other changes in the bill are actually language changes.

Mr. DeLipkau informed the committee that the present law was enacted in 1913 and does not take the present trends of development into account. Presently, it might take an applicant 3 years or longer from the time the permit is granted until he is ready to build because of the lengthy applications and approvals of such controlling bodies as the Regional Planning Commission, the counties and cities, and federal and state registrations.

He also noted that the proposed change to the law does not affect the "due diligence" requirement for filing proof of commencement of work and proof of completion of work. "Due diligence" was first set forth in the statutes in 1869, and has been the basis of the Nevada water law.

Mr. DeLipkau further testified that in the past, there were no "designated basins" and therefore no problems for the developer or utility to file an application for extension if the owners of the lots had not yet completed building. In recent years a great portion of the Northwestern part of the State has been "designated." Designated does not necessarily mean an area is a closed basin, but quite frequently that is the effect.

Mr. DeLipkau closed his remarks by saying that water resource, probably the most important resource in the state, is not adversely affected when the State Engineer issues or reviews an application to see whether a permit should in fact be extended. The proposed change allows the State Engineer, upon a finding by the State Engineer that the extension of time would seriously jeopardize the resource or prior existing rights, to deny or refuse to grant the extensions of time, thereby individual homeowners and the ground water basin would not be adversely affected.

Senator Sloan asked Mr. DeLipkau if the existing subsection 3 in NRS 533.380 doesn't allow the State Engineer the authority now, for good cause shown, to extend the time; and if the existing authority does not provide a workable solution. Mr. DeLipkau

answered that in his opinion it is unworkable because when an applicant files an application for extension, it can be approved for extension (usually one year) or approved with a provision that no further extensions be granted. Senator Sloan remarked that under the proposed change, granting the extension would become mandatory if the permittee could prove "due diligence."

Senator Neal then commented that if the Legislature permits such a law to become part of the statutes whereby it will insure the right of a writ of mandamus to force the Water Engineer to issue a permit and we have an over-appropriation of water already, are we heading towards drying up this area totally. Mr. DeLipkau replied that in his opinion, that would not happen. The State Engineer has already denied many applications in areas where over-appropriation was a probability. Also, the State Engineer feels he has a handle on it now, and with this law the existing permits will not be adversely affected.

Mr. John Holmes, representing the Sierra Estates General Improvement District spoke next, and was in favor of this bill, if amended as suggested. He endorsed the testimony of Mr. DeLipkau and stated that the time and effort spent proving beneficial use was a burden for him, especially when the water system involved was already serving a portion of the subdivision.

Mr. Sam Mamet was the next speaker, representing Clark County. He was requested by the Clark County Water District to inform the members of the committee that the Clark County Water District supports the bill with the amendments suggested.

Mr. M. Douglas Miller, a consultant in water rights and a member of the Oil, Gas and Water Board appointed by the Governor, spoke next in favor of the bill as a representative of mining. He objected to there being an amendment to the bill before the public was given a chance to study it.

He explained to the committee members a situation he was involved with regarding an estate which was denied an extension on their water rights even though they had worked with the Water Engineer and tried to put the water to beneficial use. He stated that he, and the people he represent, support S.B. 13, but he was not sure about the implications of the amendment because he had not had a chance to review it.

The next speaker was Pat Glenn of Glenn Realty who spoke in favor of S.B. 13 with the proposed amendment. She stated that she is in favor of the bill, but had not had a chance to review the amendment. She asked that she be allowed to speak again if any further discussions were planned.

Mr. Les Berkson, representing the Incline Village General Improvement District and the Kingsbury General Improvement District spoke next in favor of the bill. He is an attorney with offices in Zephyr Cove, Nevada. He explained that Incline Village is designated as a planned community and is limited in scope under the Tahoe Regional Planning Agency Compact. They are presently operating under several permits which were acquired during the 1960's and prior, and the 10 year period to prove-up on beneficial use has expired. If at the end of this year they have to prove-up on beneficial use, that will cut off the limit of the amount of water that they can use and any further development at Incline. It will also cut off approximately 50% potential build-out of subdivided lots or parcels which have not been built on, but on which water and sewer facilities were built and paid for.

He concluded by saying that they are in favor of any bill which would not allow further enabling discretion to the State Engineer's office so they would have to allow further time for potential build-out. Ten years for communities such as Incline, Las Vegas, or Carson City is not sufficient time.

Senator Sloan asked Mr. Berkson what has to be done under the proposed amendment to prove "good faith" and "due diligence." Mr. Berkson replied that in their case, the municipality owns the properties and the application for extension they submit to the State Engineer contains many of the arguments stated above.

The next speaker was Mr. Gene Milligan representing the Nevada Association of Realtors. He stated that they endorse the testimony of Mr. DeLipkau. Mr. Milligan pointed out that the law states that if the permit was forfeited, the water would become available for allotment again. Also, the last clause in the amendment is an escape clause for the State Engineer in that it allows him the opportunity not to renew the permit if it endangers the public health and safety.

Mrs. Marlene Lewis, owner of Lewis Realty of Reno, spoke next in favor of the bill. She stated that she has seen cases where extensions have been denied and people have lost their permits. Although she was not familiar with the amendment, she was in favor of a bill which would remedy this situation.

Mr. Stan Martin, President and General Manager of the Cave Rock Water Co., a small investor-owned utility serving customers in the Tahoe Basin portion of Douglas County, was the next speaker. He is in favor of S.B. 13 with the proposed amendments.

As a public utility, they have no control over the pumping demand. It is dictated by normal community growth and development, therefore they can only prove beneficial use for the exact amount of water pumped to their customers at the end of each year. If further extensions of time are not granted, they would not be able to connect any new customers, nor would they be able to start from scratch and file for new applications because all new applications in the Tahoe Basin are frozen. To complicate their problem, they operate under the laws, rules and regulations of the State Public Service Commission. These regulations dictate that they must serve their present customers and potential customers.

The next speaker was Richard Arden, State Water Rights Surveyor, who spoke in behalf of S.B. 13, as amended. He stated that the present problem in the water law with respect to quasi-municipal use, is that once a subdivision is recorded and a lot is sold to an individual, the buyer does not always realize that they have to build on it within a certain period of time and put their water to beneficial use or the permit could be cancelled. He felt that the initiation of the water system should be proof enough of good faith on the part of the permittee.

Senator Jacobsen asked whose responsibility it is to notify the property owner that an extension has not been granted. Mr. Arden replied that he felt it was the developers' responsibility, but that it was usually too late because there is only 30 days in which to file the proof of beneficial use, and that is just not enough time for him to accomplish it.

Mr. George Peek, representing Valley Water Co. as a purveyor of water, and Lemmon Valley Water Co. as a developer, also spoke in favor of the bill as amended. He stated that in the case of Lemmon Valley Water Co., they lost 220 lots that were recorded. He believes the amendment is a good law and is needed to protect the developer and consumer.

The next speaker was Debbie Sheltra who spoke in opposition to S.B. 13, representing the consumers and Virginia Foothills Property Owners Association of Washoe County. She felt that perhaps what was needed to protect the consumers buying lots in new subdivisions was legislation mandating the realtor to notify the buyer of a lot that it has to be built upon within a certain time in order to use the permitted water rights and after that time there is no guarantee of water.

She remarked that perhaps the reason why this law has endured since 1913 is because it is a working law which provides judicial relief. The law as it now exists also makes water available for future appropriations subject to existing rights.

She pointed out that the proponents are discussing water rights in a basin that has now been "designated". There are permits outstanding appropriating water much greater than the water estimates made by the U.S. Geographical Survey. One effect of over-appropriation is that lending institutions are hesitant to lend money in these areas. She felt perhaps the committee could consider an amendment, if they pass the bill out at all, which would exempt the designated basins from the effects of this bill.

Ms. Sheltra disliked the fact that the proposed amendment would put the burden of proof on the State Engineer instead of the persons who want the water rights. With limited water right availability, such as in Washoe County, if someone isn't going to use their water right, there is someone else in line who will.

Mr. William Newman, State Engineer was the next speaker. He introduced Mr. Pete Morros, Assistant Director of the Department of Conservation and Natural Resources. Mr. Newman asked to go on record as having no quarrel with S.B. 13 and the proposed amendment.

Senator Sloan asked Mr. Newman if it wouldn't be better from a legal point of view to rewrite the bill so that the burden of proof that the extension of the water rights would not jeopardize the water resource be placed on the applicant rather than on the State Engineer. Mr. Morros answered that question by stating that the determination of what effect the granting of water rights would have on the resource is made when the permit is issued in the first place. If they felt the issuance of a permit would have an adverse effect on the resource, they would deny the permit. They are mostly concerned that the permit holder use good faith in developing that permit.

Senator Jacobsen asked Mr. Newman if the State of Nevada has incurred any liability when the Engineer has granted an extension and after a period of time there proves to be no more water available. Mr. Newman confessed that this was a concern of his for some time. He mentioned that there are 38 critical ground water basins in Nevada now where more permits have been issued than there is annually being recharged by nature, and 50 more almost at that point. The philosophy of the water law is everyone should have the opportunity to develop their water, but if they are unable, they should step aside and let someone else use that block of water. Senator Neal argued that the amendment would apply just the opposite. Mr. Newman replied that the State Engineer's responsibility is to protect the existing rights, which means the existing investment and development within a basin.

After further discussion as to the position of the State Engineer, Senator Neal announced that the committee would recess until Monday, January 29, 1979, at 2:00 p.m., and at that time S.B. 13 with the proposed amendments incorporated, would be considered again.

The meeting was adjourned at 4:15 p.m.

Respectfully submitted,



Eileen Wynkoop, Secretary

APPROVED:

  
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Joe Neal, Chairman

PROPOSED CHANGE TO NRS 533.380

After NRS 533.380(1)(c) the following shall be added after the word approval, except as herein provided.

A new 533.380(3) will be added as follows:

The State Engineer, upon approving an application for quasi-municipal or municipal purposes, where the permittee seeks to supply water to an approved and final subdivision as defined under NRS 278.320 shall grant extensions of time in which to place the water to beneficial use upon proper application made annually and with a showing of due diligence and good faith, as follows:

(a) For subdivisions of less than 25 units, the State Engineer shall grant extensions of time, upon proper application and with a showing of due diligence and good faith, in which to place the water to beneficial use for a period of not less than five years past the date set forth on the original permit.

(b) For subdivisions of more than twenty five units, but less than seventy-five units, the State Engineer shall grant extensions of time, upon proper application and with a showing of due diligence and good faith, in which to place the water to beneficial use for a period of not less than seven years past the date set forth on the original permit.

(c) For subdivisions of more than seventy-five units, the State Engineer shall grant extensions of time, upon proper application and with a showing of due diligence and good faith, in which to place the water to beneficial use for a period of not less than ten years past the date set forth on the original permit.

The State Engineer may consider extensions of time beyond the time limits set forth herein for proving beneficial use, provided that the Permittee can show proof of due diligence. The State Engineer may require such proof and evidence, as may be necessary to show good faith and diligence in perfecting the permit.

This statute shall apply to all applications and permits presently on file in the State Engineer's Office, except where, upon a finding by the State Engineer that the granting of an extension of time would seriously jeopardize the resource or prior existing water rights and thereby endanger the health and welfare of the existing water users.

The existing 533.380(3) shall be changed to Subsection (4).