



Private Well Owners Association of Nye County  
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## **Comments for AB 298 April 10, 2017**

Assembly Natural Resources, Agriculture, and Mining  
Room 3142 of the Legislative Building  
401 S. Carson St.  
Carson City, NV

RE: AB 298

Dear Committee Members,

My name is John F. Bosta. I am a lifelong voting Democrat since 1958 and I am the President of the Private Well Owner Cooperative of Nye County. Thank you for the opportunity to comment on AB 298.

The Private Well Owner Cooperative respectfully does not support AB 298. Please vote no on this Bill.

Section 2, ***“Perennial yield” means the quantity of water that recharges annually in a groundwater source of supply when calculated over a period representative of the average long-term conditions of that source of supply;*** of the proposed bill defining “Perennial Yield” is incomplete and insufficient.

The perennial yield is just an estimated number for the quantity. The bill does not establish a cooperative process with clear expectation between Department of Water Resources (DWR) and purveyors to ensure that all relevant aspects of each safe yield estimate are considered to the extent feasible. To ensure that the methods, assumptions and logic used to estimate safe yield are appropriate and are clearly and plainly documented in an engineer’s report. This report should ensure that sufficient information is available to enable the State Engineer’s final decisions adequately address public concerns.

The bill does not define “safe yield” as that maintainable yield of water from a surface or ground water source or sources which is available continuously during projected future conditions, including a repetition of the most server

drought of record, without creating undesirable effects, as determined by the DWR.

Section 3, "[The plan must be in the form prescribed by the State Engineer](#)"; violates the separation of powers Article 3 sec. 1 of the Constitution of the State of Nevada. The State Engineer is an appointed administrator and he cannot legislate by prescribing the form of the plan. This is why the **1913 Water Act Chapter 140** sections 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, and 58 of said act, and each of said sections, **are unconstitutional**: First, as being in violation of the fourteenth amendment to the constitution of the United States; second, as being in violation of article 1, sec. 8, of the constitution of the State of Nevada, and article 3, sec. 1, article 4, sec. 20, article 4, sec. 21, article 6, sec. 1, and article 6, sec. 6 of the constitution of the State of Nevada.

This bill, AB 298, like so many others before the Legislature are trying to include water for domestic purposes using domestic wells into Nevada Water Law. The 1939 Water Act Chapter 178, Assembly Bill No. 215 adopted March 25, 1939, Section 3. "This act **shall not apply to the developing and use** of underground water for domestic purposes where the draught does not exceed two gallons per minute and where the water developed is not from an artesian well."

N.C.L. § 7993.12 Exemption; §3. This act shall not apply to the developing and use of underground water for domestic purposes where the draught does not exceed two gallons per minute and where the water developed is not from an artesian well.

**Under Nevada Law the State Engineer has authority over artesian wells only. He has no power to regulate wells for domestic purposes, these wells are exempt from Nevada water law.**

On July 25, 2014 the Private Well Owners Cooperative (Coop) requested a seat on the Basin 162 Groundwater Management Plan Advisory Committee. However, the request was refused; Domestic well owners are not water permit holders and are not entitled to have a seat.

The Basin 162 Groundwater Management Plan Advisory Committee under the guidance of the State Engineer refuses to consider the Principles of Ownership of Land and History of Water prior to Nevada Statehood.

The territory of Nevada had been created out of the western portion of the territory of Utah above 36° 30' and land below 36° 30' for the territory of Arizona which includes the Colorado River. Utah Territory and Arizona Territory has been a portion of the Mexican cession resulting from the Mexican War of 1845-46. U.S. Brigadier General of the Army of the West,

Stephen Watts Kearney, instituted an interim rule, commonly referred to as "Kearney's Code," over the ceded area pending formal treaty arrangement between the U.S. and Mexico. The Mexican cession was formalized two years later with Treaty of Guadalupe Hidalgo, February 2, 1848.

When the area was ceded to the U.S., the U.S. acquired all ownership rights in the lands which had been previously held by the Mexican government. This included the mineral estate and the then unappropriated surface rights. Indian title, where it existed, remained with the respective Indian tribes. All other private property existing at the time of the Mexican cession, has also been recognized and protected. Kearney's Code also recognized all existing Mexican property law and continued, in force, the laws "concerning water courses, stock marks and brands, horse, enclosures, commons and arbitration", except where such laws would be repugnant to the Constitution of the United States. The Supreme Court of the United States has upheld the validity of Kearney's Code stating that Congress alone could have repealed it, and this it has never been done.

The United States has transferred Federal Land to the State of Nevada by Patents with the understanding that the State of Nevada would sell the land using Nevada Land Patents with the understanding that valuable minerals would be reserved.

The State of Nevada requested and received the Federal 1880 Exchange Act adopted by Congress June 16, 1880:

Congress granted to the Nevada two million acres of land in said state in lieu of the sixteenth and thirty-sixth section of land heretofore granted to the Nevada by the United State, provided that the title of the state or disposed of by said state prior to the passage of this act shall not be changed or vitiated in consequence of or by virtue of this act. The lands herein granted shall be selected by the state authorities of said state from any unappropriated non-mineral public land in said state, in quantities not less than the smallest legal subdivision, and when selected in conformity with the terms of this act, the same shall be duly certified to said state by the Commissioner of the General Land Office, and approved by the Secretary of the Interior.

Congress understood it to be the purpose of the State to attempt to reclaim the desert and sagebrush lands now asks in exchange for its school grants through the inducement of special bounties for sinking of artesian wells to provide surface water for irrigation use, and as this seems to be the only method by which purchasers can ever be found for the most of these lands.

State of Nevada submitted the "Clear List" for State Selected (SS) lands in the following years:

Clear List SS2, May 5, 1883; Clear List SS8, Feb. 3, 1890; Clear List

SS9, Nov. 5, 1890; Clear List SS10, Jan. 8, 1892; and Clear List 15, May 11, 1896.

All of the land in Pahrump Valley Township 20 South, Range 53 East of Mount Diablo Meridian, Nevada is State Selected Land:

Private ownership of land and percolating water in Pahrump, Nevada Issued by SS 2 is 640 acres; SS 8 is 3,760 acres; SS 9 is 5,439 acres; SS 10 is 11,919 acres; and SS 15 is 40 acres for a total of 21,798 acres of land.

The fee title to the above land in Pahrump is State Selected Patents retaining ground water. All other Deeds are Color of Title.

The Nevada Division of State Lands Office issued 94 patents in the Pahrump Valley. Each patent has the following statement:

*To Have and to Hold the same, together with all rights, privileges, immunities and appurtenances of whatever nature thereunto belonging, unto said (person) and to his heirs and assigns forever; provided that all mines of gold, silver, copper, lead, cinnabar and other valuable minerals that may exist in said tract are hereby expressly reserved.*

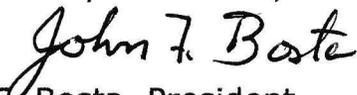
There is no reservation of water in the Federal Land Patent to the State and **no reservation of water in the State Land Patents issued in Basin 162 Pahrump, Nevada.**

The State owns little or no public land in Pahrump, Nevada therefore; the State Engineer has no non-artesian water for public use and no water to appropriate.

**The 1939 Water Act Chap. 178 and the State Selected Land Patents are two of the basic issues included in the Case No. 68448 before the Nevada Supreme Court.**

"Color of title," in property law, refers to a claim to title that appears valid but may be legally defective. Color of title may arise if there is evidence, such a writing, suggesting valid legal title. The courts have ruled that deeds are mere color of title; the actual title to land is secured with an irrefutable instrument, like a land patent. When that land is subsequently conveyed to another owner by a deed, the deed colors the title to show the new owner. Thus, the chain of title from the land patent to the present may include many deeds. The actual title remains with the land patent and lawful deeds show the chain of title to the present landowner. [From Wikipedia]

Respectfully submitted,

  
John F. Bosta, President