

**BASIN 162 GROUNDWATER MANAGEMENT
ADVISORY COMMITTEE**

**JOINT MEETING WITH THE
NYE COUNTY WATER DISTRICT GOVERNING BOARD**

MEETING MINUTES

**October 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
John Klenke
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

BASIN 162 GROUNDWATER MANAGEMENT PLAN ADVISORY COMMITTEE

1. **(00:00:24) Call to Order – Pledge of Allegiance**
2. **(00:01:17) Roll Call – Present for GWMP Committee:** Gregory Hafen II, Greg Dann, Wendy Barnett, Walt Kuver, Lenny Badger, Mike Floyd, Kristian Bentzen
3. **(00:01:42) 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.**

Kristian Bentzen announced that he was resigning from the GWMP Committee, effective immediately. He read his prepared letter of resignation into the record (see attached) and suggested that the remaining alternate member permanently assume the vacated position. Gregory Hafen, II noted that this issue will be discussed in the next item on this agenda.

Katreen Romanoff announced that the group, Americans for Prosperity, will be holding a series of free classes entitled "Grass Roots Leadership" at the Bob Rudd Center.

The first Public Comments are summarized as follows:

- Don Cox: There was only one person on the board that was qualified; the rest of the members need to resign and the public should appoint their own Water Board.
- Amy Nelson: The plan needs to be revisited and include domestic well owners in the discussion; in the future people will be mandated to hook-up to utilities.
- Dan Morrow: Kenny Bent was the only person qualified to represent the public.
- Louie DeCanio: Taking away people's water rights was not very American.
- John Lauros: Nobody wants their wells taken away or metered; there should not be any developers on the committee.
- Shane Navara: Don't allocate water that belongs to the ground which is owned by the people; don't monetize our water at our expense; don't take our water so you can go ahead and build more stuff to build a huge tax base.
- Sabrina Luitz: People have bought and paid for their water rights and you seem to think that you can take them away; requiring a meter is wrong.
- Tina Trenner: The water is ours and nobody has the right to take it away.

4. **(00:18:11) For Possible Action – Deliberation and decision regarding the placement of alternates to fill temporary vacancies for the current meeting.**

Gregory Hafen, II noted that a permanent appointment could not be made at this time because that action had not been agendaized and it would be a violation of Open Meeting Law. Only a temporary appointment could be made during the current meeting.

During public comment, John Bosta and Dave Caudle related that only the BOCC had the authority to make appointments to this committee. Donna Cox and Herman Lewis supported Kenny Bent to fill the vacant position.

Greg Dann questioned whether a vote would be appropriate when the GWMP Committee did not have any bylaws. Gregory Hafen reminded Mr. Dann that this committee had previously voted on and approved a procedure for temporarily filling the seat of an absent member on an as need basis.

Greg Dann made a motion that Kenny Bent be seated on the GWMP Committee indefinitely. Mr. Hafen again reminded Mr. Dann that this could not be done during this meeting. Mr. Dann then

changed his motion to state that Kenny Bent should be seated for the current meeting only. Walt Kuver seconded the motion. The motion failed with a deadlocked vote of 3 Ayes and 3 Nays. Wendy Barnett, Lenny Badger and Gregory Hafen, II cast the dissenting votes.

Gregory Hafen, II emphasized to the public that the comment period was over and the meeting must move on. Kenny Bent blurted out that his placement on the committee was authorized by the BOCC and not this group. Mr. Hafen asked that Mr. Bent go back and take a seat in the audience. Due to the disruptive nature of the public, the meeting was paused for a brief period until order could be regained. Sheriff's Officers were called in to quell the crowd.

When the meeting resumed, Greg Dann explained to the public that the GWMP would not immediately have an impact upon domestic wells, and that it addresses water usage for the future. Today the committee needed to move forward since they have been working on this plan for the last 20 months.

Greg Dann made a motion to place Kenny Bent on the GWMP Committee for today's meeting only. Walt Kuver seconded the motion. The motion passed with a vote of 5 Ayes and 1 Nay. The dissenting vote was cast by Wendy Barnett. Mr. Bent proceeded to assume the vacant position on the GWMP Committee.

Darrell Lacy announced that there was a fire code violation for the current meeting due to the over-capacity crowd that was in attendance. County Commissioner Donna Cox felt that the meeting should be cancelled until a larger venue could be found. Ms. Cox said that people could not be forced to go outside and she would assume responsibility for the over-capacity situation (despite violating the local fire code).

5. (00:29:05) Approval or Modifications of the Agenda for the Groundwater Management Plan Advisory Committee Meeting of September 29, 2015.

None

6. (00:29:19) For Possible Action – Approval of Minutes for August 25, 2015.

Gregory Hafen, II noted 2 typographical errors in the minutes. Kenny Bent made a motion to approve the minutes with corrections for August 25, 2015. Wendy Barnett seconded the motion. The motion was approved with a vote of 7- 0 in favor.

7. (00:30:33) Correspondence and Announcements

Gregory Hafen, II emphasized that despite the email that had been circulated on the internet by members of the public, nobody was trying to steal anybody's water. The statement made in the email was false.

8. (00:31:11) Ex-Parte Communications and Conflict of Interest Disclosure Statements

Gregory Hafen, II reminded everyone that this committee had been appointed by the County Commissioners in order to represent different aspects of the Pahrump community which includes representation from the 3 utility companies in the valley. He is the only member that receives his water from a public utility. All other members have domestic wells.

9. (00:32:29) For Possible Action – Presentation, deliberation and decision regarding the Final Draft for Stage One of the Groundwater Management Plan for Basin 162.

Gregory Hafen, II noted that there is a one page summary of the entire contents of the Groundwater Management Plan that was provided in the back-up material for this meeting. He related that the long term potential for overdraft of water from Basin 162 is very real. Declining water levels in the valley have impacted over 85% of the existing domestic wells. Water rights have also been over-appropriated. Due to looming problems, the State Engineer has asked the community to come up

with a plan with the intent of averting a crisis. Mr. Hafen briefly discussed each of the actions proposed in the plan.

At the request of the Fire Marshall, the meeting was put on hold for over an hour in order to clear some of the crowd from the chambers. Speakers were set up outside so that the public could listen to the meeting. Sheriff's deputies monitored the flow of people in and out of the boardroom in order to allow them to comment on items being discussed.

After the break, Greg Dann introduced members of the Nye County Water District Governing Board that were in attendance in order to provide comment on the plan. Mr. Dann noted that 3 of the 7 member board were from the Pahrump Valley. He explained that only members of the Groundwater Water Management Plan Committee were entrusted by the BOCC to develop the plan. The Water Board will review the plan at their next meeting, and only then can they make the decision to approve or not approve the plan before sending it on to the BOCC for a final evaluation.

Mr. Hafen continued to describe each of the ideas or remedies that were included in the plan. He stressed over and over again that metering was only proposed for new domestic wells, and not for those currently in service. He noted that the entire list of ideas that was compiled for possible inclusion in the plan has been placed in the appendix section of the document. These items may be reconsidered at a future date as elements of the original plan are implemented or not implemented. The current document is just a first step in a long on-going process.

Upon questioning, Mr. Hafen clarified that the plan was designed to be Pahrump specific, although ideas from other cities were considered throughout this process. Greg Dann felt that language in Chapter 3 which refers to "beneficial use" was inadequate and it may mislead people. Walt Kuver clarified to Mr. Dann that the language in Chapter 5 deals with using "wet" water more wisely and is not an attempt to limit water usage by domestic well owners. Referring to Table 2, Mr. Hafen pointed out that the water levels in Basin 162 have been declining over the last 10 years. Mr. Kuver explained that in the broader sense of finding a solution to the problem, the amount of over allocated water rights will be addressed at some point so the basin can be brought into balance. We cannot proceed until we know that exact figure. Gregory Hafen, II noted that the Pahrump Master Plan Revision of 2014 also proposes many steps going forward that deal with bringing the basin into balance. Mr. Dann then questioned which "springs" were being referred to in the section dealing with ASR and importation. Oz Wichman noted that he was using a generalized assumption when referring to springs. Mr. Hafen emphasized that feasibility studies must be performed before any project of this sort can even be considered for implementation.

Jim Weeks felt that this was a very good start toward addressing a very big problem. Dave Hall commented that we should start immediately with implementing the little things that don't cost a lot of money and that public education was very important.

Oz Wichman clarified that he will be either adding simplified language to Chapter 3, or that it may be in the form of an Appendix that deals with the process of perfecting a water right as per instructions from Greg Dann. This will aid the public in understanding the process.

Darrell Lacy related that State Engineer wants to see quantification of water savings and a time frame for implementation of various pieces of the plan. Basically, the final product is an application to the State Engineer for acceptance the Groundwater Management Plan. Mr. Lacy was looking for direction from the Water Board as to what the next steps would be going forward. Greg Dann noted that there is some information still missing on page 9, in Table 3. Jason King stressed that those numbers are "key" to final adoption of the plan. They serve as benchmarks toward achieving a sustainable balance for Basin 162. Oz Wichman noted that it will take many months to get those numbers quantified. There are hundreds of subdivision maps that must be reviewed in the process in order to get a handle on the exact number of water rights that could potentially be developed.

Mr. King noted that now is the time, while the basin is not being over-pumped, to develop a plan that will accommodate future growth and keep the basin in balance. Mr. King stressed that current water law “hamstrings” what the DWR can do to protect domestic well owners. Most domestic well owners are “junior” to senior water right holders and they can be curtailed by priority date as per the law. A Groundwater Management Plan developed by citizens of this basin is a way to prevent future curtailment of water especially if the community experiences another growth spurt. Be a part of the solution.

Greg Dann stressed that we are in this current situation because there was no plan in the past but that the current proposal was not fair and equitable either. Oz Wichman noted that not everybody on the committee got everything that they wanted to be included in the plan and some compromises were made. Upon questioning by Jim Weeks, Mr. Wichman noted the plan must be adopted before we can move forward with budgetary considerations. That will be addressed one item at a time as we move forward with implementation. Gregory Hafen, II related that the Water District has already funded some studies and educational programs that deal with water balance issues in the basin. Dan Sweeney felt that this was a great plan that can be used as a model for other basins in Nye County that may find themselves in a similar predicament.

Kenny Bent discussed water that is not being captured in the southern end of the valley and how it is included in the 20,000 AF of annual recharge. Oz Wichman felt that this would be addressed during planning for water redistribution in the valley. Walt Kuver stressed that we need a strong, well-staffed, well informed, adequately funded Water District to go forth into the future and make this successful.

Following a short break, the meeting reconvened. Gregory Hafen, II read into the record some written public comment (see attached).

A summary of public comment regarding this agenda item is as follows:

- John Bosta: There is no budget included for the plan; Jason King has not yet declared Basin 162 to be a Critical Management Area; the State Engineer has no authority over non-artesian wells; the plan should not be based upon future legislation and he denounced the proposed Conservation Credit plan.
- Dan Burejsza: Asked what would be considered a new well and why a big business has a right to put in a large lake when we have a water shortage?
- Dave Caudle: Had concerns about the proposed watering schedule and why propose a groundwater management plan when the basin had not been declared critical? He questioned the process of purchasing additional water rights by individuals.
- Michael Griffin: Questioned if watering of livestock would be limited and felt that people could not afford to pay for meters on their wells.
- Katreen Romanoff: This plan was only the beginning of complete control of people by the government; people were angry; this plan favors utility companies and developers; she wants a moratorium on growth and all those paper things should be deleted (water rights?).
- Tony DeMeo: There is no prioritization in the plan; the BOCC has been negligent in listening to his recommendations in the past with regards to salt cedar removal and ways to save water because they all they want to do is promote growth; and all of the proposed new regulations are too much to swallow at this time.
- Terry Nelson: Suggested there be “tree police” and regulations for the nurseries; there is deception here; put a moratorium on future construction; we plan to maintain our own wells and we don’t need a utility company to take over; and she doesn’t want to see a critical status.
- Janice Cullen: Why are we denying businesses while encouraging more people to move here? Do we have a mandate from the State, Federal Government or the UN for them to control our water?

- Ken McLeroy: Why are you considering limiting water to .5 AF for new domestic wells when water allocations for subdivisions are much higher? How can you justify allowing these subdivisions to be built if there isn't enough water?
- Linda Hatley: Questioned what would be considered a new well? This needs to be specifically addressed in the plan so well owners can feel secure; and we want all of the numbers included in the plan before it is approved.
- Mike Hickey: Asked why large water right holders are not held to the same standards as the smaller water right owner when it comes to proving beneficial use?
- Dwight Lilly: Why is the moratorium issue always pushed aside? Why is there no BDR sponsored by this board to change water laws regarding beneficial use?
- Andrew Alberti: We were lied to about Pahrump having the 3rd largest aquifer in the nation; we need a moratorium on construction; we don't want the state to manage our water; the local citizens can take care of this; and we need more businesses built to provide jobs.
- Carl Jakob: Why don't we have a moratorium on building instead of placing the burden on current well owners?
- John Wulfkulhe: Is there a way to reward people to not waste water in order to prove beneficial use? He liked being able to have a large grassy lawn for his dogs.
- Dean Brooks: We don't need government in here poking around; and the state issued too many water rights so let them take care of the problem instead of putting it on our backs. We need less government, so all board members should resign.
- Michelle Pfiester: An economy that is based upon continuous growth is completely unsustainable; we need a reasonable cut-off for growth; and she was not in favor of fracking.
- Diane Holguin: Population projections included in the plan are ludicrous; she stressed that the real population in Pahrump is around 22,000 because people have moved away; and we do not want a totalitarian government.
- Betsy Lilly: Suggested that water which is wasted to prove beneficial use be put in cement trucks and saved for future use.

Oz Wichman commented that even though the basin is not currently over-pumped, water levels continue to decline in many areas of the valley. We are attempting to do a plan now before we reach a critical point and an increasing number of wells begin to go dry. He noted that the Conservation Credit Program is actually the Water Banking Plan that had been proposed and approved by this committee at an earlier date. Jim Weeks continued to have concerns about how the plan would fit into Water District budgeting for the future.

Gregory Dann, II related that people can report blatant wasting of water to the State Engineer so that he can investigate and resolve the problem. Oz Wichman was directed to add additional language that clarifies that refurbishment, rehabilitation or replacement of an existing well shall not be considered as the drilling a new well. A new domestic well is one that is drilled upon a lot which has never had a well drilled in its previous history. Jason King related that the DWR has the discretion, according to law, to require a well owner to hook-up to a utility if the infrastructure is within 180 ft. of the property line.

Kenny Bent discussed a report, done in 1971, that is included in the appendix of the GWMP, with regards to the amount of population that can be supported by the perennial yield in Basin 162. He agreed that there is a definite problem and a plan is needed, but the current proposal needs some tweaking. He noted that the GWMP Committee is an advisory board which was tasked with bringing a plan to the BOCC and not to the Water Board for their approval and adoption.

Greg Dann agreed with the State Engineer that we must have a plan in order to go forward and prepare for the future, although he did not like this particular plan as he felt it was not equitable.

10. (02:54:13) For Possible Action – Discussion, Direction and Possible Decision Concerning Future Meetings/Workshops.

Oz Wichman stressed that a tentative meeting should be scheduled for some time in January 2016 in case the BOCC decides that adjustments need to be made to the plan. Gregory Hafen, II suggested January 26, 2016 at 9 AM as a possible meeting date.

Mr. Wichman related that he would not be able to have the missing numbers compiled for Table 3 by January 2016. Before he spends endless hours putting together the numbers for Table 3 he would like to know if the BOCC accepts or rejects the plan. He also noted that the Water Board has a right to review the plan since they will be the group that actually provides funding.

Wendy Barnett made a motion to set the next meeting of the Basin 162 Groundwater Management Plan Committee for January 26, 2016 beginning at 9 AM. Lenny Badger seconded the motion. The motion passed with a vote of 6-1 in favor. Greg Dann cast the only dissenting vote.

Greg Dann felt that there would be no reason to continue meetings with the committee as the document is basically complete at this point. What are we going to accomplish in January? Oz Wichman related that there was no harm with scheduling a meeting in case the BOCC decides that the document needs further work from the committee. The meeting can always be cancelled if need be.

11. (03:04:30) 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.

John Bosta recommended that all items be eliminated that are dependent upon future legislation. Andrew Alberti suggested that a moratorium be placed upon new construction until water issues are resolved. He also suggested that tariff areas of utility companies be reduced so that people will not be required to hook-up to utilities in the future.

12. (03:08:14) Adjourn

Gregory Hafen adjourned the meeting.



Renaë Goedhart <goedhartrenaë@gmail.com>

Fwd: Comments addressed to the Nye County Regional Water Board

1 message

Edwin Goedhart <edwingoedhart@icloud.com>
To: Renaë Goedhart <goedhartrenaë@gmail.com>

Mon, Oct 12, 2015 at 8:09 AM

Sent from my iPhone

Begin forwarded message:

From: Edwin Goedhart <edwingoedhart@icloud.com>
Date: October 11, 2015 at 9:18:08 PM MDT
To: "Kbent@speednet.com" <Kbent@speednet.com>
Subject: Comments addressed to the Nye County Regional Water Board

Dear members of the Nye County Regional Water Board

The following written comments are to be entered into the permanent public record in regards to the water management report submitted to you by the Pahrump Water Management Board, today on October 12, 2015. It is my sincere hope and desire that the members of this board take the time to both answer my questions and consider my comments before voting on whether or not to recommend / approve this plan on October 26, 2015.

Let me first raise a few questions that I am hoping you will be able to clarify / answer for me.

- 1). Has legislation passed the legislature and been signed by the governor that changes Nevada water law and provides for a new category of domestic well that restricts the parcel owner to only .5 acre feet per year, down from the current 2.1 acre feet per year?
- 2). If such a category is not provided for in current Nevada NRS, isn't this a little like putting the cart before the horse?
- 3). As envisioned in this plan being presented to the board today, any new domestic well would be subject to this reduced duty of water and would be required to have a totalizing flow meter. For the purpose of this plan, what constitutes a "new" well? Is it a brand new hole on a parcel of ground, a replacement well for a failing well, a deepened existing well, or a well that merely needed to have a submersible pump replaced?

It is vital that the definition of "new" well be explicitly defined.

- 4). There is some disagreement by private well owners, if their wells actually fall under the purview of the water rights administered by the Nevada Department of Water Resources.

Please allow me to expound a bit. I have been told by some, that the domestic water right that comes with a parcel of land (up to two acre feet annually) is separate and distinct from the water rights issued by the DWR. For example if a basin curtailment was ordered by the State Engineer according to priority date (for commercial, agricultural , and municipal water rights)the domestic well owners would be exempt from this order.

What is the board's opinion on this issue? If the State Engineer ordered a basin curtailment of water rights by priority date, would private well owners be affected and would their priority date be the date of the parcel creation or the date of the actual drilling of the domestic well?

- 5). There is a bit of confusion of what happens to the water rights that are purchased by a business (such as a new hotel) who then deeds these to a utility in order to connect to their water system. If a hotel buys 10 acre feet and then hooks up to the utility, are these water rights retired, or are

they transferred to the ownership of the utility providing the water?

Many utilities have thousand of acre feet of non-utilized water rights, and would have the ability to serve additional customers without having to add to their water rights cache.

6). Would it be possible to get a comprehensive water right listing by chronological order for the Pahrump Basin along with a cumulative running total of the quantity of water rights issued?

7). What is the total amount of permitted water rights in the basin? What is the stated perennial yield?

I also have a couple of comments to the board.

1). The board should consider legislation that will allow the State Engineer to suspend the " use it or lose it " requirement in Basins that are over appropriated, have existing groundwater withdrawals in excess of the perennial yield, and have had such a suspension requested by the County Board of Commissioners

2). Require that treated sewer effluent from the utilities be returned to the aquifer via RIBs (rapid infiltration basins) and that return inflow credits NOT be accorded for such recycling efforts.

Thank you for your time. I await your responses.

Best Regards, Edwin Goedhart

Sent from my iPhone

Edwin A. Goedhart 10-12-15
Edwin A. GOEDHART



Nye County Board of Commissioners

Citizen Input Form (Comment on Agenda Item)

Required Information

Date: 10/12/15

Name: Melissa Hasse

Town/City and State of Residence: Pahrump NV

Agenda item you wish to appear on (one item per form): Ground Water

Do you support or oppose this item? Support Oppose

Are you appearing on behalf of a group/organization? Yes No

If so, please state the name of the group or organization

If so, are the views you will express today representative of an established policy or position formally approved by the group or organization? Yes No

Have you ever, are you currently, or do you expect to receive compensation by the group or organization for any reason? Yes No

Additional Information

Do you wish to speak on this item or simply have your position noted for the record? NO

I moved here a year ago because my liberties were being slowly squashed in Vegas. If this item passes I will have to move again. I don't waste water But I don't don't like being told what to do. Is thy why the gas tax went up to almost double? To pay for this agenda?

For Official Use Only:

Number in order of receipt: _____

10-09-15 2:04:58 RCVD

Dear Commissioners,

I would like to thank every one of you for your confidence and respect in appointing me to the Basin 162 Groundwater Management Plan Advisory Committee. It was my hope to be part of finding a fair and equitable solution to the ongoing water issues in our valley.

I feel that objective has failed do to the dominate utility and developer interests of the board. Since the very beginning I had reservations that this endeavor may be doomed to fail by appointing 3 of the 7 voting seats to the utility companies and disregarding the well owners Co op. Four of the voting members on this board own over \$120 million dollars worth of paper water rights. As it turns out, any miss guided thoughts I had in the beginning of finding a way to eliminate a portion of this over allocation have proven to be futile.

Although my time on this board may feel as though it was wasted in developing real solutions, the knowledge and insight into how things actually work in the real word are immeasurable

Now that the final draft is nearly complete, I feel my time is no longer needed. My understanding was that this was an advisory board set up with the task of bringing forward our best thoughts and presenting them to you Commissioners for consideration. It appears that this board is preparing to empower itself with implementing this plan in a second stage. Not only am I disappointed by the numerous items left out of this plan, I am equally disappointed with things added to this plan after the fact.

I do not believe that an advisory board has nor should it have the power to implement policy, procedures and most of all, lobby for legislation changes.

With these thoughts in mind, I submit this as my formal resignation. I have no desire to be associated with stage two as I find it highly un-ethical and possibly illegal.

It has been a pleasure to serve under this board and I appreciate all you do the keep everything running as smooth as possible for all our residents.

Sincerely,
Kristian Bentzen.

Distributed To: BOCC
TEOOI
DARRELL

Thank you for the opportunity to comment. With your three minute limit to speak I request that my written comments are included into the record.

The biggest flaw in the Groundwater Management Plan for Artesian Well Basin 162 is there is No Budget! Who and how will the citizens of Pahrump Valley pay for this flawed plan?

Chapter 1-(A):

- The Nevada State Legislature adopt AB 419 is an act relating to water; Section 7. The State Engineer shall designate any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin as critical management area. If a basin is so designated for at least 10 consecutive years, Section 3 requires the State Engineer to order that withdrawals of groundwater be restricted in the basin to conform to priority rights, unless a groundwater management plan has been approved for the basin.

- State Engineer Order 178 adopted the 11th day of March, 1941 Designated and Described the "Pahrump Artesian Basin". When was the "Pahrump Artesian Basin", Order 178, amended to the "Pahrump Hydrographic Basin"?

Chapter 1-(B)

- Basin 162 Groundwater Management Plan Advisory Committee "stakeholds" are about the same as the 2005 Final Report of Investigation for a Pahrump Sanitary Sewer District.

- "Stakeholder":

- **FOCUS Group; John Cathey, Mike Johnson, and Matt Davis**
Focus Group brought **Desert Utilities** with **Desert Trails** land from **Hollis group**
- **Tarry Connelly** with **William Lyon Homes**
Owner of **Mountain Falls—North** with projected 3,400 units. Signed agreement with Utilities Inc to annex the development into their service area.
- **Tim Hafen**, owner of **Pahrump Utilities** and **Artesia Development**.
Not interested in considering offers for acquisition currently but may consider selling out in 5 years. He wants to assure services for current and future development. He also pointed out that the value of the utility company increases as the base of customers grows.
- **Tri-Core office** with **Henry Neth**, former BoCC chairman
- **Patricia Cox**, current BoCC member
- **Sheldon Bass**, Vice Chair of CIPAC, Chair of RPC; **Butch Boraski**, member of RPC; **Rick Walker**, builder and Chair of CIPAC; and **Walt**

Kuver, former member of RPC, County representative to State Water Committee.

- BoCC Minutes Aug. 3, 2004 page 25 - Commissioner Eastley amended her motion to approve the wastewater and treatment and trunk line alternatives study for \$143,337 and preliminary services to determine support for sanitary district for \$44,040 and option three under C -(Total Valley Area Mapping for \$499,000); Commissioner Cox amended her second. The motion passed with 5 yeas. (Emphasis Added) The total cost of this contract was \$686,372.

- On July 19, 2005 at Timed Item 10:30 a.m. presentation to BoCC in connection with Pooled Resources' findings of the Final Report of investigation for a Pahrump Sanitary Sewer District. Mr. Pooler stated that their purpose was to give the board information with which the BoCC could base its decisions. He reviewed the matter. **The BoCC took no action.** The total cost of the Sanitary Sewer District was economically unaffordable.

The Basin 162 Groundwater Management Plan Advisory Committee has failed to provide an equitable groundwater management plan for the non-artesian wells.

The "Wish List" at the top of Page 5:

- **Aggressive water education** is more that the retired State Engineer's "Nevada Water Law 101".

Will the Aggressive water education include these 20 documents of a Brief Chronology History of Nevada Water Law for the groundwater in Pahrump Artesian Basin 162?

1872: Nevada Embraces the definition of "Percolating Water." See, Mosier v. Caldwell, 7 Nev. 363, 363 (1872), set forth that **"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 the perceptible and clearly defined rights."** (Emphasis added)

1879: Land Act of 1879: Chap. 100 - Approved March 8, 1879- An Act accepting from the United States a grant of two million or more acres of land, in lieu of the Sixteenth and Thirty-sixth Sections, and relinquishing to the United State all such Sixteenth and Thirty-sixth Sections as have not been sold or disposed of by the State.

1879: The Land Act of 1879 was codified in NRS 321.596(c): In 1880 Nevada agreed to exchange its 3.9-million-acre school grant for 2 million acres of its own selection from public land in Nevada held by the Federal Government; The Exchange Act of June 16, 1880: In 1880 Congress agreed and passed the Exchange Act of 1880, specifying that the 3.9 million acres (less 63,249 acres of land already patented) could be exchanged for **two million acres of land to be selected by the State**. The State thus consented to a reduction of almost half its grant lands. These grant lands were subsequently virtually all patented to private owners.

1879: The Water Act of March 6, 1879; Chap.83 – A groundwater Act- is an Act to encourage the Sinking of Artesian wells within this State, after the first five hundred shall have been sunk, the sum of two dollars per foot, to be paid in the manner provided for in section four of this act. Prior to reaching the five hundred feet depth the person shall file with the County Recorder and when completed demand the bounty from Board of Commissioner.

1885: Riparian Water Doctrine overturned in Nevada. See, Jones v. Adams, 19 Nev. 78, 6 Pac. 442 (1885), where this Court overturns the RIPARIAN WATER DOCTRINE in Nevada, holding that (regarding surface water - lakes and streams) there is no ownership in the corpus of the water, but that the use thereof may be acquired, and the basis of such acquisition is beneficial use.

1887: The Water Act March 5, 1887: Chap. 127 – A groundwater Act- is an act to encourage the sinking of artesian wells. The Board of County Commissioners paid the bounties for three wells which furnishes seven thousand gallons of water each twenty-four hours, flowing continuously for thirty days; and provided further, that no two wells shall receive a bounty if located within ten miles of each other. **The artesian well was under the authority of the County Commissioners.**

1897 Domestic Use: –The appropriation of water for culinary and domestic purposes has been specifically recognized by the courts as a

beneficial use for commercial purposes; See *Silver Peak Mines v. Valcalda*, 79 Fed. 886, 800 (D. Nev., 1897), wherein the court said: "The fact that the water was used for culinary and domestic purposes by plaintiff, its agents and employees, was of itself sufficient to establish a beneficial use of water."

The 1901 Water Act: Chap76 – A groundwater Act- is an Act to provide for the payment of a bounty to encourage the boring of wells in searching for oil, natural gas and artesian water. Approved March 19, 1901; The first person to sink a well in the State of Nevada not less than six inches in diameter at the bottom, to the depth of one thousand (1,000) feet shall receive a bounty of twenty-five hundred (\$2,500) dollars from the State; the person who applies for any of the **bounties under this Act shall file the application with the chairman of the Board of County Commissioners.**

The 1903 Irrigation Water Act: This Act appropriates all natural water courses and natural lakes and the waters thereof which are not held in private ownership, belong to the public, and are subject to appropriation for a beneficial use, and right to the use of water so appropriated for irrigation shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right; the use of all water now appropriated, or that may hereafter be appropriated, is hereby declared to be a public use. **The Office of the State Engineer is created and shall cooperate with the Secretary of the Interior in all work of construction, operation, maintenance and management of irrigation works constructed by the Secretary of Interior in and for the benefit of Nevada, under the RECLAMATION ACT/NEULAND ACT of 1902.**

The 1913 Water Act: Chap. 54- A Groundwater Act- is an Act to provide a law for the conservation of underground waters in the State of Nevada; providing for the casing and capping of artesian wells; and providing a penalty for the violation of the provision of such act. Approved March 7, 1913.

The 1913 Water Act: Chap. 140 – Surface Water Act- Approved March 22, 1913- Section 1. The water of all sources of water supply within the boundaries of the state, whether above or beneath the surface of the ground, belongs to the public. **[This type of Act is commonly referred to as a "Public Trust Easement."]**

The 1913 Water Act: Chap. 140 – Surface Water Act.

In 1914 this Court held, in Ormsby County v. Kearney, 37 Nev. 314, 336-338 (1914), that the provisions of the 1913 Act with respect to an investigation and determination of water rights by the State Engineer were valid, but with the reservation that when questions of constitutionality of particular features arose, it would then be time for the Court to consider them.

A provision then in the law, purporting to make the determination of the State Engineer conclusive, **subject to the right of appeal, was believed by two of the three justices in the Ormsby case to be unconstitutional, Id. 37 Nev. 314, 355-392 (1914).** The statute was amended in 1915 to eliminate the objectionable provision and to prescribe the procedure now extant, which requires the State Engineer's order of determination to be filed in court as the basis of a civil action (Petition for Judicial Review). As so amended, these provisions were held valid by both Federal and State courts, (See page 46 NEVADA LAW OF WATER RIGHTS by Wells A. Hutchins, LLB, for Hugh A Shamberger - State Engineer of Nevada in cooperation with Production Economics Research Branch, Agricultural Research Service, United States Department of Agriculture, Carson City, NV 1955).

This Court did not consider section 1 of the 1913 water act, however, the Federal District Court did in the case of Bergman v. Kearney, 241 F. 884 (March 8, 1917). The Court in Bergman states unequivocally that the legislative declaration contained in section 1 of said 1913 Water Law, reads as follows, "The water of all sources of water supply within the boundaries of the state, whether above or beneath the surface of the ground, belongs to the public, **is insufficient to, and does not, warrant or authorize the acts done and threatened to be done by defendant, as state engineer, as alleged in the bill of complaint, because the waters of all sources of water supply within the boundaries of the state are appropriated or unappropriated; if appropriated, they belong to the appropriator thereof; if unappropriated, they belong to the United States government, by virtue of the treaty of the United States of America and the United Mexican States in 1848, and by virtue of the Enabling Act, approved March 21, 1864.**" (Emphasis added)

The 1915 Water Act: Chap. 210 – An Act to provide a law for the conservation of underground waters, providing for the casing and capping of artesian wells, defining the underground waters which are governed by the laws relating to the appropriation of the 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 attorney in relation thereto. Approved March 24, 1915;

Section 1. All underground water, **save and except percolating water, the course and boundaries of which are incapable of determination**, are hereby declared to be subject to appropriation under the laws of the state relating to the appropriation and use of water. (Emphasis added)

1918: Water Rights are Real Property; See Vineyard Land & Stock Co. v. District Court, 42 Nev. 1 (1918).

Water Act 1935: Chap. 184-Approved April 1, 1935-A groundwater Act amending 1915 Water Act Chap. 210-Section 4. **The state engineer shall administer this act** and shall prescribe all necessary rules and regulations for such administration. **Note: This is the first act that empowers the state engineer authority over artesian wells within artesian well basins.**

The Water Act 1937: Chap. 149 – An Act to amend an act entitled “An act to provide a law for the conservation of underground waters providing 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, 1915, together with the acts amendatory thereof or supplemental thereto.

Water Act of 1939: Chap. 178 is an act to provide for the conservation and distribution of underground waters, providing for the designation of artesian well basins and defining such wells and providing the method of appropriating the waters thereof; ...

Sec. 2 The word “person” as used herein shall be interpreted to mean any firm, partnership, association, company, or corporation, municipal corporation, power district, political subdivision of this or any state or government agency. The word “aquifer” as used herein means a geological formation or structure that transmits water. The word “artesian well” as used herein means a well tapping an aquifer underlying an impervious material in which the static water level in said well stands above where it is first encountered in said aquifer. The word “waste” as used herein is defined as causing, suffering or

permitting any artesian water to reach any previous stratum above the confining strata before coming to the surface of the ground, or suffering or permitting any artesian well to discharge water unnecessarily upon the surface of the ground so that the waters thereof are lost for beneficial use or in any canal or ditch conveying water from a well where the loss of water in transit is more than 20% of the amount of water discharged from said well, or in any event where over 20% of the water discharging from a well is lost from beneficial use.

And,

Sec. 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. (Note: Two gallons per minute is 3.226 acre-feet annually and this act ONLY empowers the state engineer authority over artesian wells within artesian well basins.)

1987: Mosier v. Caldwell Codified: NRS 534.0135 added the definition of "Percolating waters." "Percolating waters" are underground waters, the course and boundaries of which are incapable of determination. (Added to NRS by 1987, 1770)

It is perfectly and succinctly clear that the State Engineer is only empowered authority over artesian wells and has no power or authority over wells for domestic purposes or uses. It is of significant relevance, that in 2015 the State Engineer requested the Legislature to adopt **SB 81 which would give him the power to supervise all underground water and wells.** Why would this change in the law be necessary if the State Engineer already had it? The answer is it wouldn't. SB 81 failed to make it out of the Finance Committee for approval.

- **Water Importation** is economically unaffordable for the citizens of Pahrump. To import water into Pahrump Valley for 70 miles will cost \$173,000,000 just for the installation of the pipe to carry the water. Other costs have not been provided.

Appendix C, Water for Nevada is 1970 Special Planning Report Summary; Water Supply for Future in Southern Nevada by Montgomery Engineers of Nevada is the study to import water into Las Vegas from four basins,

Pahrump Valley, Amargosa Desert, Railroad Valley, and Pahrnanagat Valley at the cost of one billion 252 million (\$1,252,000,000) to mine the top 100 feet of groundwater from each basin. The citizens of Las Vegas determined that the water mining projects was unaffordable. Water from Lake Mead was more reasonable.

- **Require meters on new domestic wells** will require new legislation.
- **Limit new Domestic wells to 0.5 AFA** will require new legislation.
- **Educate domestic well owner regarding the option to supplement their water usage with permitted water rights** is a big wish by someone to sell their unperfected water rights that they stripped from the land when sold and has not been Certified for Beneficial Use.
- **Construct rapid infiltration basins and/or recharge basins** for flood control.
- **Allow utilities to put in backbone infrastructure with PUC approval to reach more lots.** The utilities can put the backbone infrastructure at any time but they will not pay for it. They will ask the PUC to raise the rates that the present member now pay. The cost is unaffordable for the present rate payer.
- **Create incentive to voluntarily connect to public water systems.** The water systems in the Pahrump Artesian Basin 162 are private water systems not public water systems provided by a local government. Public water systems are not regulated by the PUC, for example, the Nye County Water District which cannot purchase a private water system.
- **Conservation Credit Program for Water Rights.** Is this the new name for "Water Banking"?
GWMPC page 5,
"Water District staff at the direction of the GWMPC and WDGB was directed to pursue a conservation credit concept as outlined below in this section. Senate Bill 81 (SB 81), considered during the 2015 legislative session, included language that supported the concept. The bill passed by the Senate Sub Committee on Governmental Affairs but did not materialize in the Assembly and therefore died at the end of the 2015 session. In addition the Nye BoCC heard an agenda item in May 2015 which proposed the BoCC support SB 81. During the BoCC

meeting a petition was presented that represented 71% of the water rights holders in Basin 162, in favor of SB 81. The item died at the BoCC level for a lack of a second to a motion to support the bill.

The GWMPC, WDGB, and the State Engineer see the following conservation credit concept as a useful tool to include in a GWMP for Basin 162. The conservation credit concept **may** (in some form) be included in the 2017 Legislative Session. (Emphasis Added)

For this reason the GWMPC retains this concept as a priority recommendation to be included in the GWMP for the Pahrump basin.”

The twelve defined concept of a Conservation Credit Program for the Pahrump basin at the top of page 26 are not the defined concepts of an Active Management Area pursuant to Section 4 of Failed SB 81.

Legislative Counsel’ Digest of SB 81:

This bill eliminates the classification “area of active management” and renames the classification “critical management area” as “active management area.” Similar to the former designation of critical management area, section 3 of this bill authorizes the State Engineer to designate a basin or portion therein as an active management area if the State Engineer determines that:

- (1) Consumption of groundwater consistently exceeds the perennial yield of the basin; or
- (2) Groundwater levels continue to unreasonably decline.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Sec. 4. In considering a groundwater management plan pursuant to NRS 13 534.037 for a basin or portion therein designated as an active management area pursuant to section 3 of this act, and in addition to any other power granted by law, the State Engineer may approve a plan to:

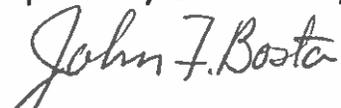
1. Limit the quantity of water that may be withdrawn under any permit or certificate to conform to priority rights.
2. Exempt a water right from the requirements set forth in NRS 533.390, 533.395, 533.410 or 534.090 during the period that the plan is in effect so that any conservation practices that are implemented do not result in the cancellation or forfeiture of a water right.

3. Establish a fund to retire water rights or implement conservation practices. For purposes of the fund, the State Engineer may:
 - (a) Assess fees on appropriators of record of groundwater rights, owners of parcels and owners of domestic wells; and
 - (b) Receive money from any other source.
4. Authorize the voluntary relinquishment to the groundwater source of a portion of a groundwater right in exchange for granting an exemption on the unrelinquished portion of the groundwater right from any provision that requires the filing and approval of extensions to avoid the cancellation or forfeiture of the groundwater right during the period that the plan is in effect. Any right that is not voluntarily relinquished is not exempt from regulation by priority.
5. Require the filing of proofs of beneficial use pursuant to NRS 533.400
6. Require the adoption of rules or regulations to further a groundwater management plan.
7. Request any other action reasonably related to the removal of the designation of an active management area.

- **Investigate existing and future development agreements and implement changes with the goal to require water mitigation.** This is another big wish by someone to sell their unperfected water rights that they stripped from the land when sold and has not been Certified for Beneficial Use.

- **Growth Control** is simple just stop the subdividing.

Respectfully Submitted,


John F. Bosta