Feb. 17, 2015 SB 65 Workshop

My name is John F. Bosta and I am a private person who owns my land which contains the percolating water in the soil of the land. By definition of a "person" of this act, NRS 533.010, "Person" includes the United States, this State and any political subdivision of this State. As a private person, I am not included in SB 65.

However, my real property, a domestic well which pumps my percolating water is a subject in SB 65. Sec. 3 "Source of surface water or groundwater" includes, without limitation, a stream or stream system. No definition of groundwater is provided in SB 65.

Percolating waters are well understood as being underground waters.
Underground waters have been from time immemorial divided into two general classes, namely: (a) flowing streams, and (b) percolating waters.

Nevada’s bifurcated system of water law has maintained separate groundwater and surface water regimes for over 100 years. In fact, percolating groundwater was held not subject to Prior Appropriation Doctrine by the Arizona Territorial Supreme Court eighty years before Arizona became a State. The Territorial Supreme Court state that "Filtrating or percolating water oozing through the soil beneath the surface in undefined and unknown channels, and therefore a component part of the earth, has no characteristic of ownership distinct from the land itself, and therefore is not subject of appropriation by another, but belongs to the owner of the soil."

The boundaries for the original territory, if they had kept their same size, would make Las Vegas part of Arizona. However, in 1866, the northwestern section was annexed to the state of Nevada, and the territory maintained its current size. The above Arizona Territorial Supreme Court ruling applies to groundwater in Las Vegas and Pahrump.

PERCOLATING WATER WAS DEFINED early on in NEVADA SUPREME COURT in the case of MOSIER v. CALDWELL, 7 Nev. 363 (1872), TO BE THE PROPERTY OF THE LAND OWNER. Percolating Water is a part of the soil. Water percolating through the soil is not, and cannot be, distinguished from the soil itself, and of such water, the proprietor of the soil, has the free
and absolute use, so that he does not directly invade that of his neighbor, or consequently, injure his perceptible and clearly defined rights.

The proposed changes for "domestic wells" in SB 65 are in conflict with the definition of "Percolating Water" defined by **MOSIER v. CALDWELL. NRS 533.0245** State Engineer prohibited from carrying out duties in conflict with certain decrees, orders, compacts or agreements. The State Engineer shall not carry out his or her duties pursuant to this chapter in a manner that conflicts with any applicable provision of a decree or order issued by a state or federal court, an interstate compact or an agreement to which this State is a party for the interstate allocation of water pursuant to an act of Congress.

What the previous legislatures and State Engineers have done is, they have attempted to turn a right into a state granted privilege so that it can either tax it or regulate it. This is a taking under the Taking's Clause of the United State Constitution and has been done without a Condemnation or Immanent Proceeding. This is illegal and a violation of the State Engineer's and the Members of Legislator's Oath of Office, which is to support and defend the Constitution of the United State and the State of Nevada.

I would like to call the member of this workshop to the 1971 Special Planning Report; WATER SUPPLY FOR THE FUTURE IN SOUTHERN NEVADA. Page 35, 2.07(b); "In 1968 about 48,000 acre feet of water was used to irrigate 11,000 acres of cultivated land and to supply domestic water to less than 1,000 people. The most probable population for the Pahrump Valley in year 2020 is 10,000 which would require about 4,500 acre feet per year of water supply. Since the water rights issued already exceed the annual recharge, permits are not being granted to appropriate ground water for irrigation purposes.

On the first day of June, 1970, an order was issued by the State Engineer which in effect eliminates the granting of any irrigation permits, including supplemental irrigation permits, in the designated area of the Pahrump Artesian Basin.

As was seen, the Pahrump Valley ground water basin is in a state of overdraft with withdrawals being about four times the perennial yield. The overdraft will continue if owners of the ground water rights exercise these rights.

The paper water rights especially those termed "over-allocated" for which no wet water in the form of annual recharge exists is fraud on the part of State Engineer's that issued the permits. In short, the bill submitted should
be modified to specifically address the particular circumstance of the fraud. Claiming that "sharing" water with domestic wells owners as the strategy to "bring the aquifer into balance" is not the real purpose of the submitted bills, nor does it "balance" the aquifer. The true purpose is to "cover" the fraud perpetrated by issuing "over-allocated water rights," particularly, those that were issued and retained with full knowledge that no recharge volume existed to back them. (Feb. 11, 2015 Judith Holmgren to Senator Pete Goicoechea)

The State Engineer is attempting to constrict the rights of private owners, who own private wells, by dictating and diminishing how much water they may use and be informing them that he intends to put meters on their wells to monitor their use. However, he has no statutory authority over private wells. Pursuant to the statutes he only has authority over Government created entities, such as the U.S. Government, Public Water Utilities and/or Corporations.

NRS 533.100 (3)(a) The survey and maps shall show with substantial accuracy; the course of the stream. Is it possible for the State Engineer or a Licensed State Water Surveyor to map the underground stream with substantial accuracy? To the best of my knowledge there is no mapped underground stream in the Pahrump Valley.

The use of the words, "Source of surface water or groundwater", should be removed from all sections 3-92 and the original wording replaced. Ground water is not defined.

Respectfully,

John F. Bosta