

MEMBERS PRESENT:

Chairman Jeffrey  
Vice Chairman Redelsperger  
Assemblyman Dini  
Assemblyman Polish  
Assemblyman Rhoads  
Assemblyman Schofield  
Assemblyman DuBois  
Assemblyman Kovacs

MEMBERS ABSENT:

Assemblyman Mello (excused)

GUESTS PRESENT:

Diane Campbell, Nevada Miners & Prospectors  
Roland Westergard, State of Nevada  
Department of Conservation  
Fred Welden, Senior Research Analyst LCB  
Mr. Bill Newman, State Engineer  
Mr. Ross deLipkow, Attorney  
Mr. George Peek, Nevada Association of Realtors  
Mr. Tom Young, NEAT  
Mr. Jim Hadden, Concepts, Inc.

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The meeting was called to order by Chairman Jeffrey at 3:06 P.M.

A.B. 16

Provides for extensions of time for use  
of appropriated water and for  
registration of certain wells.

Mr. Fred Welden, of the Research Division of the Legislative Counsel, stated that he was on the staff of the subcommittee that did the study on water problems in the state. The subcommittee met seven times throughout the state. There were two points that were made as findings of the study: one being Nevada water laws have been developed over a number of years and that the concepts are basically sound, the second finding was that State Engineers office, which is a division of Water Resources does not have enough financing or staff to adequately do the job that is expected of them.

At this time Mr. Welden began going through AB 16 section by section. There are two sections that raise the fees that are charged by the State Engineers office.

Section One raised the fee for the proofs of appropriation from \$10.00 to \$100.00. This deals with the vested water rights. A person can claim that they have been using water over many years, that they first started using the water prior to 1905 and they have continued up to the present time, that is a claim of a vested water right. These go through the courts to adjudication for proof. The price to file and say you have one of these vested water rights has been \$10.00, the suggestion is to go to \$100.00.

Section Two deals with the municipal and quasi municipal applications for water. The operative portions are Sub-Section C, on page 2, lines

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6 through 13, where it specifies that if a municipal or quasi municipal organization wants to put water to beneficial use they are talking about an area that has filed a subdivision map the State Engineer must give them at least five years to show beneficial use. In the past it has been his discretion to set a time limit up to 10 years for people to show beneficial use of the water, this would say "he must give municipalities or municipal uses at least 5 years."

Sub-Section 4, lines 28 through 41 provides that the State Engineer can give the municipal and quasi municipal uses extensions of time if they don't prove to be beneficial uses. It gives four criteria that he must consider before he grants them an extension of time.

(1) One speaks to them to show good cause why they haven't put the water to beneficial use; (2) another speaks to the number of parcels in the subdivision, for instance if there are a great number of parcels maybe there better reasons why he could not put it to beneficial use; (3) economic conditions could effect his capabilities to put the water to veneficial use, also (4) delays caused by un-anticipated natural conditions could effect his capabilities to put the water to beneficial use.

Chairman Jeffrey wondered if the five year limit would stand and if you did not put the water to beneficial use within the five year limit if you would then fall under the ten year limit and be under the four criteria mentioned. Mr. Welden explained that it was his feeling that a person wouldn't necessarily have to be under these criteria but the criteria would be something for the State Engineer to consider when determining if he would grant the extension or not. Mr. Welden felt that perhaps this might need a legal interperatation to clarify, but he also stated that he felt at a quick reading of the subsection the State Engineer could have the freedom to give any amount of extensions that he wanted to.

Section Three beginning on line 2, page 2 is basically clean up language along with the other language on being able to allow an extension of time.

Section Four page 3 begins the changes in fees. For examining and filing an application for permit to appropriate water the fee used to be \$35.00 the suggested fee increase here is to \$150.00. For examining and filing a fee on a dam or reservoir the fee is \$100.00, in addition to the actual cost of inspection, thus, they could charge inspection plus \$100.00 for a dam or reservoir. The fee for change of a point of diversion remains the same. Next, on line 18 on page 4 the fee would go from \$10.00 to \$200.00. Other changes in this fee section begin on line 31, page 4 a change of fee from \$1.00 to \$10.00 lines 32 and 33 an increase from \$1.00 to \$10.00, for filing an extension of time the fee was increased from \$5.00 to \$25.00 and for filing for an assignment or water deed would be the actual cost of the work up from \$1.00 to \$10.00. Mr. Welden added a note of explanation regarding this proposed fee increase. He stated that the subcommittee asked the State Engineer to provide some figures that he thought would help to make his office self-supporting. He provided these figures with the caveat that number one, they would not be enough to make his office completely self-supporting and number two, he did not necessarily recommend adoption

Date: Tuesday February 10, 1981

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of them. Assemblyman Dini explained that the subcommittee would like to that agency develop more of its own revenue so they could stay more on a self-funding basis.

Section Five on page 5 deals with water for wildlife. It provides that before a person may obtain a right to the use of water found above the surface of the ground, he must insure that access for wildlife to such water will remain available, except that the state engineer may waive this requirement for a domestic use of water.

Section Six deals with forfeiture provisions. Under the existing law once a person has a water right, and neglects to use that water within that right or any part of it within the five consecutive years he loses the right to as much as he has use. Specifically, Page 5, lines 34 and 35, the date April 15, 1967 was included because that was the date that the original forfeiture procedures became effective. There were people that were afraid that this law would be used retroactively and this date being put in the bill would insure that it is not retroactive. It has to be someone that has not used the water for five years after 1967.

Line 50 at the bottom of Page 5 starts the exception and allows that the State Engineer may extend the time necessary to work a forfeiture. For instance, if a person doesn't use his water for five years, if prior to the end of that five years he asks the State Engineer to, and he shows that he has complied with certain criteria, he can be granted an extension of time, rather than be forced into an automatic forfeiture. He can have any number of extensions but no single extension may exceed one year, a criteria that must be considered includes good cause, the unavailability of water at the time, or any economic condition or natural disaster that may have effected this. Again, these criteria are not mandatory but the State Engineers office must consider these factors.

Section Seven page 6 deals with the well drillers records. There was lengthy discussion at the subcommittee of opposition to registering domestic wells. The subcommittee heard a lot of testimony that was, basically, at this time not to set up a full scale system of registering domestic wells, but it was to strengthen the requirements in the law that the well drillers file their information with the State Engineer. Under the existing law they are supposed to be filing the well logs but the testimony was that the well drillers were not complying with this law, all the time. Section 7 would require that the well drillers furnish the well log and record of work to the State Engineers office.

Section Eight deals with the State Engineer permitting dams and reservoirs. Under existing laws the State Engineer must give you a permit before you build a dam on a stream. The problem was with water bodies that were not on streams, for example, a person who wanted to build a settling pond or some other type of a dammed body of water, felt they did not have to get a permit from the State Engineer nor should it be inspected if it wasn't on a stream. This section of the bill is designed to say that all dams and reservoirs are to be permitted by the State Engineer.

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Section Nine speaks to dams and reservoirs designed to go along with Section 8 of this bill, it simply adds reservoirs.

Section Ten page 8. This section is a disclaimer. If a dam or reservoir happens to fail after it has been inspected this says that his inspection was not necessarily a warranty that everything was great and that the dam would never fail.

Section Eleven is the appropriation section. Under (a) it appropriate \$295,325.00 for the employment of 12 additional persons in the State Engineers office. This follows the earlier finding that htis office is to understaffed to handle the work load. (b) It appropriates \$36,000.00 for a computerized system of filing records, which at present are handled manually and are terribly disorganized, computerizing would increase the speed and accuracy of the office information that is being provided. (c) Appropriates \$16,000.00 for the operation of that system.

Mr. Bill Newman was next to testify on AB 16. On Section One proof of appropriation of claims of a beneficial use prior to enactment of the water law he had the following comments. Those claims last year came to 357 and they expect that amount to drop considerably because it is becoming harder and harder for anyone to prove that they used water in or prior to 1905. Thus, the source of a large amount of revenue will be dropping in the years to come.

Section Two nothing was proposed by the State Engineers office on Page 3 regarding fees.

Section Three page 3 line 20, at present there is no fee for filing an application to construct a dam. He stated that perhaps this should go with the dam section of the law under NRS 535.

The rest of Mr. Newmans testimony concurred with the fees and explanations of the fees. His feelings were that the State Engineers office needed these fee increases in order to be more self funding and urged the committee for passage of it.

The committee wondered how long the current fees had been in effect. Mr. Newman stated that he didn't know how long the current fees had been in effect but that they hadn't been changed since the last time there was a need for a printers increase.

Assemblyman Redelsperger asked for an explanation for the drastic increase from \$10.00 to \$200.00 for issuing and recording each permit to appropriate water for any purpose. Mr. Newman replied that some applications take days, even weeks, and many hours of preparation in the field. Filings, investigations, hearings, etc. He presented a chart ( a copy of which is attached hereto marked EXHIBIT "A")

Assemblyman DuBois wondered if the filings, investigations and hearings are incerasing at a rapid rate.

Mr. Newman stated that the increase had been at approximately 300% in the past three years. Protests are also having to be processed in an ever increasing rate. In 1980 there were 825 protests filed

whereas, a normal year usually yields only about 100 protests.

Assemblyman Dini wondered how much revenue would be raised by these increased fees. Mr. Newman stated that he has based figures on 2500 applications per year and that would be 2100 to appropriate and 400 applications to change. One-third of the new applications would be for stock water water at \$100.00 per fee. Mr. Newman stated he had calculated about \$700,000.00 that these fees would generate based on the 2500 applications submitted in a year. Last year's fees only came to about \$68,000.00 to contribute to the state general fund. The budget for this department is \$1,200,000.00.

A.B. 27      Makes administrative changes regarding appropriation of water.

Mr. Bill Newman, State Engineers Office, testified in regards to AB 27 which deletes the requirement for commencement of work.

Chairman Jeffrey asked if this would be a conflict and Mr. Newman stated that it would because AB27 still has a commencement of work in it and they have another bill in the works that deletes the commencement of work. On line 29, page 5, he stated that the State Engineer's concern regarding this language would be establishing a minimum flow on a stream for wildlife.

Assemblyman Rhoads recommended amending this section as he is also concerned about establishing a minimum flow. Assemblyman Dini stated that the intent was not to establish any minimum flow. Mr. Welden stated that the intent was, originally, to speak to springs and seeps but it would speak to streams as well. The subcommittee did not want to get into mandating minimum flows. For instance, if a rancher wants to pipe a spring he could go ahead but leave some access to water as basically non-consumptive water for wildlife.

The committee members felt the language, as it now stands, in this bill, would leave the bill open for challenge. Chairman Jeffrey asked that Mr. Welden while working on amending this bill also work on the language regarding this matter so as to not be establishing a minimum flow.

Mr. Newman, returning to the fee portion of this bill stated that payment of these fees may be a problem area. For example, if the new fees went into effect on July 1, and someone had filed an application to appropriate on June 30 and then his permit fees were due after the 1st day of July, would he then pay the old fee schedule or would he pay the new fee schedule. The State Engineers office has a judicial direction that they have to act on the fees at the time the petition was filed.

Mr. Welden felt this was a legal question and should be given interpretation by Mr. Frank Daykin.

The forfeiture clause was the next section to be reviewed by Mr. Newman. He felt that there would be no problem with this particular clause other than if the forfeiture occurred at the time of the request

for the extension of time. For instance if someone stated that they wanted a year's extension before the forfeiture was declared they would have to determine if the five year limit had already run out. This would probably require a hearing thus increasing the number of hearings now heard by the State Engineers office.

Section Seven Mr. Newman felt this section needed no changes. Mr. Redelsperger wondered if this would be the first step in registering domestic wells. Mr. Newman replied that this was indeed the intention of the committee.

Mr. Newman stated that their budget, in reference to Section Eleven reflects 6 additional employees instead of 12. He felt that after reassessing some of the office priorities that the addition of 6 to the staff would be sufficient instead of 12. This staff addition would be four engineers, one would be an engineering technicologist and one would be a clerical person.

Mr. Ross deLipkow, an attorney specializing in water laws, was next to testify on AB 16 he felt that the fee of \$100.00 for filing a rproof of appropriation of water is excessively high. Sometimes as many as 60 or 70 proofs of appropriation of water would be a definite hardship on many of the ranchers that would be directly effected by this increase. By not being able to pay this fee it might render a person helpless to protect his rights. Mr. deLipkow suggested a compromise fee of \$25.00. He stated that he was totally in favor of the language on Page 2, beginning on line 6 to the bottom of the page. The filing fee of \$150.00 on page 3 he felt was excessive. He felt the two large items, the filing fee and the permit fee should be reduced substantially. On Section 5, page 5 he also felt that this would be a reservation on stream flow. He stated that he would assist in the rewriting of this section if requested, in order to cover the intent. He felt Section 6 is a very complex issue and needs more study.

Mr. deLipkow generally supports passage of this bill with reconsideration of the fees mentioned herein.

Next to testify on AB 16 in behalf of the Nevada Miners and Prospector was Diane Campbell. She stated that she felt that the fees in this bill were excessive, otherwise she supported passage of this bill.

Tom Young, Executive Manager of the Nevada Environmental Action Trust, requested that on page 5 of AB 16, line 5 additional language be added to that paragraph as follows: on line 31 after the comma to read "...if there is justification for this as an existing beneficial use." He felt this would protect the private individual and his investment.

Mr. Jim Hadden, Carson City Public Works Department stated in regards to AB 16 they were in agreement with this bill, except for the permit portion of the bill. This includes the \$200.00 per second foot or each portion of a second foot that is applied for and felt this amount is excessive.

Mr. George Peek, representing the Nevada Association of Realtors, and himself, as a developer and a purveyor of water, testified on AB 16 and stated that he has some experience in quasi-municipal water rights. He stated that he appreciated that at this time there is a recognition for an extended period of time for beneficial use for quasi-municipal purposes. This is especially important now in this economically tight time. His blanket statement concerning the fees in this bill are that they are excessive. He feels that the State Engineers office is indeed in need of additional staffing.

There being no further testimony on AB 16 the public hearing was closed.

Chairman Jeffrey then called a brief recess before hearing the public testimony on AB 27.

Mr. William J. Newman, State Engineer was the first to testify on AB 27. He stated that the changes on AB 27 come in Section 3 on the cancellation clause. He stated that they were not opposed to it as it was written it just provided the appropriator with another level of review prior to being cancelled. He stated it was an attempt by his office to cut down on the number of appeals that his office has to handle. For instance, if the 30 day notice that someone with water rights is due to be cancelled, goes out and it is misplaced or it is not received in time and the instrument is filed a day late, or two days late they are mandated to cancel it and it is not subject to review except by appeal in court but in this bill it provides for additional reasons for reviewing it.

The only other change he mentioned was the removal of the provision for filing of proof of commencement of work and fees.

Mr. DeLipkow stated that he was totally in favor of AB 27 in particular 2, on the bottom of page 2, he stated that losing water rights because the mails were late would carry tremendous consequences to the individual. He felt that this would give the individual a second chance to take care of a simple oversight.

George Peek, Nevada Association of Realtors state that he was in support of this bill also and he concurred with Mr. Newman's remarks.

There being no further testimony on AB 27 the public hearing was closed.

Chairman Jeffrey then called for testimony on AB 28.

Mr. Newman of the State Engineers office was the first to testify. The purpose of AB 28 was to eliminate more paper and possible save the public money. It allows the State Engineers office to reject or cancel an application in a valley or basin that has already similar applications denied. For instance in the Las Vegas Valley where irrigation applications have been denied since 1941 this bill would permit the State Engineers office to deny applications before it goes to publication. It would relieve the person of having to have the publication fee and having to have a supporting map prepared. It would also relieve the State Engineers of alot of office work, from

the time the application is filed clear down to the time of publication.

Mr. Newman's suggestion is that on Page 2, line 42 that which is in brackets be left as presently in the statute. He stated that his office used that narrative quite often in their rulings to appropriate water which specifically does not contemplate the application of water to a beneficial use.

Mr. Newman stated that his language was very important because there are applications that are made for water for a different use than what the stated intention is. It is his feeling that the public should have their due process in being able to protest if they wish to do so.

Assemblyman Dini then wondered about the rationale for the language regarding plugging wells.

Mr. Newman stated that his office had had problems with wells being drilled by unlicensed drillers and they have attempted to get these wells plugged because it is the responsibility of the State Engineers office to protect the resource and when they are not drilled by licensed well drillers they are not properly sealed and are a potential for contamination of the resource. There were some wells in the Las Vegas Valley that had been drilled by unlicensed drillers. The State Engineers office ordered these wells plugged and sealed, the orders were appealed in court and the drillers were given a misdemeanor fine of about \$25.00 and thus had a drill for the sum of the fine, plus the cost of labor and the State Engineers office had no further recourse.

Mr. Ross deLipkow approves entirely for this bill and with the suggestions of Mr. Newman.

Mr. deLipkow also felt the language contained in the brackets starting on line 39 on page 2 should be set forth. He feels that it is necessary in order to keep consistency for the State Engineers Office. For example, he can deny an application only on three grounds: (1) There is no unappropriated water; (2) It would conflict with existing rights; or (3) It would be detrimental to the public interest or a combination of all three.

He agrees with Mr. Newman on the well drilling aspects.

Mr. George Peek wondered if all wells drilled had to be drilled by a licensed well driller. He felt that perhaps it was an invasion of an individual's right to drill his own well as per state specifications.

Assemblyman Redelsperger asked for the language in the statute regarding this matter.

Mr. Newman stated that N.R.S. 534.160, Section reads "No person shall drill a well for water in this state without having first obtained a well drillers license as provided for in NRS 534.140 to 534.170, inclusive." This is interpreted as meaning on private land or otherwise, this is to protect the resource from contamination.



There being no further testimony on AB 28 the public hearing was closed.

BDR 43-197\* Makes certain changes in the Nevada boat act. Chairman Jeffrey asked for a committee introduction on this bill. Mr. Dini moved and Mr. Redelsperger seconded the motion for committee introduction. The Motion carried unanimously. Mr. Mello was absent from voting.

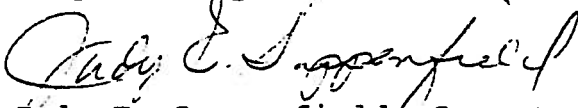
Chairman Jeffrey called for volunteers to be on the sub-committee for the amendments for Mr. Newman's office. Mr. Dini, Mr. Kovacs, and Mr. Rhoads were appointed.

Assemblyman Dini moved for a DO PASS on AB 27, Assemblyman Schofield seconded the motion. The motion carried unanimously with Mr. Mello absent from voting.

Assemblyman Kovacs moved for an AMEND as agreed and DO PASS on AB 28, the motion was seconded by Assemblyman Schofield. The motion carried unanimously with Mr. Mello absent from voting.

There being no further business the meeting adjourned at 5:20 P.M.

Respectfully submitted,

  
Judy E. Sappenfield Secretary

\*A.B. 156

Exhibit "A"

FLOW CHART

APPLICATIONS TO APPROPRIATE OR  
APPLICATIONS TO CHANGE EXISTING RIGHTS

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APPLICATION FILED

Indexing

(Fee - N.R.S. 533.435)

Check for submittal for Publication

(Supporting Map Required)

Return for Correction  
(Ammended Application, Map, etc.)

Publication

(Once a week - 5 weeks - local newspaper)

Protest Period (30 days)

Ready for Action

Field Investigations  
Approval                      Hearings                      Denial

Rulings

Work Ups

Permit Terms

Issuance of permit

Proof of Commencement

Proof of Completion

Proof of Beneficial Use →→→→→

CERTIFICATE

