



Private Well Owners Cooperative of Nye County
Post Office Box 2073
Pahrump, Nevada 89041-2073
775-537-5412

Comments for SB 271 April 10, 2017

Senate Floor Session
Legislative Building
401 S. Carson St.
Carson City, NV 89701

RE: SB 271

Dear Senator,

My name is John F. Bosta, President of the Private Well Owners of Nye County, representing the domestic well owners.

Please Vote "NO" on SB271. Do not give the State Engineer unprecedented authority over domestic wells.

This bill like so many others before the Legislature is trying to include water for domestic purposes using domestic wells into Nevada Water Law without amending the original 1939 Water Act Chap. 178.

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 pursuant to the 1939 Water Act Chapter 178 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." [Emphasis added]

NCL § 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.

Section 11. "The state engineer, his assistants or authorized agents and the artesian well supervisor, or his assistants, shall have the right to enter the premises of any owner or proprietor **where any well mentioned in this act** is situated at any reasonable hour of the day for the purpose of investigating and carrying out his or their duties in the administration of this act." [Emphasis added]

Section 14. All acts and parts of acts in conflict herewith, and that certain aact entitled "An act to provide a law for the casing and capping of artesian wells, defining the underground waters which are governed by the laws relating to the appropriation of the public waters of the state, providing a penalty for the violation of the provisions of this act, and prescribing the duties of the district attorneys in relation thereto," approved March 24, 2015, being sections 7987 to 7993, both inclusive, N. C. L. 1929, and as amended, approved April 1, 1935, as amended, approved March 24, 1937, be and the same are hereby repealed.

I did a Ctrl F Search for "domestic well permit" on both the 1913 Water Act Chap. 140 and the 1939 Water Act Chap. 178; "the Adobe Acrobat Reader DC has finished searching the document. No matches were found."

During the March 28, 2017 Senate Committee Natural Resources hearing making various changes relating to water for SB271 Senator Pete Goicoechea introduced the bill. "This bill curtails use of domestic wells to conform to priority rights and changes the use to indoor domestic use and watering pet and livestock. I suggest one change, "add mature landscaping" it would unfair for someone spending 40 years developing the landscape and then be curtailed."

The Chair then moved to those who support the bill. The first speaker from the Humboldt Association was given more than 5 minutes to speak without interruption by the Chair.

When the Chair finally got to those who oppose the bill in Las Vegas, Mr. Lilly was interrupted at exactly 3 minutes and asked by the Chair to summarize. He asked for the same time as the first support speaker and continued for about 40 seconds when was asked to stop by the Chair.

Why is those who support the bill given more time than those who oppose the bill?

Finally the State Engineer provide testimony that rebutted the comments of Pete about "Priority" and "entering the property of the well owner" citing NRS 534.130 and NRS 534.110 (6).

NRS 534.110 Rules and regulations of State Engineer; statements and pumping tests; conditions of appropriation; designation of critical management areas; restrictions.

6. Except as otherwise provided in subsection 7, the State Engineer shall conduct investigations in any basin or portion thereof where it appears that the average annual replenishment to the groundwater supply may not be adequate for the needs of all permittees and all vested-right claimants, and if the findings of the State Engineer so indicate, the State Engineer may order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted to conform to priority rights. [Emphasis added]

8. In any basin or portion thereof in the State designated by the State Engineer, the State Engineer may restrict drilling of wells in any portion thereof if the State Engineer determines that additional wells would cause an undue interference with existing wells. Any order or decision of the State Engineer so restricting drilling of such wells may be reviewed by the district court of the county pursuant to NRS 533.450.

[10:178:1939; A 1947, 52; 1949, 128; 1955, 328] — (NRS A 1993, 2641; 2001, 553; 2011, 1385)

NRS 534.130 State Engineer, assistants and Artesian Well Supervisor authorized to enter premises to investigate and carry out duties. The State Engineer, or the assistants or authorized agents of the State Engineer, and the Artesian Well Supervisor, or the assistants of the Artesian Well Supervisor, shall have the right to enter the premises of any owner or proprietor where any well mentioned in this chapter is situated at any reasonable hour of the day for the purpose of investigating and carrying out their duties in the administration of this chapter.

[11:178:1939; 1931 **NCL § 7993.20**]

NCL § 7889.20. ENTERING PREMISES FOR ADMINISTRATIVE PURPOSES; § 11.

The state engineer, his assistants or authorized agents and the artesian well supervisor, or his assistants, shall have the right to enter the premises of any owner or proprietor where any well mentioned in this act is situated at any reasonable hour of the day for the purpose of investigating and carrying out his or their duties in the administration of this act.

NRS 534.080 Appropriation of underground water for beneficial use from artesian, definable aquifer or percolating water: Acquisition of rights under chapter 533 of NRS; orders to desist; dates of priority.

3. Except as otherwise provided in subsection 4 and NRS 534.180, the date of priority of all appropriations of water from an underground source mentioned in this section is the date when application is made in proper form and filed in the Office of the State Engineer pursuant to the provisions of chapter 533 of NRS.

4. The date of priority for the use of underground water from a well for domestic purposes where the draught does not exceed 2 acre-feet per year is the date of completion of the well as:

(a) Recorded by the well driller on the log the well driller files with the State Engineer pursuant to NRS 534.170; or

(b) Demonstrated through any other documentation or evidence specified by the)

[9:178:1939; A 1947, 52; 1943 **NCL § 7993.18**] — (NRS A 1957, 718; 1967, 195; 2007, 843)

NCL§ 7993.18. APPROPRIATION OF WATER—ORDER TO CEASE UNLAWFUL USE—DATE OF PRIORITY; § 9. A legal right to appropriate underground water for beneficial use by means of a well, tunnel or otherwise that was drilled, bored, or otherwise constructed subsequent to March 22, 1913, can only be acquired by complying with the provisions of the general water law of this state pertaining to the

appropriation of water. In an area within which the state engineer is supervising distribution of water from underground source as in this act provided, the state engineer may, upon written notice sent by registered mail, return receipt requested, advise the owner of a well who is using water therefrom without a lawful permit to cease using such water until he has complied with the laws pertaining to appropriation of water. If said owner fails to initiate with thirty days from the date of such notice he shall be deemed guilty of a misdemeanor. The date of priority of all appropriations of water from an underground source, mentioned in this section, is the date when application to made in proper form and filed in the office of the state engineer pursuant to the general water laws of this state.

It is my understanding that a Revised Nevada Code (NRS) is the provisions of any law or statute which is reenacted, amended or revised, so far as they are the same as those of prior laws, shall be construed as a continuation of such laws and not as new enactments. If any provision of a law is repealed and in substance reenacted, a reference in any other law to the repealed provision shall be deemed to be a reference to the reenacted provision. (See NRS 0.020 Added to NRS by 2003, 2094)

"The Nevada Revised Statutes version of the statutes do not contain the enacting clause. "The enacting clause of every law shall be as follows: 'The people of the State of Nevada, represented in Senate and Assembly, do enact as follows,' and no law shall be enacted except by bill." Nev. Const. art, 4, § 23. The Nevada Supreme Court has interpreted this Constitutional provision to mean an enacting clause must be included in every law created by the Legislature and the law must express on its face "the authority by which they were enacted." State v. Rogers, 10Nev. 250, 1875 WL 4032,7 (1875). The Court further found that nothing can be law that is not introduced by the very words of the enacting clause, Id. at 256.

However, while it is well established that the laws of Nevada must include an enacting clause, the Nevada Revised Statutes do not have the same requirement, as they are not laws enacted by the legislature. Instead, the Nevada Revised Statutes consist of *previously enacted laws* which have been classified, codified, and annotated by the Legislative Counsel. See NRS 220.120. Thus, the reason the Nevada Revised Statutes are referenced in criminal proceedings is because they "constitute the official codified version of the Statutes of Nevada and may be cited as *prima facie* evidence of the law." NRs 220.170(3) [emphasis added]. Further, the content requirements for the Nevada Revised Statutes, as laid out in NRS 220.110, do not require the enacting clause to be republished in them. See NRS 221.110. Therefore, the lack of an enacting clause in the Nevada Revised Statutes does not render them unconstitutional." [Steven B. Wolfson, Clark County District Attorney].

WATER IS LIFE, without water from my well I cannot live in Amargosa.

Respectfully submitted,

John F. Bosta, President