

**BASIN 162 GROUNDWATER MANAGEMENT  
ADVISORY COMMITTEE**

**MEETING MINUTES**

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**January 12, 2015 – 9:00 AM  
BOCC Chambers, Pahrump, NV**

Regular Members: Gregory Hafen II – Chair  
Gregory Dann– Vice Chair  
Lenny Badger  
Wendy Barnett  
Kristian Bentzen  
Walt Kuver  
Mike Floyd

Alternate Members: Kenny Bent  
Judith Holmgren

Legal: Marla Zlotek

Finance: Amy Fanning

Staff: Darrell Lacy  
Oz Wichman  
Levi Kryder  
Teddi Osburn

Acronyms: AG - Attorney General  
AVSTP - Amargosa Valley Science & Technology Park  
BOCC - Board of County Commissioners  
BOR - Bureau of Reclamation  
CSWP- Community Source Water Protection  
CNRWA - Central Nevada Regional Water Authority  
DOA - Department of Agriculture  
DOI - Department of Interior  
EPA - Environmental Protection Agency  
GID - General Improvement District  
GM - General Manager  
GWE- Groundwater Evaluation Grant  
GWMP – Groundwater Management Plan  
HUD - Housing and Urban Development  
IRWMP - Inter Regional Water Management Program  
MOU - Memorandum of Understanding  
NTS - Nevada Test Site  
NCWDGB - Nye County Water District Governing Board  
NRWA – Nevada Rural Water Association  
NWRA - Nevada Water Resources Association  
RFP - Request for Proposals  
RNWA - Rural Nevada Water Authority  
ROW - Right of Way  
SNWA - Southern Nevada Water Authority  
USDA - United States Department of Agriculture  
UGTA - Underground Test Area  
USGS - United States Geological Survey  
WD - Water District

*Mission Statement: "To create an equitable groundwater management plan for the Pahrump Basin and the Pahrump Community that balances water supply and demand today and for the future."*

## **BASIN 162 GROUNDWATER MANAGEMENT PLAN ADVISORY COMMITTEE**

1. **(00:00:00) Call to Order – Pledge of Allegiance**
2. **(00:00:46) Roll Call – Present:** Gregory Hafen II, Greg Dann, Walt Kuver, Kristian Bentzen (Mike Floyd and Lenny Badger joined the meeting after it had already commenced.) **Absent:** Wendy Barnett
3. **(00:01:10) General Public Comment (first): Three-minute time limit per person. Action will not be taken on the matters considered during this period until specifically included on an agenda as an action item.**  
Paul Cichocki noted that large scale pumping of water for agriculture use has had a negative impact upon water levels in the southern end of the valley. He proposed that there be a moratorium placed upon new large scale development and agricultural operations in the basin until further studies are performed to determine the exact amount of water that may be available for future development. (At this time Lenny Badger joined the meeting.)
4. **(00:04:50) Approval or Modifications of the Agenda for the Groundwater Management Plan Advisory Committee Meeting of January 12, 2015.**  
No modifications
5. **(00:05:04) For Possible Action – Approval of Minutes for December 8, 2014**  
Lenny Badger made a motion to approve the minutes for December 8, 2014. Kristian Bentzen seconded the motion. The motion was approved with a vote of 5-0 in favor.
6. **(00:05:40) Correspondence and Announcements**  
Greg Dann related that he had met with PUC management at the Las Vegas Office and noted that they wished there was more interaction between them and the Town of Pahrump. Mr. Dann felt that people at the PUC were very open and informative. He then discussed some of his static water level measurement findings.
7. **(00:08:29) Ex-Parte Communications and Conflict of Interest Disclosure Statements**  
None
8. **(00:08:38) For Possible Action – Presentation, discussion and possible decision regarding items considered for inclusion in the Basin 162 Groundwater Management Plan. Prioritization and implementation will be considered as well. There may be additional presentations by staff or committee members. (Continued from December 8, 2014)**  
Gregory Hafen thanked members for compiling their priority lists and also thanked staff for organizing that information. Mr. Hafen related that they will start addressing the issues based upon how many members included that item on their list, starting with the most frequently chosen items. With that in mind, the first item to be addressed was:
  1. **C-6 / Adopt a conservation plan -** Greg Dann agreed with conservation. Lenny Badger felt that it would be one of the easiest items to implement. Darrell Lacy related that he would like additional discussion as to what might be included in a plan since conservation can mean different things to different people.

During public comment John Bosta paraphrased a letter that he wished to be presented to the committee. (See attached.) His letter dealt with the definition of a “taking” as it applies to domestic wells. He related his concerns about potential water-banking by the local utility companies. Gregory Hafen noted that Mr. Bosta’s presentation was not related to the current topic of debate and asked him to tie his discussion to adoption of a conservation plan.

Walt Kuver felt that there was a need for a very clear, concise explanation of the long term problem in order for citizens to take water conservation seriously. Everyone needs to participate in order to achieve the desired result. Greg Hafen felt that a conservation plan would primarily impact future development.

Lenny Badger made a motion to include C-6, the adoption of a conservation plan, in a list of the top 10 priority items to be addressed in a Groundwater Management Plan. Walt Kuver seconded the motion. Mr. Kuver stressed that a conservation plan should include all water users in the basin. Kristian Bentzen would not vote for a plan that has not yet been written. Greg Dann thought that at this time the proposal was too broad, even though he feels that conservation is important. Greg Hafen emphasized that specifics of a plan are not being considered at this time.

The motion passed with a vote of 3-2 in favor. Nay votes were by Kristian Bentzen and Greg Dann.

2. **C-16 / Aggressive water education program -**

Walt Kuver stressed that the “key” word here was education. Paul Cichocki thought that agriculture water users were the big “wasters” and needed education. Kenny Bent wished to have information made available to the public regarding the operation and maintenance of septic systems. Gregory Hafen agreed. Dwight Lilly suggested that an educational program presented on the local TV channel may be a way to relay information to the public. There was other discussion by members of the public about protecting water use rights of the domestic well owner. (Mike Floyd joined the meeting at this time.)

Walt Kuver felt that education was needed in order for the public to support expenditures that may be required to solve the problem. Kristian Bentzen thought that there was a need to educate the “farmers” to make them more productive and use less water. Mr. Kuver thought that water should be moved from the “fan” down to the valley floor to help replenish the valley aquifer. Gregory Hafen agreed that education would be at minimal cost to taxpayers.

Kristian Bentzen made a motion to include C-16, the inclusion of an aggressive water education program, in the top 10 list of priority items to be addressed in a Groundwater Management Plan. Lenny Badger seconded the motion. The motion was approved with a vote of 6-0 in favor.

3. ~~**M-1 / Water Rights – Retire water rights through purchase**~~

Walt Kuver felt that purchasing paper water rights that have no real water to back them was a bad idea since they are essentially worthless. Other members were concerned about the financial burden that may be placed upon taxpayers. Gregory Hafen felt that this was a good opportunity to get some of those rights off the books. John Bosta cautioned the

committee about purchasing unperfected water rights. Bill Clark noted that a lot of the water rights sitting on the books are agricultural and were originally allocated to farmers at no cost. He commented that many water rights on the books are already allocated to subdivisions and cannot be relinquished. Dwight Lilly suggested that for future development the county could require more water to be relinquished than is now required, in order to remove extra paper water rights from the books. There was discussion about proving beneficial use and banking of water rights which can lead to inflated values and speculation for profit. Others felt that there should be a moratorium on all building. Champ Roach noted that by letting paper water rights sit quietly on a shelf and not require PBU's there would not be any incentive to waste water in order to remain compliant. Also, the public needs to be educated about the benefits of using treated effluent as a source of usable water. Judith Holmgren felt that allowing large lakes to be developed should be reconsidered due to the quantity of water lost through evaporation.

Lenny Badger made a motion to include M-1, the inclusion of water right retirement through purchase, in the top 10 list of priority items to be addressed in a Groundwater Management Plan. Mike Floyd seconded the motion. There was a brief discussion by members. The motion failed with a deadlocked vote of 3-3. The motion was modified to also include purchasing water allotments from domestic well owners. Lenny Badger made a motion to include the additional language. Mike Floyd seconded the motion. Kristian Bentzen questioned how one would go about buying back domestic well allocations. The motion failed again with a deadlocked vote of 3-3.

~~3. **C-9 & 10, Combined / Removal of high water consumptive vegetation and incentives to replace high use water fixtures**~~

Greg Dann felt that this plan would yield minimal results with regards to solving the current water problem. Walt Kuver thought this may be something to address in the future. There was some discussion about incentives to replace turf grass and water features.

Lenny Badger made a motion to include C9 & 10, the removal of high water consumptive vegetation and incentives to replace high use water fixtures in the top 10 list of priority items to be addressed in a Groundwater Management Plan. Gregory Hafen seconded the motion. The motion failed with a vote of 2 ayes and 4 nays. Gregory Hafen and Lenny Badger both voted aye.

3. **E-1 / Future Domestic Wells – Require meters on all new domestic wells**

The committee had no comment on this issue. Public members expressed concerns about requiring meters on domestic wells. Many felt that it would be in violation of a citizen's rights. Walt Kuver explained that metering can supply important data which reveals the amount of water that is actually being used by domestic well owners. This leads to a better understanding of the state of the basin. Greg Dann emphasized that this requirement should only be for new wells.

Walt Kuver made a motion to include E-1, the requirement for water meters on all new domestic wells, in the top 10 priority list of items to be addressed in a Groundwater Management Plan. Lenny Badger seconded the motion. The motion passed with a vote of 5-1 in favor. Kristian Bentzen cast the only nay vote.

4. **H-2 / Water Reuse - Spread RIB's: Identify benefits, costs and rights of way; target RIB locations**

Walt Kuver felt that RIB's would provide the most benefit when placed on the valley floor. Gregory Hafen noted that cost analyses should be considered when choosing locations. One member of the public was in agreement while another had concerns about the potential for contaminants to enter the aquifer through RIB's.

Lenny Badger made a motion to include H-2, building RIB's at targeted locations on the valley floor in a top 10 priority list of items to be addressed in a Groundwater Management Plan. Walt Kuver seconded the motion. The motion passed with a unanimous vote of 6-0 in favor.

**5. J-2 / Utility Companies – Allow utility companies to put in backbone infrastructure with PUCN approval in order to reach lots that have no services**

Gregory Hafen related that this item was included primarily to address the issue of “zombie” subdivisions and thought that utility companies would pay for their own pipeline extensions. There was public comment regarding who pays for pipeline extensions and at what point a lot may be required to hook-up to a utility when a pipeline is built nearby. There was other comment about requiring larger lot sizes for future subdivisions. John MacLaughlin commented that a utility company would pay for the main trunk-line in the road, but it was up to the customer to pay for lines to hook to their home. Kristian Bentzen questioned if someone not in a tariff area might be required to hook-up to the main line if it happens to be extended near their home. Greg Hafen noted some water and sewer lines only serve as a route to transport water/effluent to a water treatment plant and cannot provide service to individual homes. One member of the public questioned how this proposal could help decrease water usage. There was continued discussion about the logistics of connecting homes to a utility service especially in the “zombie” subdivisions. Dave Caudle commented that there is state law that requires a home owner to connect to utility service that is nearby should an individual's well or septic fail. Walt Kuver noted that this would offer an option to people who may not be eligible to drill wells on smaller lots. Greg Dann had fears that the public may have to pay for pipeline extensions. Mike Floyd commented that the process to allow people to connect to a utility when they are not included in a tariff area needs to be streamlined by the PUC, especially in an emergency situation like when a well goes dry.

Mike Floyd made a motion to include J-2, allowing utility companies to develop backbone infrastructure with PUCN approval in order to reach lots that have no service, in the top 10 list of priority items to be addressed in a Groundwater Management Plan. Greg Hafen seconded the motion. The motion was approved with a vote of 4-2 in favor. Kristian Bentzen and Greg Dann both voted nay.

**6. K-1 / Look at development agreements – changes and future development agreements and require water mitigation**

Walt Kuver related that he would like to see some of the existing development agreements for subdivisions that have not yet been built be reviewed for the purpose of getting larger lot sizes and increased water mitigation. There may be clauses in some agreements that would allow the county to back-out based upon water availability. All agreements must be reviewed for density and water use. Lenny Badger thought this step was unnecessary as most of these subdivisions will never develop before the agreements expire with time and the tenants of the Groundwater Management Plan will cover the rest of the issues. Mr. Kuver was concerned with subdivisions that are currently under development.

During public comment, Kenny Bent suggested that the location of big production wells was the most important factor affecting water levels and not where a particular subdivision may

be located. He was in favor of letting existing agreements run-out. Upon questioning, Gregory Hafen related that the only item to be reviewed in agreements would be water mitigation and not extensions of time.

Walt Kuver made a motion to include K-1, the review of existing development agreements with regards to water mitigation, in the top 10 list of priority items to be addressed in a Groundwater Management Plan. Greg Dann seconded the motion. The motion was approved with a vote of 4-2 in favor. Lenny Badger and Gregory Hafen voted nay.

7. **N-8 / Growth Control**

Greg Dann felt that there needs to be a growth plan for this community. Walt Kuver explained that a staged growth plan should be implemented and that we need to understand how to grow in a sustainable way with respect to water. The new Master Plan update is a first step in that direction. Upon questioning, Mr. Kuver related that there needs to be investigation into how other communities have dealt with this subject. Lenny Badger felt that increasing water relinquishment will lend itself to controlling growth as water right inventory diminishes.

During public comment, members expressed concerns about allowing more growth. Another felt that water importation was a form of “stealing” water from somebody else, and that fan water eventually works its way down to the valley floor so there was no need to spend money to pipe it down. Terry Nelson questioned whether the City of Las Vegas had stolen water from the valley thereby creating the dry lake bed.

Greg Dann made a motion to accept item N-8, growth control, as part of the Top 10 priority items to be addressed in a Groundwater Management Plan. Kristian Bentzen seconded the motion. The motion was approved with a vote of 4-2 in favor. Gregory Hafen and Lenny Badger voted nay.

It was decided that the topic of Water Funding would not be addressed at this time. The committee next took a break for lunch, then, re-adjoined after the break to continue addressing the Top 10 list of priority items.

8. ~~**F-6 / Grandfather status be extended to all existing well owners**~~

Greg Dann supported this concept. Lenny Badger felt that we did not have any authority to enforce such a policy. Mr. Dann explained why this was so important to current domestic well owners. Mr. Badger noted that domestic well owners must also be part of the solution and not be given a free pass. Gregory Hafen related that the current 11,000 domestic wells, using 2 AF per year (22,000AF), could potentially take more water from the basin than that of the annual perennial yield of 20,000 AF. The DWR has placed domestic wells as number 1 priority item needing to be addressed when seeking solutions to the problem. There was discussion about domestic wells being addressed in the current SB 81 proposal. Mr. Badger noted that water right holders are now being required to dedicate more water during development which contributes to alleviating the crisis.

Kenny Bent related how modeling the aquifer would give a realistic picture of water level trends in multiple years throughout the valley. With this knowledge we may not need increasingly restrictive regulations and rules for water users. He felt that “paper” rights are not a threat to the basin at this time since they are not being but they may be in the future. A model would be used to detect negative trends.

Greg Dann made a motion, with regards to item F-6, that policy be made stating that we respect the right of existing well owners to draw water for domestic purposes providing they abide by the law, be included in the Top 10 priority items to be addressed in a Groundwater Management Plan. Kristian Bentzen seconded the motion. Walt Kuver stressed that domestic well owners have contributed vast sums of money to the community by developing their wells, more so than that of water right holders. Gregory Hafen felt that it was counterproductive to exclude any group from being part of the solution. Mr. Badger felt no one should have special protection. The motion failed with a vote of 2-4. Greg Dann and Kristian Bentzen cast the aye votes.

8. **J-3 systems where feasible (Utility companies waive fees for connection and contribute to line extensions, etc. when a domestic well is abandoned)**

Mike Floyd liked the concept but wondered how one could convince utility companies to participate in such a plan. Gregory Hafen felt that the idea benefits the community. There was no public comment.

Mike Floyd made a motion to include J-3, creating incentives to voluntarily connect to public water systems where feasible, as part of the Top 10 priority items to be addressed in a Groundwater Management plan. Lenny Badger seconded the motion. Greg Dann felt that this issue had value but should not be included in the list of priority items. The motion passed with a vote of 4-2 in favor. Kristian Bentzen and Greg Dann voted nay.

Following the vote there was discussion among members regarding other items that should be included in the Top 10 priority items. The consensus was that Item N-6 should be considered next.

~~9. **N-6 / Hire an administrative water manager for Basin 162**~~

Walt Kuver felt that it was premature to address this topic before a plan was in place. Gregory Hafen felt that inevitably someone will have to be hired. During public comment, Kenny Bent related that there was a need for someone to pull all of this information together and keep in a centralized location. There was discussion about how this position would be funded. Greg Dann thought that there should be an acre foot tax placed upon water rights. Walt Kuver noted that the parcel fee currently charged to landowners could be increased in order to cover rising costs. Dwight Lilly felt that the BOCC could figure out funding after the plan was formulated. He noted that all property owners must pay a fair share in moving toward resolution as nothing was more important than protecting our water resources. Mr. Dann felt that the county needed a point person that would be the authority on Basin 162.

Kristian Bentzen made a motion to include N-6, hire an administrative water manager for Basin 162, in the Top 10 list of priority items to be addressed in the Groundwater Management Plan. Greg Dann seconded the motion. The motion failed with a deadlock vote of 3-3.

9. **H- 4 & 5 / Build water detention basins with infiltration; aquifer storage and recovery and injection wells**

Gregory Hafen suggested that items H-4 & 5 be combined for discussion purposes. There was no public comment. Lenny Badger made a motion to combine items H-4 & H-5 for discussion. Walt Kuver seconded the motion. The motion to discuss passed unanimously with a vote of 6-0.

Earlier in the meeting, Walt Kuver noted that 85% of wells in the valley are currently declining. He noted that the current Leising Geoscience Study may be able to identify the most beneficial area to place an injection well. Recharge of the aquifer will benefit wells that continue to decline. Lenny Badger felt that detention basins gave a greater return for the dollar spent

There was no comment from the committee. Members of the public discussed how storing run-off water can help lessen the impact of a drought. Treated effluent can be reused time and again. Retention, reuse and storage should take top priority. Another public member wondered if something like this would be cost effective. Greg Dann related that Las Vegas is currently utilizing water that has been stored underground. Kristian Bentzen liked the idea of capturing water that would normally be leaving the valley when it drains toward California. Gregory Hafen related that redistribution of water throughout the valley needs to be thoroughly studied before decisions can be made.

Walt Kuver made a motion to include H-4 & 5, which includes: the building of water detention basins, aquifer storage and recovery and injection wells, in the Top 10 list of priority items to be addressed in the Groundwater Management Plan. Lenny Badger seconded the motion. The motion passed with a unanimous vote of 6-1 in favor.

There was discussion about Item D-5 when Oz Wichman requested that language be changed from boundary line adjustments to reversionary maps. Greg Dann stressed that by merging lots, only one domestic well could be drilled instead of two. Gregory Hafen requested that UICN be removed from the item as nobody knows if there are any fees charged by UICN. Then, Mr. Wichman related that this idea is already being moved forward by the Water Board from a different angle that includes purchasing delinquent tax parcels.

Mr. Wichman suggested that the committee consider of J-13 which deals with banking of water rights. He went on to discuss the proposal for a new county regulation that calls for increasing relinquishment of water rights in a 3/1 ratio. This requirement could also be applied to a plan for "banking" of water rights: 1 right goes in the bank which the owner retains indefinitely, and 2 rights go back to the basin never to be used. This proposal would have to be presented to the state in a BDR. As a result PBU's would no longer be required and owners are not forced to waste water every 5 years. This method could remove a lot of the over allocated water rights from the books.

One member of the public had concerns about people speculating in water rights for profit. Mr. Wichman noted that once water rights are relinquished they are gone forever. Volunteer banking of water rights will not solve the entire problem but could be part of a solution. It will lower the overall pumpage inventory of the basin. This could potentially benefit both the small owner and large developers that have extra rights which may not be used for a very long time.

Walt Kuver suggested there is a need to perform an inventory of basin water rights in order to see who owns what and how much. He agrees with the water banking concept that Mr. Wichman has proposed. Kenny Bent felt that this proposal would be contrary to existing water law. He also noted that the DWR has inventory information available on their website. John Bosta stressed that water rights are meant to be used, and if not, you lose them. Dwight Lilly felt that this plan could move us closer to a solution. Relinquishment of some water rights makes the remainder more valuable.

Rick Felling from the State Engineer's Office related that his office feels domestic wells need to play an important part in moving toward a solution, but they should not shoulder the entire burden. All water users must contribute. The solution is to use less water or bring in new water. The new designation of

Area of Active Management proposes many new tools that may be used to bring balance back to the basin.

Greg Dann wanted to include a study of the carbonate rock aquifer in the Top 10 priority list. Walt Kuver felt that the carbonate rock aquifer could be included as part of an importation plan. There was more discussion on what the final item should be on the priority list. After brief discussion it was decided to include 11 priority items.

**10. J-13 & 14 combined / Banking of water rights**

Lenny Badger made a motion to include J-13 & 14 as presented by Oz Wichman, the banking of water rights, in the Top 11 list of priority items to be included in a Groundwater Management Plan. Mike Floyd seconded the motion. The motion was approved with a vote of 5-1 in favor. Kristian Bentzen was the only nay vote.

**11. A-3 / Study the future importation of water**

During public comment, Michael Noyes discussed the concept of importing effluent from major cities, treating and using it to replenish water supplies in the basin. This could help create new jobs in the area.

Walt Kuver made a motion to include A-3, a study of future importation of water, in the Top 11 list of priority items to be included in a Groundwater Management Plan. Lenny Badger seconded the motion. The motion was approved with a unanimous vote of 6-1 in favor.

The committee decided that the list should be prepared in no particular order when it is presented to the Water Board. Kenny Bent again stressed the need for a model of the aquifer. Rick Felling, from the DWR, replied that the Desert Research Institute had created a model of the Pahrump Valley a few years ago and it is still a work in progress. Mr. Bent felt that this was not sufficient as it was not in "live time" and could be done cheaply in-house. Mr. Felling emphasized that Mr. Bent was talking about monitoring and not modeling. You could not make a model that was current to today as there was a large amount of data that has to be input and it is a slow process. A model does exist right now that contains volumetric information. Mr. Bent continued to emphasize that he could do it very easily and would not require any additional expense as he already had some modeling software. Gregory Hafen agreed with Mr. Felling in that the study is already being performed by highly qualified specialists. Greg Dann felt that the county has already spent a lot of money on various studies and has failed since domestic wells in the valley are starting to go dry. Kristian Bentzen was frustrated that none of the information compiled from these studies is made readily available to the public. He questioned what the recharge rate may really be. He wants access to all information so it may benefit all citizens of Basin 162. Mr. Bent wants to bring back a sample of his program to present to the committee.

Lenny Badger made a motion to not prioritize the Top 11 items being considered for inclusion in the Groundwater Management Plan. Greg Dann seconded the motion. The motion passed with a vote of 6-0 in favor.

**9. (05:33:19) For Possible Action – Presentation, discussion and possible decision regarding ongoing and short-term projects of the Nye County Water District.**

None

**10. (05:33:38) Staff Reports/Comments:**

**A. Darrell Lacy**

None

**B. Oz Wichman**

Mr. Wichman recommended that committee members take a close look at the Senate Bill proposals that are included in their back-up. If members have any concerns about specific issues, make a list and submit it to Nye County Water District staff who will make sure that political officials will be able to review their concerns.

**C. Levi Kryder**

None

**D. John Klenke**

None

**11. (05:34:53) For Possible Action – Discussion, Direction and Possible Decision Concerning Future Meetings/Workshops.**

After discussion, it was decided that a joint meeting of the Groundwater Management Plan Advisory Committee and the Water Board will be scheduled after the Top 11 priority list is presented to the Water Board for their review at the meeting on January 26, 2015.

There was a short discussion about setting the date for the next meeting of the Groundwater Committee. Lenny Badger made a motion to set the next meeting of the Groundwater Management Plan Advisory Committee for February 9, 2015 at 9:00 AM. Kristian Bentzen seconded that motion. The motion was approved with a vote of 6-0 in favor.

Greg Hafen requested that Oz Wichman check with the Water Board to see if February 23, 2015 would be a good day to schedule a joint meeting of the GWMP Committee and Water Board. Mr. Wichman requested staff to put this request on the agenda for the next Water Board meeting on January 26, 2015. Mr. Wichman also asked Gregory Hafen to present the findings of this committee concerning the priority list to the Water Board at the same meeting.

**12. (05:42:20) General Public Comment (second) - (Three-minute time limit per person) Action will not be taken on the matters considered during this period until specifically included on an agenda as an action item.**

None

**13. (05:42:47) Adjourn**

Gregory Hafen adjourned the meeting.

## Comment for January 12, 2015 Basin 162 Agenda Item 8

The principle governing percolating waters is the common law maxim, *Cujus es solum, ejus est ad coelom et ad interos* -- To whomever the soil belongs, he owns also to the sky and to the depths. The owner of a piece of land owns everything above and below it to an indefinite extent. *2/10/15*

The English common law rule of *Action v. Blundell* determined that the owner of the land may pump unlimited quantities of water from under his land, regardless of the impact that action might have upon his neighbor's ability to obtain water on his own land. Neither an injunction nor damages will lie to prevent such action.

Nevada is a Common Law State. The common law of England, so far as it is not repugnant to or in conflict with the Constitution and laws of the United States, or the Constitution and laws of this State, shall be the rule of decision in all the courts of this State. (NRS 1.030-Application of common law in courts.)

Two Nevada Supreme Court decisions have determined percolating water belongs to owner of the land. It has been conclusively established by a long line of decisions that percolating water existing in the earth is not governed by the same laws that have been established for running streams. No distinction exists in the law between waters running under the surface in defined channels, whether upon the surface or subterranean, and those oozing or percolating through the soil in varying quantities and uncertain directions. The secret, changeable, and uncontrollable character of underground water, in its operations, is so divers and uncertain that we cannot well subject it to the regulations of law, nor build upon it a system of rules, as is done in the case of surface streams.

The Legislature declares that it is the policy of this State to recognize the importance of domestic wells as appurtenances to private homes, to create a protectable interest in such wells and to protect their supply of water from unreasonable adverse effects which are caused by municipal, quasi-municipal or industrial uses and which cannot reasonably be mitigated. (NRS 533.024)

The United State and the State of Nevada both sold land acquired in the Treaty of Guadalupe Hidalgo July 4, 1848 by patents. The percolating water or groundwater is contained in the soil of the land and belongs to land owner as the appropriator thereof as identified by *Bergman v. Kearney* 241 F. 884, March 8, 1917.

The GWMP Advisory Committee is not following the Legislature declaration to recognize the importance of domestic wells in your present Basin 162 Groundwater Management Plan.

It is the policy of this State to recognize the importance of domestic well as appurtenances to private homes, to create a protectable interest in such wells and to protect their supply of water from unreasonable adverse effects which are caused by municipal, quasi-municipal or industrial uses and which cannot reasonably be mitigated. (NRS 533.024)

The GWMP Advisory Committee should request the State Engineer to have all water rights with the status of PER file for each water permit "Proof of Application to Beneficial Use" so that State Engineer may determine a Certification for each permit.

Utilities Inc. of Central Nevada has 146 water rights permits with the status of PER for a total of 23,299.4 acre-feet annual none of which have submitted Proof of Application to Beneficial Use. The earliest priority date is November 10, 1982 for Permit 46309 with a duty of 363.3 acre-feet annually. All of the 146 permits have been given annual exemptions year after year. This is Water banking. Water banking, forbearance agreements, and other collaborative reallocation options may violate the anti-speculation provisions of "use it or lose it" law of beneficial use

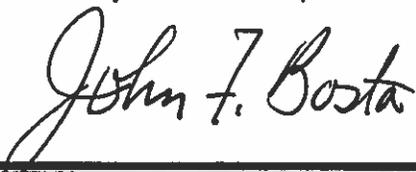
The average of the pumping reports filed with the State Engineer's Office from 2003 to 2013 for Utilities Inc. of Central Nevada is a total of 861,361,039 gallons of water per year for a total of 2,643.42 acre-feet of water per year. (UICN's Historical Consumption 2003-2013 attached hereto)

The 2014 report of Utilities Inc. of Central Nevada indicated that they have 28,000 Platted Lots of which they can serve only 6,400 which would require only 7,168 afa. They have 4,860 connections with meters which could use 5443.2 afa. leaving 1540 for new water connections to be serviced by UICN. 21,600 platted lots cannot be serviced by UCIN. 11,276 domestic wells and septic systems have been installed in the 21,600 parcels. (UICN's Service Territory Report is attached hereto)

Carson City v. Estate of Simone Lompa -October 6, 1972 and Adaven Management Inc. v. Mountain Falls Acquisition Corp-September 11, 2008 both have ruled water rights are freely alienable property interests separate from the land to which they are appurtenant. Water rights are real property.

The GWMP Advisory Committee should request the Nye County Assessor to assess all water rights. Pursuant to NRS 361.045--Taxable property. Except as otherwise provided by law, all property of every kind and nature whatever within this state shall be subject to taxation.

Respectfully submitted,



## UICN's History of Water Use 2003-2013

Year	Residential		Commercial		Irrigation		Total	
	Gallons	Acre-foot	Gallons	Acre-foot	Gallons	Acre-foot	Gallons	Acre-foot
2003	279,010,832	856.25	130,272,066	399.79	321,722,012	987.33	731,004,910	2,243.37
2004	307,695,312	944.28	156,851,302	481.36	323,187,896	991.83	787,734,510	2,417.47
2005	341,093,774	1,046.78	166,331,275	510.45	395,303,396	1,213.14	902,728,445	2,770.37
2006	401,124,804	1,231.01	186,361,256	571.92	405,565,562	1,244.64	993,051,622	3,047.56
2007	445,724,579	1,367.88	201,586,108	618.65	406,082,113	1,246.22	1,053,392,800	3,232.74
2008	481,848,439	1,478.74	219,573,076	673.85	220,438,178	676.50	921,859,693	2,829.08
2009	382,876,566	1,175.01	196,135,568	601.92	126,575,671	388.45	705,587,805	2,165.37
2010	361,834,212	1,110.43	213,192,599	654.26	220,652,474	677.16	795,679,285	2,441.85
2011	338,346,450	1,038.35	216,768,994	665.24	604,589,560	1,855.42	1,159,705,004	3,559.00
2012	353,161,419	1,083.81	217,416,128	667.23	271,494,780	833.19	842,072,327	2,584.23
2013	256,737,680	787.90	162,014,569	497.20	163,402,780	501.46	582,155,029	1,786.57
<b>Total</b>	<b>359,041,279</b>	<b>1,101.86</b>	<b>187,863,904</b>	<b>576.53</b>	<b>314,455,857</b>	<b>965.03</b>	<b>861,361,039</b>	<b>2,643.42</b>

Utilities Inc. of Central Nevada

SERVICE TERRITORY	No. Acres	No. Wells	Infrastructure Water	Connected Meters	Infrastructure Sewer	Connected Sewer
Calvada Valley Water & Sewer Systems		5	Yes	3,609	Yes	2,127
County View Estates / Calvada North Water & Sewer Systems		3	Yes	511	Yes	275
Calvada Meadows Water System		1	Yes	32	None	0
Mountain View Estates Water System		1	Yes	27	None	0
Mountain Falls Water & Sewer Systems	1,050	2	Yes	681	Yes	644
<b>28,000 Platted Lots by Preferred Equity Total Connected</b>		<b>12</b>	<b>6,400</b>	<b>4,860</b>	<b>6,400</b>	<b>3,046</b>

Total UICN water connections for years 2014 forward are per Table 3.1 projections for 2014 forward. The total number of connections was divided among the service areas base upon historical connections per service area. Calvada Valle is estimated at 74.6% of the total connections, Calvada North/Country View Estates at 10.5 %, Country Meadows at 0.7%, Mountain Falls at 13.6% and Mountain View Estates at 100% of the constant 27 connection since it is currently built out. Only another 1,540 new water connections can be service by UICN. 21,600 platted lots can not be serviced by UICN. 11,276 domestic wells and septic systems have been installed in the 21,600 platted parcels. The State Engineer estimates another 8000 platted can be developed to a total of 19,274 out of the 21,600 platted parcels without water & sewer service from UICN.