

**MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES**

**Seventy-ninth Session
March 2, 2017**

The Senate Committee on Natural Resources was called to order by Chair Yvanna D. Cancela at 1:02 p.m. on Thursday, March 2, 2017, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Yvanna D. Cancela, Chair
Senator Mark A. Manendo, Vice Chair
Senator Julia Ratti
Senator James A. Settelmeyer
Senator Pete Goicoechea

STAFF MEMBERS PRESENT:

Alysa Keller, Policy Analyst
Erin Roohan, Counsel
Gayle Farley, Committee Secretary

OTHERS PRESENT:

Jason King, P.E., State Engineer, Administrator, State Engineer's Office,
Division of Water Resources, State Department of Conservation and
Natural Resources
Mike Baughman, Ph.D., Executive Director, Humboldt River Basin Water
Authority
David Rigdon, Sadler Ranch, LLC
Joseph Guild, Newmont Mining Corporation
John Bosta, Private Well Owners Cooperative of Nye County
Kenny Bent
Steven Walker, Truckee Meadows Water Authority; Carson City;
Douglas County; Eureka County

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Andrew Belanger, Las Vegas Valley Water District, Southern Nevada Water Authority
Susan Joseph-Taylor, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources
Chase Whittemore, Nevada Bighorns Unlimited
Andy MacKay, Director, Nevada Bighorns Unlimited
Edwin James, Carson Water Subconservancy District
Anne Macquarie, Sierra Club, Toiyabe Chapter
Jeremy Drew, Commissioner, Board of Wildlife Commissioners
Steve Bradhurst, Executive Director, Central Nevada Regional Water Authority
Howard Watts, Great Basin Water Network
Ernie Adler, Pyramid Lake Paiute Tribe
Tony Wasley, Director, Department of Wildlife
Jack Robb, Deputy Director, Department of Wildlife

CHAIR CANCELA:

We will open the meeting with Senate Bill (S.B.) 43.

SENATE BILL 43: Revises the membership of the Nevada State Board on Geographic Names. (BDR 26-127)

ALYSA KELLER (Policy Analyst):

Senate Bill (S.B. 43) was heard by this Committee February 21, 2017. This bill was brought on behalf of the Nevada State Library, Archives and Public Records Division of the Department of Administration. The bill revises the composition of the Nevada State Board on Geographic Names by adding a representative from the U.S. National Park Service. There were no amendments proposed for this measure and no testimony was offered in opposition to the measure ([Exhibit C](#)).

SENATOR MANENDO MOVED TO DO PASS S.B. 43.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CANCELA:

Legal counsel has informed me that due to the removal of the assessment limitation in section 18, a two-thirds vote on the Floor is required to pass this bill. We will now hear Senate Bill 51.

SENATE BILL 51: Makes various changes relating to the adjudication of vested water rights. (BDR 48-180)

JASON KING P.E., (State Engineer, Administrator, State Engineer's Office, Division of Water Resources, State Department of Conservation and Natural Resources):

Senate Bill 51 is brought before you from our office. I will be reading from my written testimony ([Exhibit D](#)) and summarizing the bill by sections. *Nevada Revised Statutes* (NRS) 533.090 through 533.320 address the process of water rights claims. These statutes have not been updated since the early twentieth century. The amendments we are proposing today are much clearer than what was proposed in S.B. No. 65 of the 78th Session.

Section 1, subsection 2, proposes to change the word "shall" to "may" as a way of becoming more transparent with adjudication requests; however, we are not duty-bound to do this. We are proposing to delete much of the language in section 2, subsection 2. Section 4, subsection 3, is a modernization of old language. Sections 6 through 9, page 3 of [Exhibit D](#), came from a query of our database of vested claims for wildlife. Although some of these claims appeared as vested claims, they might not make it from a preliminary order to determination.

We think sections 10 and 11 need revision and are willing to consider public comments and suggestions. Changes to sections 12 through 16 can be found on pages 4 and 5 of [Exhibit D](#). Section 17 proposes to eliminate NRS 533.110 as discussed in section 2, and we are proposing to eliminate section 18, subsection 4. Water law is a very complex subject, and the adjudication process within our water law is further complicated.

SENATOR GOICOECHEA:

I would like to maintain, "shall" rather than "may." At the point where a petition for adjudication is brought to you, it is clearly a water source issue. In section 1, subsection 2, the language, "commencing on the streams in order of their importance for irrigation," has been deleted. As I understand this, anyone could

petition for adjudication with any water source, even a very small stream. This could simply be a dispute with two people over one water source.

MR. KING:

The language in section 1, "if upon investigation the State Engineer finds the facts and conditions justify it," gives us the discretion whether to enter an order to grant the petition. You are correct, we have been petitioned to do source-specific adjudications, and we have done that on occasion. We have limited means, and our priority is to perform basin-wide adjudications, not site specific, because of the additional resources required.

SENATOR GOICOECHEA:

I agree with your approach, but we still have those small issues and conflicts that occur. You cannot move into full-blown adjudication, which could be a 20-year to 30-year process, depending on the claims that are in place. On those small individual conflicts that have a water rights source in a basin, how are you going to handle that? You cannot ask people to wait until the basin is adjudicated before settling a dispute on the water source.

MR. KING:

We have denied moving forward on adjudications based on those types of conditions. Various claims have been approved when we know they are going to be put in the queue with claims that may not be adjudicated for a decade or two. The best we can do is to hold hearings, perform field investigations, meet with the claimants to better quantify and understand each one of their vested rights and make a decision based on that. However, the claim would always be subject to adjudication and a final decree.

SENATOR GOICOECHEA:

We need to recognize there has to be a mechanism that addresses those smaller disputes. I would like to see something in this bill to address that. I do not want your office hiding behind the fact that you may not have to address a claim until it has been adjudicated, and then have 20 years to dispute something like a small drain flow.

MR. KING:

I appreciate that comment, and it is certainly not our intent. We have a good record of settling these types of issues. Sometimes, someone files a suit in court and we get a decision from the judge. This process is not in NRS, but it is

our practice. We try to work a compromise with all the claimants on the source until an adjudication occurs.

SENATOR GOICOECHEA:

I would like to see language added to the bill such as, "in the absence of adjudication, the State Engineer's Office would attempt to resolve the claim short of any issue that was arising because of the time frame." Something simple like that.

SENATOR SETTELMAYER:

I was just going back to section 1, subsection 2, in relation to the language that has been stricken, "commencing on the streams in order of their importance for irrigation." What would your office use as a determination of importance?

MR. KING:

Irrigation is the largest manner of use for ground and surface waters in the State. However, there are many other uses and there could be a reason for adjudicating a specific basin based on something other than irrigation use. This was part of the reason for striking the language. To answer your question about what we use as criteria, it could be a court order. A perfect example is what is happening in Diamond Valley today in terms of critical management and to the extent that has prompted considerable litigation. Part of this is knowing what is going on in the basin, meetings with the stakeholders, and what is taking place in the courts. It is a number of things.

SENATOR SETTELMAYER:

We do not always agree, but I am willing to trust your judgment based on those court orders. I am concerned about the future and with whoever replaces you. Their emphasis may be quite different from yours. They may not be concerned about agriculture at all. I may be a little cynical because of my experience with a small water lawsuit that lasted for 58 years. It began as a farmers versus miners dispute, but almost became a farmers versus municipalities issue by the time it ended. I know how things change over decades, so I am concerned about the deletion of those words.

MIKE BAUGHMAN (Ph.D., Executive Director, Humboldt River Basin Water Authority):

The Humboldt River Basin Water Authority (Authority) supports S.B. 51 and the effort to modernize statutes. We have two concerns. The first one is in

section 1 regarding the change from “shall” to “may.” Our board would like to keep the original language.

We have provided the Committee with a proposed amendment ([Exhibit E](#)) to section 18, subsection 4. The State Engineer’s Office proposes to raise the cap on costs to administrate services for the surface water resources in the Humboldt Basin. The cap is currently set at 30 cents. There has been a cap in place for many years for irrigation of basins in excess of 200,000 acres. The Humboldt River Basin is the largest surface basin region that is administered by the Division of Water Resources (DWR). There are 670,000 acre-feet of water resources, and this could potentially generate a lot of money on an assessment basis. The situation is getting more complex for us in the Basin in terms of water management and distribution. The cap has been increased 5 times since 1971, the latest being in 2003 when it was increased from 25 cents to 30 cents. Our board voted to seek the proposed amendment to maintain the cap and to increase it from \$.30 to \$1.00. The DWR maintained this should work within their budget for 10 years to 15 years.

The Authority represents five counties primarily located within the Humboldt River Basin. We found out about this bill after we had already voted to raise the cap to \$1.00. This change requires a two-thirds majority vote. I understand there is another bill in regard to raising this assessment from \$.30 to \$1.00. I would suggest that this Committee let the increase be dealt with there and perhaps this bill will no longer require the two-thirds majority vote.

SENATOR GOICOCHEA:

I would like to make clear to the Committee that the Humboldt Basin, for the most part, is decreed. I know we have a lot of work there, especially on groundwater and conjunctive water issues. I represent a lot of the Humboldt area, and it is unfair that this area is being assessed \$1.00, yet no one else in the State is assessed at that same level.

MR. BAUGHMAN:

Our proposal to raise it to \$1.00 does not mean \$1.00 would be charged. This is the maximum amount under the existing statute that can be charged, and it would assessed be over a 10-year to 15-year time frame at best.

DAVID RIGDON (Sadler Ranch, LLC):

Sadler Ranch is fed by two springs and was established in the mid-1800s. The rights to those two springs are undisputed, but they are not adjudicated. We are in support of S.B. 51. However, we do have concerns with one section of the bill and one of the amendments being proposed by the Southern Nevada Water Authority (SNWA) ([Exhibit F](#)).

Our first concern is with section 1 of the bill changing the language from “shall” to “may.” We understand Mr. King’s concern with having a stack of adjudications that are not being acted on. However, we feel this is valuable to him and the Legislature in order to realize what resources are needed to get these claims adjudicated.

We have shared our concerns with the SNWA regarding its amendment to section 12, subsection 1, of the bill. The current law states the State Engineer has to hold a hearing no earlier than 30 days and no later than 60 days. The SNWA has proposed 180 days after the notice goes out. These adjudications are very diverse, from an undisputed single-source adjudication to basin-wide huge-stream system adjudications. We suggest removing that entire subsection and let the State Engineer work with the claimants on determining what is needed to prepare for the hearing appropriately.

JOSEPH GUILD (Newmont Mining Corporation):

Newmont Mining Corporation is in opposition to a section of the bill that has already been discussed. Our position is to leave section 18, subsection 4, of NRS 533.280 intact at 30 cents per acre-foot. Many people do not know that Newmont Mining Corporation has one of the largest ranch operations in the State. We own significant surface water rights on the Humboldt River, and raising this to \$1.00 as proposed by the Authority would have a significant financial impact on Newmont’s ranching operations. Furthermore, as a policy note, as Senator Goicoechea expressed, this is a decreed basin so the management of this river is subject to decree by court in the Humboldt Basin Water Decree.

SENATOR RATTI:

Is there an amount Newmont would support?

MR. GUILD:

I do not have the authority to answer that.

JOHN BOSTA (Private Well Owners Cooperative of Nevada):

I have given you a copy of my testimony ([Exhibit G](#)). I do not support changing the language from “shall” to “may” in section 1, subsection 1. In section 1, subsection 2, I do not support the removing the language, “commencing on the streams in the order of their importance for irrigation.”

Traditional irrigation is being moved to the side for large cities, utilities and municipalities. I do not think this is fair to the ranchers that have been here since the early 1890s.

KENNY BENT:

I understand the reason for this bill but do not support it as written. Filing proofs for prestatutory vested rights can threaten existing owners who do not read the newspaper. This bill only leaves a 90-day window for vested water rights holders to realize the requirement and respond. Large shares of vested water rights are on ranches with no Internet service. This bill also gives discretionary powers to the State Engineer.

The word “may” should be replaced with “shall” to ensure laws are applied equally. The additional expense of a certified court reporter and other costs which will be incurred by the claimant imposes an additional burden to someone contesting the decision of the State Engineer. Historically, this determination of ownership was a judicial function of the lower courts. The notification period should be extended and discretionary powers reigned in because this practice has compounded many of the issues landowners are now facing with water in general.

STEVEN WALKER (Truckee Meadows Water Authority; Carson City; Douglas County; Eureka County):

Truckee Meadows Water Authority, Carson City and Douglas County support the amendment made by SNWA, [Exhibit F](#). Eureka County is neutral, but has concerns regarding notification to the remote ranches that have no access to the Internet. Eureka County also supports the amendment to raise the cap from \$.30 to \$1.00 per acre.

ANDREW BELANGER (Las Vegas Valley Water District, Southern Nevada Water Authority):

I would like to go through our amendment, [Exhibit F](#), with the Committee. We would like to change the language in section 2, subsection 2, paragraph (d),

from "prepared in accordance with" to "depicting information required in" regarding maps. In section 2, subsection 3, we would like to add the language "the date of the last publication of notice may not be less than 30 days prior to the date fixed for the commencement of the taking of proofs by the State Engineer." Our substantial change to section 2 would be in subsection 4 and is noted in our amendment, which would change the time frame from 60 days to 180 days for proofs. Changes to section 5 are mostly a change of language, such as changing the word "statement" to "proof of appropriation." The phrase "point of diversion" to "place of diversion" is the main change in section 5, subsection 1, paragraphs (l) and (j). Earlier, Mr. Rigdon mentioned section 12, which references the 180-day time frame to designate a time and place for the hearing. We are happy to work with the parties regarding this change.

CHAIR CANCELA:

Can you tell us the difference between point of diversion and place of diversion?

MR. BELANGER:

The "point of diversion" is a common term used by the public; however, "place of diversion" is the language that is typically applied in statute, which is why we proposed the change.

MR. KING:

I would like to address the issue of increasing the cap of the assessment. It is not our intention to start assessing \$1.00 the day after the bill passes. This gives us some breathing room over time for maybe ten years. The groundwater basins along the Humboldt River are paying 50 cents per acre-foot versus others at basins that are paying 30 cents. We are the driest State in the Nation, and we have to realize what water should cost here. Our water is inexpensive. We are not trying to gouge anyone; we are just trying to have enough money to run the administration of the system.

SENATOR GOICOECHEA:

Jason, when you opened your presentation, you said you wanted to go back to revisit changes in section 10.

MR. KING:

That is correct. We have had second thoughts about it. I do not have that amendment with me, but if this were moved to work session, we would bring it to the Committee at that time.

SENATOR RATTI:

Could you comment on the notification changes that you are proposing?

MR. KING:

We would be like to be able to use our Internet Website to allow people to download large preliminary orders of determination. We will continue to notice all relevant people by certified mail advising them there is a document on our Website. If they do not have Internet service, they can contact us, and we will send it to them. We are only trying to expand the use of our Website.

SUSAN JOSEPH-TAYLOR (Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources):

Senator Ratti, I think you were referring to Mr. Bent's question regarding NRS 533.110, section 2. Written notice is sent to whomever we can determine from the assessor that has a water right claim. This is also published in the newspaper.

SENATOR RATTI:

That was part of it, but there were others that testified about the amount of time.

MS. JOSEPH-TAYLOR:

I have not seen an adjudication process resolved in less than a year. When it is a very small case, we try to adjudicate it as quickly as possible.

MR. KING:

We are striving to perform adjudications as quickly as possible and attempting to give people enough time to prepare their vested claims. Practically speaking, the time that we allow for filing these proofs is much longer than 180 days. In the instance where there are only 2 claimants, we do not want to wait 180 days for proofs.

SENATOR GOICOECHEA:

How many adjudications do you anticipate per year?

MR. KING:

Currently, our office is involved in exactly 50 statewide adjudications. We have prioritized 16, which are getting most of our attention. We are also supporting

another 35 decrees with about 6 adjudication staff. Unless it is a very small claim on a single source, adjudication will not happen for one year to three years.

SENATOR GOICOECHEA:

I want the Committee to understand that this is a very lengthy process. Adjudications can take up to ten years depending on the issues. Some of these cases can on go for a lifetime.

CHAIR CANCELA:

We will close the hearing on S.B. 51 and get started on S.B. 74.

SENATE BILL 74: Revises provisions relating to water. (BDR 48-178)

MR. KING:

I will be reading from my prepared testimony ([Exhibit H](#)). Senate Bill 74 was prompted by a recommendation from the Governor's Drought Forum. The Forum identified a need to focus on increased information gathering to provide technical assistance to water suppliers, public education, conservation and conservation planning, drought response and resiliency, and conduction water use inventories. This bill is complemented by adding nine new positions to our agency, which has been included in the Governor's *Executive Budget*.

The Forum also discussed the topic of rainwater capture and use of that water for domestic and wildlife, page 2 of [Exhibit H](#). The NRS 533.030 limits the diversion of water in the State to entities that have been a granted water right. The Forum agreed that the water law could be amended to allow for the use of small-scale rainwater capture devices. These small-scale capture devices are commonly known as rain barrels for domestic use and guzzlers, which provide water to wildlife. Assemblywoman Carlton has introduced Assembly Bill (A.B.) 138 to address these two subjects, and we will be working closely with her on that bill.

ASSEMBLY BILL 138: Authorizes the de minimus collection of precipitation under certain circumstances. (BDR 48-445)

Section 2 of S.B. 74 provides the State Engineer with authority to grant extensions of time for filing proof of completion of works of diversion or proof of beneficial use of water under a permit, as seen on page 3 of [Exhibit H](#).

Section 3 is a revision of language, and section 4 states that chapter 540 of NRS is amended by adding provisions set forth in sections 5, 6 and 7. Section 5 authorizes the State Engineer to establish an advisory committee on water planning and drought resiliency. Section 7 adds compliance requirements and sections 8, 9 and 10 add drought resiliency to current water planning statutes. New language has been added in sections 11 through 14, page 4 of [Exhibit H](#).

SENATOR RATTI:

What is the reason for proposing nine new positions?

MR. KING:

Four positions will be placed in the new water planning and drought resiliency section. The other five positions will be used throughout our agency and the State to gather data in terms of pumping levels, water usage, inventories and other data collection.

SENATOR RATTI:

Where is technical assistance and compliance?

MR. KING:

Part of this water planning and drought resiliency section is to help us collaborate with other states' local and federal agencies to collect and assemble information in one place.

SENATOR RATTI:

Are they law enforcement officials?

MR. KING:

No.

CHAIR CANCELA:

I do not see any language to define committee rules or length of terms for this advisory committee.

MR. KING:

You are correct; it was not in this language. This would be left to the discretion of our office. We can work on potential amendments, if this is something you would like to see.

SENATOR GOICOECHEA:

Mr. King, you want to add four employees to work on a committee to determine if we are in a drought. It seems like another committee to tell us we are suffering from a drought. I do not think we need it.

MR. KING:

We have been going through a prolonged drought, and there are many agencies that are collecting data, but it is not centralized. There is no single message that is being sent out about drought resiliency. This came up many times during the Forum. It was their recommendation to have a section of the agency whose only job is to get the message out about drought, gather the latest data, and pursue what the latest technology is with desalination among other issues.

SENATOR GOICOECHEA:

I hope that we will never need this committee.

CHASE WHITTEMORE (Nevada Bighorns Unlimited):

Nevada Bighorns Unlimited (NBU) is in support of S.B. 74. We have also had a look at the proposed amendment from SNWA ([Exhibit I](#)) and are in agreement with them; however, there are a couple of issues we will be working on together. Currently, there are guzzlers out there at the capacity of 18,500 gallons. If you are inclined to put a cap on the capacity of future guzzlers, we would like to see the cap at 20,000 gallons.

ANDY MACKAY (Director, Nevada Bighorns Unlimited):

Nevada Bighorns Unlimited is the largest conservation organization in Nevada. We are made up of about 3,600 sportsmen, sportswomen and conservationists. The SNWA amendment capping guzzler capacity at 5,000 gallons would preclude us from repairing, expanding or building new ones.

EDWIN JAMES (General Manager, Carson Water Subconservancy District):

We are in support of S.B. 74. We think that having an advisory committee and the assistance of this staff would help us provide a better product. It is wet today, but tomorrow can be dry, and we know this is how it works in our State. We also support the rain barrels.

ANNE MACQUARIE (Sierra Club, Toiyabe Chapter):

I have included written testimony ([Exhibit J](#)) and am testifying on behalf of the 5,000 members of the Sierra Club, Toiyabe Chapter. We support S.B. 74;

however, we do not support section 1, subsection 5, paragraphs (a) and (b), of the amendment from SNWA, [Exhibit I](#).

JEREMY DREW (Commissioner, Board of Wildlife Commissioners):

The Commission supports the portion of S.B. 74 that exempts wildlife guzzlers from requiring a water right. There were two issues we discussed while reviewing this bill.

In section 1, subsection 5, paragraph (b), we noted that the Bureau of Land Management of the U.S. Department of the Interior (BLM) and the U.S. Department of Agriculture, Forest Service (USDA FS) were explicitly identified in the language. There are guzzlers located on other government lands that were not identified, including the U.S. Fish and Wildlife Service and the U.S. Department of Defense, as well as private lands that have been developed in cooperation with Department of Wildlife. We understand there is a proposed amendment being offered to resolve this ([Exhibit K](#)).

MR. BELANGER:

I am here to support S.B. 74 with our proposed amendment [Exhibit I](#). We think the term “domestic use” is too broad in section 1, subsection 5, paragraph (a). Domestic use as defined in NRS 534.013 extends to culinary and household purposes. Do you want to allow people to drink and cook with rainwater rather than use it for outdoor irrigation? We think “domestic use” is too broad a term. We are open to finding a term that allows people to use it for indoor replacement of gray water purposes such as flushing toilets.

Section 2, subsection 3, and section 2, subsection 4, paragraph (e), [Exhibit I](#), both reference “... water right is located in a basin that has been officially designated as being in a drought” I do not think the Governor declares drought basin by basin, but by county. Our changes, section 5 through section 9, are based on what we heard at the Forum. In section 13, subsection 2, paragraph (b), we are suggesting the removal of the requirement to quantify each element of the plan and state that in terms of gallons per capita daily. We also have concerns with section 6, subsection 1 of the bill regarding the \$10,000 a day fine.

STEVE BRADHURST (Executive Director, Central Nevada Regional Water Authority):
We are in support of S.B. 74 with special emphasis on section 5 and the creation of the Advisory Committee on Water Planning and Drought. There are a

number of counties that do not have the resources to prepare a water resource plan. It would be helpful if the State could provide them with technical assistance. I think this is definitely the right direction for our water future.

MR. WALKER:

I am representing Truckee Meadows Water Authority, Douglas County, Carson City, Lyon, Storey and Eureka Counties. We are generally in support of S.B. 74. However, all entities would like to replace "planning" with "conservation" in the name of the proposed committee. Developing consistent conservation policies and creating a central record collection point supported by the State Engineer would be a very good policy. All entities support the change in section 13 from conservation reporting in gallons per capita day to acre-feet saved annually.

Eureka County would support a change in language in section 1, subsection 5, paragraph (b) from "does not conflict with any existing water rights" to "conflicting with existing water rights" for consistency. The definition of drought as it appears in the bill is not clear to my clients. I would be happy to participate in a process to define this better.

CHAIR CANCELA:

This question is directed to legal counsel. Is drought defined anywhere in statute?

ERIN ROOHAN (Legal Counsel):

I do not know. I will get back to you with an answer.

HOWARD WATTS (Great Basin Water Network):

We are in support of S.B. 74. We do have concerns about sections 1 and 2 and have addressed them in our written testimony ([Exhibit L](#)). We would also like to see the tribes represented in the membership of the advisory committee.

MR. BOSTA:

I support section 1, and I have submitted my written testimony ([Exhibit M](#)) in opposition to the rest of S.B. 74.

MR. BENT:

I am in favor of the rooftop collection of rainwater and think that water should be captured as soon as possible. Currently, when it rains, the majority of the water ends up being evaporated and never even makes it to the aquifer. This bill

covers three separate chapters of NRS and is excessive. I question the need for an advisory committee to recognize a drought. This could lead to problems with regard to creating regulations that should be a legislative function. I am in support of the county use plan and agree this could help educate counties to protect themselves. I do not support allowing the State Engineer to have the discretion to impose \$10,000-a-day fines. This bill promotes use of effluent and I would caution you to be careful with that issue.

ERNIE ADLER (Pyramid Lake Paiute Tribe):

I am here to address the creation of the advisory committee. Tribes should be considered for membership because they have water rights in this State.

Tony Wasley (Director, Department of Wildlife):

The Department is neutral on this bill; however, we are very pleased to see legislative action formalizing the legality of capturing rainwater for the benefit of wildlife. We would encourage any language that broadens the definition of where a guzzler exists or who builds, develops, or owns that water development for wildlife. Mr. Drew pointed out that currently the BLM and the USDA FS are called out specifically in the bill, but there are other entities that might have ownership or at least land management responsibilities on the land on which this occurs. We do not agree with the SNWA amendment capping the capacity for guzzlers at 5,000 gallons. This change would render approximately 100 existing guzzlers as noncompliant. If the cap must exist, a 20,000-gallon capacity would accommodate the existing units.

SENATOR GOICOECHEA:

I am in complete agreement with the 20,000-gallon cap. It is not really about the storage size or the rooftop for capturing rainwater. You are capturing with the platform. Mr. Wasley, can you tell me where the largest platform can be found in the State?

MR. WASLEY:

The largest surface area we are covering now is in southern Nevada. The size may be 200 feet by 200 feet. The frequency of precipitation is relatively low there, so it requires us to cover a much greater surface area.

SENATOR GOICOECHEA:

In the Ruby Mountains there is a huge guzzler. It is lined in plastic and has a pipeline that comes off the Hagerman snowbank. There is a lot of water there.

This is the type of scenario where someone could get to be abusive and all of a sudden you might start seeing a containment there of 40 acres or more. This could happen in a plastic apron or a rooftop situation and could begin to impact a water source. If we are going to put a limitation on capture, and I am referring to the amendment offered by SNWA, I would be far more concerned with someone putting in a half section of the apron in plastic rather than the storage site.

JACK ROBB (Deputy Director, Department of Wildlife):

In answer to Senator Goicoechea's question, not all of them are rooftop type situations. We do have multiple slickrock guzzlers where we use a rock formation instead of building an apron. One that is named after my father is probably a couple of acres in size. The entire area that drains down goes into a little dam and into a guzzler.

SENATOR GOICOECHEA:

What do you think would be reasonable? I am not opposed to even as much as ten acres.

MR. ROBB:

I will ask our guzzler crew to define which ones are slickrock guzzlers and come up with acreage totals for you.

SENATOR GOICOECHEA:

We are just trying to avoid something down the road. This is not what we have in place now, but we want to ensure that we do not start doing entire drainages.

MR. KING:

It is ironic that we are discussing drought resiliency while newspaper headlines broadcast the unprecedented winter we are having. I think our new climate is prolonged drought punctuated by flooding. We do not know what dry years are around the corner, and we must stay vigilant. The Forum yielded a lot of good information while focusing on solutions. I do not know whether drought declarations are defined in statute. I understand the concern about what an official drought is. There is a Drought Declaration from the U.S. Department of Agriculture, and it is based on what kind of condition the county is in for eight consecutive weeks during the growing season. The 5,000-gallon cap on guzzlers is too small and unreasonable.

SENATOR SETTELMAYER:

With regard to the discussion about guzzlers, it might be a good idea to go forward with the concept of overall gallons and the areas that are covered, or a combination of the two. Guzzlers in very dry areas have a very large surface but may only gather 1,000 to 2,000 gallons of water; whereas, small ones in wetter areas can gather more water. It depends on the area where the guzzler is located.

SENATOR RATTI:

Would it be considered a friendly amendment to add a member representing the tribes to the advisory committee?

MR. KING:

Absolutely.

SENATOR RATTI:

Would the Indian Commission or another body choose the representative? Can you help us with that?

MR. KING:

We would be happy to.

SENATOR GOICOECHEA:

Mr. King, when do you anticipate you would impose this \$10,000 fine? As I look at this bill, I see that this is an advisory committee whose charge is to give direction to amend statutes, if necessary. I do not see a mandate intended to assess a fine of \$10,000.

MR. KING:

To be very blunt, the language that was put in this bill draft is a cut and paste of everything we have in the rest of our statutes relating to water rights. I know a lot of thought was not given to the up to \$10,000 fine, but I do know that \$10,000 would be the cap.

What comes to mind is a situation where a municipality has been warned several times about wasting water. This would be an instance where the fine would assessed. It is not our intention to fine anyone; we do not want to have to collect even \$1.00. This is strictly a compliance issue. The fines that are collected go to the school district where the offense occurred.

SENATOR GOICOECHEA:

That is already an existing law. You technically have the ability to impose that fine without having this advisory committee. This is what people are concerned about. This fine is tucked in this little advisory committee and all of a sudden, nine or ten members say we are going to go after this town, this is my concern. Do you anticipate that this advisory committee could name a basin that should be considered for conservation? Again, there would be no mechanism that I see unless it was a ruling by you, the State Engineer. They could advise you, the Governor, or the Legislature as far as amendments to the law, but I do not see that they have the ability to make the any decisions. I am not seeing in the bill where this advisory committee has the authority as a body to govern a municipality. Am I wrong?

MR. KING:

No, you are not, Senator Goicoechea. This is an advisory committee and their charge is in this bill. I think the sky is the limit in terms of water conservation and drought resiliency. If this Committee has a recommendation that our office ignores, I would expect that someone would go a higher authority to find out why the State Engineer's Office is not taking their recommendations seriously.

SENATOR GOICOECHEA:

I want to clarify there is no force of law in this bill that gives this advisory committee the ability other than to advise and seek remedy. I do not see it in their power to impose the \$10,000 fine.

MR. KING:

You are correct. It is the power vested in the State Engineer's Office.

SENATOR SETTELMAYER:

I would like to go back to Senator Ratti's recommendation of defining a particular member on this advisory committee representing tribal interests. If we are discussing defining one member, we need to define all the members to ensure there is diversity of all interests on the committee. I would be in favor of giving you full discretion or hardly any.

MR. KING:

Thank you very much, Senator Settelmeyer.

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CHAIR CANCELA:

Section 5, subsection 2, breaks down the composition of the membership. I think Senator Ratti's point was to include tribal interests within that committee.

SENATOR SETTELMAYER:

Madame Chair, I do not see anywhere here where it has to contain an agriculturist.

CHAIR CANCELA:

It does say agriculturist.

SENATOR SETTELMAYER:

What I am saying is that once you get into defining one, you create the task of defining all.

SENATOR RATTI:

Are there any population caps on rainwater basins and guzzlers, and is it statewide?

MR. KING:

There are no population caps and it is statewide.

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CHAIR CANCELA:

Being no further discussion we will close the hearing on S.B. 74 and adjourn the meeting at 2:50 p.m.

RESPECTFULLY SUBMITTED:

Gayle Farley,
Committee Secretary

APPROVED BY:

Senator Yvanna D. Cancela, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	8		Attendance Roster
S.B. 43	C	1	Alysa Keller / Policy Analyst	Work Session Document
S.B. 51	D	6	Jason King / State Engineer	Written Testimony
S.B. 51	E	1	Mike Baughman / Humboldt River Authority	Amendment
S.B. 51	F	3	Andrew Belanger / Southern Nevada Water Authority	Amendment
S.B. 51	G	1	John Bosta	Written Testimony
S.B. 74	H	4	Jason King / State Engineer	Written Testimony
S.B. 74	I	8	Andrew Belanger / Southern Nevada Water Authority	Amendment
S.B. 74	J	1	Anne MacQuarie / Sierra Club	Written Testimony
S.B. 74	K	1	Department of Wildlife	Amendment
S.B. 74	L	1	Howard Watts / Great Basin Water Network	Written Testimony
S.B. 74	M	3	John Bosta	Written Testimony