Dear Committee Members,

After spending the day participating in the Workshop meeting regarding SB 65 and SB 81, my concerns have escalated as opposed to diminishing. There seems to be a desire by some to expedite the passing of these bills without full consideration of the ramifications which may result from such haste.

As a volunteer member of the Basin 162 Groundwater Management Plan Advisory Board, I have a special interest developing tools that will mitigate many of the prior planning and poorly applied discretionary decisions that have led us to the current problems we face. While it is extremely important to be fare and equitable to all parties involved, it is also just as important that we do not open the door to excessive litigation that is likely to ensue without a solid legal foundation in the policies we pursue.

Prior Supreme Court decisions, jurisdictional conflicts, overriding statues and duplication are just some areas that need to be scrutinized closely to avoid too many worms from getting out of the can. Our County is no exception to those experiencing financial difficulties.

Historically, domestic wells have been excluded from regulation by the Legislature except for the allocation of 2 acre feet derived from water percolating through the soil belonging to the property. Currently they are being thrown into the mix without the long standing perspectives, mitigations and considerations which Nevada Water Law has adapted to through over a century of experience, challenges and changing conditions.

The prior appropriation doctrine is now attempting to be applied to domestic wells, which is in conflict in its current form. Many, if not most of the agricultural farms that once dominated this valley have long since abandoned the projects that their water rights were permitted and certificated to. The points of diversion have been changed; water rights have been stripped from the land and sold to various developers all over the valley. Many water rights have been dedicated to small utility companies which lack infrastructure and the means to beneficially serve even a fraction of customers they hold water rights for.

We now have thousands of subdivision lots all over the valley, most of which have never even had a home built on them but under current law enjoy a priority application date senior to the thousands of residents who have lived here beneficially using their domestic wells for many decades. This causes a precarious situation in which the historic residents in this valley could be stripped of their right to water once allocated to them to give priority to a population who does not even exist at this time. This does not appear to be equitable and would likely cause legal ramifications for our county.

Our valley is unique in the fact that it developed sparsely over a large area beyond the economic ability of utility infrastructure to reach the far spans required. The vast majority of current
residents live on domestic wells. The majority of water rights are only paper being held for future speculation by discretionally applied extensions and not actual wet water pumping.

Currently all water rights issued after 1948 are over allocated given a perennial yield of 20,000 afa. Considering approximately 8,000 afa may be flowing out of the basin uncaptured, the priority date could actually be considered around 1943.

Section 4 of SB 81 contains an interesting approach to eliminating some of the over allocated water rights, however the legal and ethical implications are of grave concern and may need further judicial and legislative review before safely implementing.

6. Allow for the voluntary relinquishment back to the source a portion of a groundwater right in order that the remaining, unrelinquished amount would be exempt from the provisions requiring the filing and approval of extensions of time to avoid cancellation and forfeiture and would not be exempt from regulation by priority

At present time the outstanding water rights in Basin 162 are somewhere around 60,000 afa. Currently discussions on the item are suggesting relinquishing 2 water rights to keep 1 in perpetuity. This “could” ultimately allow approximately 20,000 afa of senior water rights to live forever leaving all domestic wells in the status of over allocated.

My legal concern is; regardless if the percolating water belongs to the land or to the public, would this item not imply the ownership of water by the permit holder? If no further filing, beneficial use or extensions are required and there is no possibility of losing the water right permit, how is this different from ownership?

With County lay offs imminent and a short staffed legal department, due diligence is imperative in the tools we apply to our Groundwater Management Plan. I’d much prefer we lean towards caution than haste.

Thank you for your time and consideration.

Sincerely,

Kenny Bent
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