The meeting was called to order at 2:05 p.m. Senator Neal in the Chair.

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

EXCUSED: Senator Lamb

OTHERS PRESENT: Senator Carl Dodge, Western Nevada Senatorial District
Mr. Jac Shaw, Administrator, Division of State Lands
Mr. William Newman, State Engineer
Mr. Max Johnson, Vice President, Johnson Development Company
Mr. Michael Eckstein, County Engineer, Lyon County
Mr. Francis E. DuBois, N.I.C., State Mine Inspector
Mr. John S. Miller, Public Relations Director, Kennecott Copper Corporation

Senator Neal stated that, there being a quorum present, the committee would hear testimony on S.B. 248, S.B. 266 and A.B. 139.

Senator Dodge was asked to make a brief statement about S.B. 248 and S.B. 266 since he introduced the bills. He stated that S.B. 248 relates to the Carey Act which was amended by the Legislature last session. The original Act is over 100 years old. He stated that Mr. Jac Shaw would be more qualified to discuss the reasons for the changes in the bill.

Regarding S.B. 266, Senator Dodge stated that he was requested by the Johnson Development Company in Fernley to explore a solution to the problem they ran into while exploring for additional water sources to supply new residential developments in Fernley, including their own. When the Johnson Development Company drilled two wells, they found them to be too high in arsenic to meet the health standards. The problem that this bill intends to correct arises when a well turns out to be unsatisfactory and the applicant has to make a new permit application. There is a waiting period before the state can grant a permit. The waiting period has posed serious problems in that a lot of money has been invested trying to develop the water. Senator Dodge stated that he approached the State Engineer, Mr. Newman, and Mr. Westergard, Director of the Department of Conservation and Natural Resources, to develop a procedure for permitting exploratory wells. They suggested the language in the bill starting on Page 9, which would permit them in the case of exploratory wells to write guidelines for a waiver of their regular requirements.

Senator Dodge pointed out that this situation of needing additional water sources would be happening more often in the State and would have a much broader application than just to benefit the Johnson Development Company of Fernley.

Senator Dodge was excused. Senator Neal asked for further testimony on S.B. 248.

S.B. 248 - Clarifies and amends procedure for disposing of Carey Act lands.

Mr. Jac Shaw, Administrator of the Division of State Lands, informed the committee that S.B. 248 is primarily to clean up some language in the statutes, but has 1 or 2 significant changes. The first change is contained in lines 34 - 35 on Page 3, which deletes the reference to the State Engineer being the authorized agent of the State to make desert land selections under the Carey Act. The Division of State Lands has been the agent authorized to make such selections.

Mr. Shaw stated that the only basic addition to the act is in line 44 on Page 3. This provision would give the Division the authority to reject applications that apply to lands that are either in an area where the water availability is not there, or the topography is not good for agriculture. This change will help in the administration of the program, and help the people because they will not have to pay $100 to file a claim on land where it is already known that there is no water, or the water is not suitable for agricultural purposes. He felt his Division should not even have to take such applications.

Senator Neal asked the purpose of the change on Page 4, lines 14 - 19. Mr. Shaw replied that this would be in conformance with the federal Carey Act regulation. It provides that an applicant has to state that he is hoping to get the land for farming. He stated that this provision is necessary because there have been people who have tried to get land for other than agricultural purposes.

Senator Glaser asked how the Carey Act differs from the Desert Claim Act. Mr. Shaw replied that the Carey Act is more restrictive.

Senator Neal closed the hearing on S.B. 248.

S.B. 266 - Provides for waiver for certain exploratory wells of permit to appropriate water.

Mr. William Newman, State Engineer, informed the committee that he concurs with the bill and would not oppose it. He stated that the bill would give him control over exploratory holes in that his office would know where and when they are being drilled, size limits could be set for testing, and they can impose a requirement that the holes be plugged and sealed when the exploratory well has served its purpose. He felt that the State Engineer's office would retain control, yet be allowed to waive the requirement for compliance with the statutes.

Senator Neal asked if the bill would allow a well digger to move from one hole to another if he doesn't strike suitable water without consulting with the State Engineer's office. Mr. Newman replied that the well digger must have a waiver on each hole. The applicant must apply for a waiver with a response in writing to the waiver with certain conditions on it.

Senator Sloan asked Mr. Newman what fact pattern would justify "good cause" for allowing the exploratory wells. Mr. Newman replied that economics would be "good cause" since some developers can not spend too much money drilling wells in an area. Another example of "good cause" for moving to another area for digging would be drilling a well and getting contaminated water. Senator Sloan remarked that this would mean that the first well would always be paid for, so the time frame of waiting as mentioned by Senator Dodge, is more important than economics. He asked what the time frame is for commencing the second well. Mr. Newman replied that after the application is made, notice must be advertised for 5 consecutive weeks, and then there is a period of 30 days to allow protests to be filed. If a dry hole or a contaminated well develops, the applicant must make application to change the location of the hole, and wait the 5 weeks for advertising and 30 days for protest again. Added to that time is office time. It takes time to get a new map prepared showing the location of the existing point of diversion and the proposed diversion. If a dry hole is hit again, the applicant must go through the whole procedure again. It would take at least, and at best, 9 weeks.

Senator Sloan asked Mr. Newman if he would concur with the statement that a waiver would not be contemplated unless a well had been drilled and proved to be unfavorable, or if he would contemplate using the waiver in the first instance before the first well was sunk. Mr. Newman replied that he felt the waiver could be used before the first well is sunk. However, the State Engineer would have control over the size of the test well. He would allow only a 6-inch or 8-inch well, which would not be very productive for municipal or irrigation and agricultural purposes. If suitable water is found and the applicant wants to enlarge the hole, he would then apply for a permit and have to go through the 9-week notice process.

Senator Jacobsen asked if this waiver were used by a municipality, and a test well determined that the basin is not water deficient, would that give them a priority over someone who had previously filed and was not given a permit. Mr. Newman replied no, that if someone wanted that priority, they must file.

Senator Faiss asked if there is provision in the law to cap dry holes if they are not successful. Mr. Newman replied that there are no provisions in the law, but there is provision in the Department's rules and regulations. He stated that they have not been very successful in getting compliance because many are being sunk without prior knowledge. The Department is trying to accomplish the capping and plugging because the ground water resource must be protected. Open holes are not only dangerous because of possible injuries, but would allow the surface water to pollute and contaminate the potable aquifers. The Department requires that the plugging and sealing consist of filling with gravel to 50 feet below the surface, and then filling with concrete to the surface.

Mr. Max Johnson, Vice President of Johnson Development Company, spoke in favor of S.B. 248, stating that his company did request this legislation. He informed the committee of the circumstances which his development company experienced which brought about this bill. He stated that his company was drilling wells under an agreement with the County of Lyon to expand the Fernley Utilities' water system. The drilling was done under permits already granted to the county so they already had the permit to appropriate the state water. The problem was the delay time which took a minimum of 90 days from the day that suitable water was found to transfer the point of appropriation to another location. The objective was to give the State Engineer the opportunity to evaluate the situation, and, if he determined there was good cause, to enable him to waive the advertising requirement so that the location of the well could be changed. He stated that in their circumstance, they were not decreasing or increasing the appropriation, but just changing the point from which the water would be obtained.

Senator Neal felt that Mr. Johnson's testimony was different than had previously been indicated as the intent of the bill. Mr. Johnson replied that he was only speaking to Johnson Development Company's situation and felt that the State Engineer has had other experiences in other areas.

Senator Jacobsen asked if the right to appropriate water would move with an applicant to another location. Mr. Johnson replied that was their intent.

Mr. Michael Eckstein, County Engineer of Lyon County, spoke in favor of S.B. 248. His testimony concurred with the testimony of Mr. Johnson. Mr. Eckstein stated that the county recognizes that their water rights are subject to everyone else's.

Senator Neal asked if there is a possibility that the passage of this bill would allow a person to test drill and get potable water, then cap that well and drill somewhere else. Mr. Newman replied that he envisioned the application of waiver to be in the form of a letter, and the State Engineer would respond to that letter of application with considerations on it. Without a permit being issued, or without this waiver, it is unlawful to drill to develop water in a designated basin.

Mr. Francis De Bois, Inspector of Mines,commented that he felt the knowledge gained from exploratory wells may be just as valuable from the standpoint of what it will not produce and the quality of the water as whether a successful well was found. He felt it would be worthwhile to have that information a matter of public record so that sometime in the future when we need these resources and have the technological knowledge to treat the water so that it will comply with quality standards, those wells could be put back on the line.

He felt that another helpful purpose for using these test wells would be to monitor the draw-down effect, or whether the water is being mined out of a closed basin. He felt that when considering plugging and capping the test holes, the bill should give some consideration to the later access of those holes.

Mr. De Bois pointed out that when 6 or 8-inch wells are dug for testing purposes, it is sometimes more difficult to enlarge those holes. He stated that it is easier to drill a larger well because of the equipment available, than to drill a 6-inch well. He felt it would be possible to drill at whatever diameter the driller feels appropriate, but pumping could be restricted from that well in the case of a test well. Under those circumstances, if the well could ever serve a useful purpose sometime in the future, it would be ready to come on stream.

Senator Faiss asked how much more expensive it would be to drill a 14 inch well than a 6 or 8-inch well. Mr. De Boise answered that it would depend on the drilling conditions. He added that today's technology is such that it might not be economical to drill a small hole. As an example, he stated that down-the-hole hammers do not fit in small holes.

Senator Faiss felt there would be a problem if these exploratory wells were not capped. Mr. De Bois felt the wells could be cased down to an appropriate depth necessary to maintain the casement and then capped off.

A.B. 139 - Authorizes inspector of mines to accept and administer certain money and requires certain notification by mine operators.

Mr. Francis De Bois, Inspector of Mines, explained the purpose of the bill. He said that Section 1 contains language proposed by Mr. Frank Daykin, Legislative Counsel, because he felt that the states should have the right under the constitution to adopt regulations so long as they are consistent with the Mine Health and Safety Act of 1977. The language previously stated that the Office of the Inspector of Mines would adopt regulations promulgated by the Secretary of the Interior. The Mine Health and Safety Administration has been transferred from the Department of the Interior to the Department of Labor. Throughout the bill that change is included.

Mr. De Bois further explained that Section 2 would insert the word "conduct" in the reference to development of educational and training programs simply because they have been conducting as well as developing these programs.

Mr. De Bois explained that the next change would allow the Office of the Inspector of Mines to accept and administer grants from the government other than under the Mine Health and Safety Act.

Mr. De Bois stated that Section 3 provides that operators should notify the Inspector of Mines before opening and closing mine operations. This provision has been in their regulations for 4 years, but it was felt that it should be in the statutes. Counselors advising clients of the procedures involved in starting mining operations need access to these regulations and don't have access unless they request it.

He stated that the remainder of the changes in the bill are to correct the references of the Department of the Interior to the Labor Department and from the Mining Enforcement Safety Administration to the Mine Health and Safety Administration.

Mr. John Miller of Kennecott Copper Corporation read from a prepared statement concerning suggestions they would like incorporated in the bill. His statement is attached as Exhibit A.

Senators Sloan and Glaser pointed out that they were hesitant to amend this bill at this point in the session, and asked Mr. Miller if Kennecott would have real problems with the bill as it is until the next legislative session. Otherwise, Senator Sloan suggested incorporating the changes Mr. Miller suggested into a new bill. Mr. Miller stated he would check with his people and report back at the next meeting on Wednesday, March 7th.

Mr. De Bois stated that he has no problems with the first suggestion made by Mr. Miller for confidentiality, and agrees with Mr. Miller's other suggestions.

Senator Neal closed the hearing on A.B. 139.

There being no further business, the meeting was adjourned at 3:20 p.m.

Respectfully submitted,

Eileen Wynkoop
Committee Secretary

APPROVED:

Joe Neal, Chairman

EXHIBIT A

John S. Miller
Public Relations Director
Kennecott Copper Corporation
McGill, Nev. 89318

RE: AB 139

Sec. 3 NRS 512.160 (1)
This section requires the operator to maintain and submit to the Inspector of Mines reports on production, employment, mine activity and status, accidents, bodily injury, loss of life, occupational illnesses, and related data. There is no provision for the treatment of confidential information such as mine production. A clause incorporating the treatment of confidential information should be made part of this section.

Sec. 4 NRS 512.195 (2)
This section requires the Inspector of Mines to furnish a copy of any notice or order issued to the operator and to a representative of the workers, if any. This is in conflict with language presently accepted by the Department of Labor. Representatives of workers should be changed to representatives of the miners.

Sec. 4 NRS 512.195 (3)
This section requires the Inspector of Mines to notify the Mines Safety and Health Administration of the U.S. Department of Labor of any order issued to an operator. AB 139 defines the role of the Inspector of Mines as a state agency, and I question the reason for the close association with the Mines Safety and Health Administration.