

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON NATURAL RESOURCES,
AGRICULTURE, AND MINING**

**Seventy-Ninth Session
April 4, 2017**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Heidi Swank at 1:34 p.m. on Tuesday, April 4, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada and to Room 31, Griswold Hall, Great Basin College, 1500 College Parkway, Elko, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Heidi Swank, Chair
Assemblywoman Lesley E. Cohen, Vice Chair
Assemblyman Chris Brooks
Assemblywoman Maggie Carlton
Assemblyman John Ellison
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Robin L. Titus
Assemblyman Justin Watkins
Assemblyman Jim Wheeler
Assemblyman Steve Yeager

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Susan E. Scholley, Committee Policy Analyst
Randy Stephenson, Committee Counsel
Nancy Davis, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Paul Enos, representing Nevada Trucking Association
K. Neena Laxalt, representing Nevada Propane Dealers Association; and Nevada Cattlemen's Association
Bryan Milton, President, Nevada Propane Dealers Association
Andy MacKay, representing Nevada Franchised Auto Dealers Association
Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Danilo Dragoni, Bureau Chief, Air Quality Planning, Division of Environmental Protection, State Department of Conservation and Natural Resources
Brian McAnallen, Government Affairs Manager, Office of Administrative Services, City of Las Vegas; and representing the Southern Nevada Forum Transportation and Infrastructure Committee
Andrew M. Belanger, Director of Public Services, Southern Nevada Water Authority
Danny L. Thompson, representing Laborers International Union Local #872/AFL-CIO
David Rigdon, representing Taggart & Taggart, Ltd.
Paul J. Moradkhan, representing Las Vegas Metro Chamber of Commerce
Lucas Ingvaldstad, representing General Moly
Tyson K. Falk, representing Southern Nevada Home Builders Association
Amanda Moss, representing Retail Association of Nevada
Gary Milliken, representing Nevada Contractors Association
Jonathan P. Leleu, representing National Association for Industrial and Office Parks
Stephen Hartman, representing Vidler Water Company
Rusty McAllister, representing Nevada State AFL-CIO
Kandis McClure, representing The Howard Hughes Corporation
Warren B. Hardy II, representing Virgin Valley Water District
Howard Watts, III, representing Great Basin Water Network
Jake Tibbitts, Natural Resources Manager, Department of Natural Resources, Eureka County
Laurel Saito, Nevada Water Program Director, The Nature Conservancy
Kyle J. Davis, representing Nevada Conservation League
Steve Bradhurst, representing Central Nevada Regional Water Authority
Anne Macquarie, member, Toiyabe Chapter, Sierra Club
Will Adler, representing Pyramid Lake Paiute Tribe
Tobi Tyler, Private Citizen, Stateline, Nevada
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation

Mike L. Baughman, Executive Director, Humboldt River Basin Water Authority
Jason King, P.E., State Engineer and Administrator, Office of the State Engineer,
Division of Water Resources, State Department of Conservation and Natural
Resources

Chair Swank:

[Roll was called and standard rules of the Committee were reviewed.] We will begin with a work session, starting with Assembly Bill 16.

**Assembly Bill 16: Revises provisions relating to agricultural extension programs.
(BDR 49-440)**

Susan E. Scholley, Committee Policy Analyst:

The Legislative Counsel Bureau is nonpartisan, and I neither oppose nor advocate for any of these bills. Assembly Bill 16 revises provisions relating to the Cooperative Extension, and was heard in this Committee on March 9, 2017. The bill requires Nevada System of Higher Education (NSHE) to contribute an amount equal to the 1-cent assessment imposed by participating counties to the budget for the Cooperative Extension program. The bill also corrects references to the Cooperative Extension program and adds a requirement for annual reports on the Cooperative Extension to be submitted by NSHE to the Legislature or Interim Finance Committee, as appropriate. At the hearing, a number of amendments were presented in a mock-up. In response to concerns raised at the hearing, additional amendments have been proposed and included in a revised mock-up, which is in the work session document ([Exhibit C](#)).

Page 2 of the work session document is a summary of the amendments to A.B. 16. The mock-up removes all references to "agricultural" because the mission of the Cooperative Extension has been expanded over the years beyond agricultural work.

The mock-up also changes references from "Department" to "Program" and removes references to "Public Service Division."

In response to testimony at the hearing, the mock-up changes the references from "University of Nevada, Reno" to "Nevada System of Higher Education" to reflect that the Cooperative Extension functions throughout the system.

Additionally, in response to testimony at the hearing, the mock-up adds a requirement to the annual report to split out information detailing the amount spent at the campus level and at the county level.

Amendments in section 4, subsection 5 clarify that the state's cooperative share is equal to the aggregate or cumulative proceeds from all participating counties and clarifies the reference to "budget."

The mock-up adds language in section 4, subsection 5 to set the state's cooperative share based on a five-year rolling average. Using a rolling average will avoid large variations from year to year and allow for predictability in planning and budget preparation.

Finally, at the request of the bill sponsor, section 4, subsection 6 is deleted, which required the Extension to contribute money to the counties.

With that, I would be happy to answer any questions.

Chair Swank:

I will entertain a motion on A.B. 16 to amend and do pass.

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 16.

ASSEMBLYWOMAN COHEN SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Wheeler:

I have not had time to look at the amendment. I see a couple of things that may bother me. I will be voting no, but reserve my right to change my vote on the floor.

Assemblywoman Titus:

I will vote to move out of Committee, but I also have not seen these amendments. I reserve my right to change my vote on the floor.

Assemblywoman Krasner:

I will be voting no with the reservation to change my vote on the floor.

Assemblyman Ellison:

I am voting yes to move out of Committee, but I have not read the amendments. I am going to reserve my right to change my vote on the floor.

Chair Swank:

We will now vote.

THE MOTION PASSED. (ASSEMBLYMEN KRASNER AND WHEELER
VOTED NO.)

I will assign the floor statement to Assemblywoman Carlton. I will move on to Assembly Bill 34.

Assembly Bill 34: Revises provisions relating to state lands. (BDR 26-179)

Susan E. Scholley, Committee Policy Analyst:

Assembly Bill 34 relates to state lands. It was sponsored by this Committee on behalf of the Division of State Lands. It makes a number of changes. It reduces the number of appraisals required for the sale or lease of state lands from two to one. It allows money in the Revolving Account for Land Management to be used for the acquisition of land interests, environmental assessments and surveys, and mitigation. It also increases the minimum balance of the account from \$5,000 to \$20,000, the point at which additional funds can be requested. It eliminates the collection of certain data by the Division of State Lands related to land use planning. It also removes certain eligibility criteria pertaining to one-year leases below market value for certain economic development proposals. Assembly Bill 34 also repeals statutory provisions relating to the Lincoln County Pilot Land Development and Disposal Fund, as enacted in 1959 ([Exhibit D](#)).

There were no specific amendments submitted at the hearing. In response to concerns by Committee members and other persons who testified, a number of amendments have been proposed. In section 1 of the bill, with respect to state lands, amend the *Nevada Revised Statutes* (NRS) to increase the required degree of separation for eligible appraisers from the first degree of consanguinity to the third degree. There is a chart on page 2 ([Exhibit D](#)).

The second amendment would be to amend section 4 of the bill to add a qualifier to the duty of State Lands to compile certain data and also to restore one of the provisions that in the original version of the bill was proposed to be deleted. This would now read that the Administrator of State Lands would develop and compile, to the extent feasible, and make available to cities and counties, information useful to land use planning, including preparation and continuing revision of a statewide inventory of the land and natural resources of the state. The remainder of that section would continue to be deleted as proposed in the original bill.

The amendment would also add two additional sections amending NRS Chapters 244 and 268, relating to counties and cities respectively, increasing the required degree of separation for eligible appraisers from: (a) the first degree to the third degree in counties with a population over 45,000, which would be Carson City, Clark, Douglas, Elko, Lyon, and Washoe Counties, and for cities within those counties; (b) for the remaining counties with a population of 45,000 or less, and for cities within those counties, the degree of separation for eligible appraisers for the disposal of public land would be from the first to the second degree of consanguinity.

Finally, add a new section to amend NRS 321.710, which pertains to the priorities of the Administrator of State Lands. Adding the language that the activities of the State Land Use Planning Agency which have priority are the provision of technical assistance to cities and counties in areas where such assistance is requested. As indicated, there is a consanguinity chart ([Exhibit D](#)). I would be happy to answer any questions.

Assemblywoman Carlton:

I understand changing the third degree of consanguinity. The chart on page 2 ([Exhibit D](#)) has consanguinity on the top and affinity on the bottom of the chart. Does this apply only to consanguinity?

Randy Stephenson, Committee Counsel:

As written, this particular change is for both, the degree of consanguinity or affinity. It applies to blood relation or marriage.

Chair Swank:

I will entertain a motion on A.B. 34 to amend and do pass.

ASSEMBLYWOMAN JAUREGUI MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 34.

ASSEMBLYMAN WATKINS SECONDED THE MOTION

Any discussion?

Assemblyman Ellison:

There was a comment made by Steve Walker that he was neutral, but he submitted written comments. I will check to see if I can find them.

Chair Swank:

We will vote.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Cohen. I will move on to our last bill on work session, Assembly Bill 138.

Assembly Bill 138: Authorizes the de minimus collection of precipitation under certain circumstances. (BDR 48-445)

Susan Scholley, Committee Policy Analyst:

Assembly Bill 138 was sponsored by Assemblywoman Carlton, authorizing the de minimus collection of precipitation under certain circumstances. This would allow the collection of rainwater in minor quantities from the roofs of single-family dwellings for domestic use or in a guzzler to provide water for wildlife, without requirement of a water rights permit. At the hearing, Southern Nevada Water Authority presented a conceptual amendment deemed friendly by the bill's sponsor, which changed domestic use to nonpotable use and also put a qualifier on the guzzler to be a capacity of 20,000 gallons or less, developed in consultation with the Department of Wildlife. Also, clarification that the collection would not interfere with existing water rights ([Exhibit E](#)).

Chair Swank:

I will entertain a motion on A.B. 138 to amend and do pass.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 138.

ASSEMBLYMAN WATKINS SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Carlton:

There was a discussion about ancillary buildings. That is still a possibility, but I have not received all the information I need. I am still looking into it.

Chair Swank:

We will vote.

THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Carlton. [Assemblywoman Cohen assumed the Chair.]

Vice Chair Cohen:

I will open the hearing on Assembly Bill 416.

Assembly Bill 416: Requires the Division of Environmental Protection of the State Department of Conservation and Natural Resources to establish a program to use certain settlement money received from the Volkswagen Corporation and its subsidiaries. (BDR S-1050)

Assemblywoman Heidi Swank, Assembly District No. 16:

I have with me Mr. Paul Enos. We are going to talk a little about the Volkswagen (VW) settlement.

Paul Enos, representing Nevada Trucking Association:

I represent about 580 companies throughout the state. Trucking in Nevada moves about 90 percent of our freight. We see some tremendous benefits through emissions with the monies available from the VW settlement due to some of the issues they had in terms of emissions testing. The state of Nevada gets about \$25 million; however, the Governor has already dedicated about 15 percent, or \$3 million, for his Nevada Electric Highway. That leaves a \$22 million pot of money. Right now, we are in talks, Nevada and all the other states, about how that money is going to be spent. What are the parameters around that \$22 million? How are we going to reduce the emissions that we have going into our air? I appreciate Assemblywoman Swank working with us on this bill to develop some of those parameters that are in line with the Consent Decree that VW signed.

I will give a quick overview on what that means. A private business would be able to get, through that Consent Decree, 25 percent of a new vehicle paid for or 40 percent for a repowered engine. If the vehicle is being taken off the road, a hole will be drilled in the engine and the frame will be cut. That sounds well and good; however, in speaking with Assemblywoman Swank and trying to come up with some ways to make sure we were getting the worst polluters out there, we did come up with some parameters. That is for the private sector and local governments to be able to get some of this revenue as well.

The Consent Decree allows for up to 100 percent. One of the things we did put in this bill was an allowance of 80 percent, because we thought it is important that everyone should have skin in the game in terms of getting a new vehicle and actually making that investment, not having it paid entirely through this funding.

We are talking about local delivery trucks that are doing at least 50 percent of their miles in Nevada. We are talking about those high-use vehicles, those vehicles that have over 200,000 miles on them. Those are the highest-polluting vehicles. In fact, pre-2002 trucks make up only 30 percent of the trucks on the road; however, they are responsible for about 70 percent of the emissions. The year that we chose for the bill says 2005. We are going to amend that to 2006 because trucks got a lot cleaner after 2006. The U.S. Environmental Protection Agency (EPA) required those engines to have a particulate diesel filter to make sure that the black smoke that you used to see on the stacks of those trucks was no longer there. The engines do get cleaner the newer they are. We thought we should focus on those highest-polluting trucks. Those are not just the big class 8 trucks that are over 33,000 pounds; this would run the gamut from a truck that is 14,000 pounds all the way up to 33,000 pounds, and higher.

When you look at the cost of those vehicles, class 4 through 7, the average cost is about \$80,000; 25 percent of that would be a \$20,000 grant to those companies. We do have a preference in there for small businesses to be able to take advantage of this. That would be a \$20,000 benefit to that company and give them an incentive to take a truck that is high-use and heavily polluting off the road. This is not a truck that will be sent to Central or South America, as we have seen in the past. The owner must have a hole drilled in the engine and have the frame cut so that high-polluting vehicle will no longer be used.

When discussing class 8 trucks, the average price is about \$135,000. For someone who would be replacing a class 8 truck, that would be an approximate \$34,000 benefit to them to purchase a new truck that is not as polluting.

We do have different operations throughout the trucking industry. We allow for people to replace an old vehicle with a new diesel, with an alternative-fueled vehicle, or an all-electric vehicle, depending on what those operations are. I know that diesel gets a bad rap from time to time; however, the diesel vehicles today have newer engines that are tremendously cleaner than those built ten years ago. We do appreciate working with Assemblywoman Swank to

put some parameters around that \$22 million that can be spent over the next ten years to ensure we are taking the highest-use, highest-polluting vehicles off the road and giving those small businesses an incentive to be able to do it.

Assemblywoman Swank:

I will now walk through the bill. Section 1 talks about how the entire idea, these priorities that are set by this bill, must work within the requirements that are set up by the Partial Consent Decree and the Second Partial Consent Decree as part of the VW settlement. Section 1 subsection 2 states the Division of Environmental Protection (NDEP), State Department of Conservation and Natural Resources, and several other offices must put together a program for distributing this money in order to either replace or repower a diesel vehicle. Subsection 3 is where the priorities that we thought were important to have are. A committee has already been formed and is working on these ideas with the Legislature.

In section 1, subsection 2, paragraph (a), subparagraph (1), we would say that the vehicle should be manufactured not later than 2006. The next priority is that they should have over 200,000 miles registered on the odometer and be operated by and for a small business. We also want to have the preference for small businesses that use these vehicles in-state. So within the current ownership, the vehicle should have been operated in this state not less than half the time.

Again, as Mr. Enos said, we have an 80 percent cap on local government and what they might get back. This ensures that, with the 80 percent, people will prioritize their requests a little more. A procedure has to be put in place, and there must be other documentation. A small business is an entity that employs not more than 50 employees. We are happy to answer any questions.

Assemblywoman Carlton:

I was excited when I saw that this was for all diesel vehicles, but now I see it is just for trucks. Could you possibly replace a school bus with this?

Assemblywoman Swank:

You can replace school buses and street cleaners. There is a wide range of vehicles that can be replaced. I think this is a great tool for school districts with older buses that need to be replaced. This is a great program, and they should get their requests in.

Assemblywoman Carlton:

I would thoroughly support that because this is money they do not have to spend on buses and can put it toward education. I have concerns that this bill could be a windfall for trucking companies, and I have a hard time supporting that.

Assemblyman Wheeler:

Mr. Enos, I am looking at section 1, subsection 2 (b), where it says, "Repower with a new diesel, alternative fueled or all-electric engine." An alternative-fueled or all-electric engine is going to be a complete change. Repowering with a diesel engine is going to take a little more. There has to be all new harnessing; this is a very extensive repower. Who would actually inspect it and ensure that it is not dirtier than the engine that was replaced?

Paul Enos:

The probability that anyone is going to be repowering a vehicle is basically nil. Of all the companies that I have talked to, repowering, which does allow for 40 percent, really is not an option. I know some folks who tried that in 2006 and 2007, and they would never do it again just because of the issues that you raised. The Consent Decree still allows that for an option; however, very few companies, if any, have said that it is realistic.

Assemblyman Wheeler:

The problem that I see is that if you are giving a certain percentage of an entire vehicle, I think you are incentivizing to repower. Obviously the repower is going to be less than an entire vehicle. Is this in the bill or in the Decree? If it is in the Decree, there is not much we can do about it. If you struck the repower from the bill, I think you lose any chance of the vehicle actually being dirtier than the vehicle you replaced.

Paul Enos:

The repowering is in the Consent Decree. I agree with you; I think this Legislature has the ability to put more parameters around that. The Consent Decree says up to 40 percent of the repowering. It does give us a litany of ten different choices that the VW money could be spent on, from freight switchers for railroads to tugs. We are not going to be focusing in those areas. We are focusing on how to get some of those high-use, heavy-polluting vehicles off the road. If that is a parameter that the Committee would entertain, I do not think that would be an issue.

Assemblywoman Titus:

Specifically related to the bill, section 1, subsection 3 talks about the program developed pursuant to subsection 2 must include, without limitation, priorities for the distribution. Will those priorities be weighted? Since there is a limited fund, will a vehicle with over 200,000 miles have priority over something operated by a small business? Is that going to be weighted in any way?

Assemblywoman Swank:

That was not our vision. Our vision, because this does have to already operate within a pretty tight Consent Decree, is to leave that to NDEP to sort out how the priorities would be weighted. We could always contemplate that, if that is something the Committee wanted.

Assemblywoman Krasner:

I am also looking at section 1, subsection 3(a) where it talks about the priorities for the distribution of available money. It does not say anything about school buses. It says not manufactured later than 2005, with over 200,000 miles, operated by and for a small business, and operated in this state. Where do the school buses fit in?

Assemblywoman Swank:

We do not need to specify; it is actually already part of the field of vehicles that could be eligible for a replacement. It does not specify specific types of vehicles that can be replaced. Page 3 of the bill, line 6 does say a local government. That is where it shows that local governments do have access to this, but it does not specifically list all the types of vehicles.

Assemblywoman Krasner:

I am afraid the fact that a school is not a small business might preclude it.

Assemblywoman Swank:

That is the priorities, but it does not weight those priorities; it leaves it up to the Committee. School buses definitely could be replaced through this program.

Assemblyman Ellison:

We have a lot of mining and ranching trucks with high mileage. This bill only goes back to 2005. With this bill, we are talking about taking what you consider a heavy polluter off the road. Next year are we going to have a bill that says now that we have replaced all these vehicles, all the ones we did not replace we will put an extra surcharge on? I am worried that this bill could lead into another bill. We have a lot of trucks hauling ore, and ranching cannot afford to go buy new trucks, although some of the mines would probably love this.

Assemblywoman Swank:

This is just the pot of \$22 million that is coming from the VW settlement. When that pot of money is spent, it is done. As far as section 1, subsection 3(a)(1), where it says manufactured not later than what should be 2006, that does not preclude anything after, it is just a preference for small business. Mining can sure take advantage of this; it is really wide open for businesses and local entities to take advantage of. These are just the priorities; they are not precluding anything that was after 2006 from being replaced. We know that there was a change in emission levels across those years, which is why we identified a priority, or a preference, for those vehicles that were 2006 and earlier.

Assemblyman Ellison:

Mr. Enos, is there anything that you see coming down the pike that is going to put more restrictions on emissions of these older trucks?

Paul Enos:

In terms of a surcharge, no, but in terms of doing business in certain areas, absolutely. The California Environmental Protection Agency Air Resources Board has requirements about what types of vehicles can be operated in California beyond certain hours or mileage.

There are some of those restrictions out there. I see this bill and having that \$22 million pot of money as a way for incenting these businesses that have a truck that may be working fine, but it is being used a lot and polluting a lot, to be able to replace that vehicle with a new clean-burning diesel, an alternate-fueled vehicle, or a hybrid electric. I really see this as an incentive to get rid of some of those older trucks. A small business does not necessarily have the wherewithal to find \$80,000 or \$135,000 rolling around, but there is that incentive. We have \$22 million available to help those folks you are talking about so they can bring those vehicles up to current emission standards.

Vice Chair Cohen:

Is there any way for us to encourage people who utilize this to purchase the new vehicles or do the repowering in Nevada? Is that allowed in the Consent Decree?

Paul Enos:

I do not know, but I love that idea. I know that my truck dealers, who are the ones who made me aware of this, love that idea as well. These are the folks who do not just sell to the private sector, but are selling vehicles to local government entities. I would envision those local folks being the partners in making sure we have identified those vehicles that meet these parameters and being our education for this program. The state of Nevada, through the VW Consent Decree, has set up a program that incentivizes you to replace that old, heavily used, high-polluting truck. I do not know if that is something we can do in law, but for the natural course of things, I think that is already going to happen.

Assemblywoman Titus:

Do we know what the average cost would be to replace an engine?

Paul Enos:

In terms of repowering, I have no idea. That is not something that we recommend and is not done in the normal course of business. In terms of replacing that vehicle, class 4 are small pickups ranging from 14,001 pounds to 16,000 pounds. A class 7 is 26,001 to 33,000 pounds. The cost of those vehicles averages \$80,000. When you look at class 8 trucks, the big rigs, they cost approximately \$135,000. The incentive is up to 25 percent, which is in the Consent Decree. For an \$80,000 vehicle, it is about \$20,000, and for a class 8 truck that is about a \$34,000 incentive.

Assemblyman Watkins:

I am assuming this is not intended to be an extensive list. It is up to the respective agencies to determine what qualifies. From a practical standpoint, is there something that says if it is a diesel engine that was manufactured before 2006, it is not a clean diesel? I know they have such good, clean-running diesels now with no emissions. Did that not exist prior to 2006?

Paul Enos:

That is correct. In 2006 and prior, there was no requirement for a particulate diesel filter that would capture a lot of those particulates that were coming out of the stacks. In 2010, we saw a requirement to have a diesel exhaust fluid tank where you have a little tank called AdBlue that actually captures those emissions and turns them into water vapor. Throughout the various EPA engine classes, the engines get better and better.

Assemblyman Watkins:

So 2006 is when those requirements were to be part of the diesel engine. I am wondering if this might be some sort of a catchall. We know the technology existed before that. We do not want to give away a free new engine or new truck to someone who actually had a clean-burning engine, just because it qualifies under these factors.

Paul Enos:

I agree with you. In looking at this bill, I think a good amendment would be instead of the year the vehicle was manufactured, it would be when the engine was manufactured. That would fall in line with those EPA determinations of the class of engines.

Assemblyman Watkins:

Is there an industry standard in the measurement of the pollutant out there? If there is a certain level of pollutant, then it qualifies, but if it is under that, it would not qualify.

Paul Enos:

That is a tough one. It absolutely differs by type of truck and by the application of that truck. We do have some standards; I would be more than happy to show you some charts. It varies depending on the type of truck, the operation, and where it is used.

Vice Chair Cohen:

I will now move on to those in support of A.B. 416.

K. Neena Laxalt, representing Nevada Propane Dealers Association:

I have with me Bryan Milton, who will give our presentation. I want to say that propane has been part of the school bus involvement in Nevada, Washoe County specifically. Elko County is looking at replacing all its school buses, and propane would like to become a part of that. I like that we are ensuring that school buses are included in this because that is a huge part of where propane comes in. We agree that this is not the ultimate end-all to buy all new vehicles and clean the air in Nevada, but this is a start, and we appreciate being part of this.

Bryan Milton, President, Nevada Propane Dealers Association:

We appreciate the opportunity to support A.B. 416, while providing you with information regarding the use of propane-powered vehicles in Nevada.

On March 13, 2017, I sent a letter to the Bureau Chief of the Air Quality Planning Division, Division of Environmental Protection, encouraging the adoption and utilization of propane-powered vehicles in Nevada's Volkswagen environmental mitigation plan. I have provided a copy of that letter to Nevada Electronic Legislative Information System (NELIS) ([Exhibit F](#)).

Soon after, our association discovered that a group had been meeting regarding this issue, but our industry was not informed. With that said, we would like to take this opportunity to request that our industry be part of the dialogue in the future, so that we can play a role in the state's environmental mitigation plan.

Already in Nevada there are 300 people employed in the propane industry. One of the most successful propane vehicle programs has been school bus fleets. Forty-eight propane-powered school buses are currently on the road, serving the community. It is important to state that with the involvement of the Volkswagen settlement, propane school buses are eligible for the 80 percent replacement costs proposed by A.B. 416.

As regulated by state legislation, Washoe County School District is 100 percent compliant in its use of alternative fuels. Forty-seven buses are powered by propane autogas. Since 2013, Washoe County School District's propane autogas school buses have logged 1.5 million miles and have helped improve the air quality in the Reno-Sparks area. Each bus averages 20,000 miles annually.

Equipped with these fuel systems, the buses emit 80 percent fewer smog-producing hydrocarbons and virtually eliminate particulate matter when compared with conventional diesel. The propane autogas type A bus fleet will eliminate 1.1 million pounds of carbon dioxide over its life when compared with gasoline models.

While the Washoe County School District bus fleet is the largest use of propane-powered vehicles in a public system, many individuals and a large taxicab company in Las Vegas are also users of propane autogas. According to their website, the three cab corporations under Yellow Checker Star Transportation all use propane for their 550 taxis. The entire propane fleet logs more than 50 million miles a year and saves the Las Vegas Valley from 800 tons of carbon monoxide and 800 tons of particulate matter per year.

In addition, while other school districts across the state look to replace their aging school buses, the propane industry hopes to be part of the transitions of these fleets to clean-burning fuel vehicles.

Thank you for your time. I will be happy to answer any questions. [Also provided a written statement ([Exhibit G](#)).]

Assemblyman Ellison:

I thought this bill was only for diesel engines. Does this allow for propane also?

Neena Laxalt:

That is correct. We fall under the category of alternative fuel in both the Public Utility Commission of Nevada's (PUCN) definition and through the federal Energy Policy Act of 1992. I have provided a copy of that Act ([Exhibit H](#)).

Assemblyman Wheeler:

Are you advocating repowering with propane?

Bryan Milton:

No. I think when the school districts order a new 33,000-pound vehicle, they can order them with the required equipment from the manufacturer.

Assemblyman Wheeler:

I know that propane does not have the BTUs to power a class 8, and I want to ensure that you do not advocate for a repower.

Andy MacKay, representing Nevada Franchised Auto Dealers Association:

We are in full support of this bill. I want to thank Assemblywoman Swank for meeting with us to talk about the bill. I think the bill meets precisely what the Consent Decree is—to take the polluting vehicles off the road. We applaud Assemblywoman Swank for her efforts in doing that. Also, any business that can be kept in Nevada with respect to buying these vehicles, we are completely in support of.

Vice Chair Cohen:

Is there anyone in opposition? [There was no one.] Anyone neutral?

Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources:

I am here to provide neutral testimony on behalf of the Division. I also have with me Danilo Dragoni, who oversees the air quality planning programs at the Division.

I will briefly outline the status of the Volkswagen settlements and then explain some of the key settlement provisions that relate to the proposed legislation.

The approved 2.0 liter settlement and anticipated 3.0 liter settlement will provide approximately \$24.9 million to Nevada for nitrogen oxide (NOx) emission reduction projects. Funds will be allocated one-third each year over the first three years, and the funds are required to be used within ten years. We are in the process of completing steps required to receive funding, which we anticipate will start to be distributed in calendar year 2017.

The Governor has designated the Division to work in coordination with the Office of Energy, Office of the Governor, to develop an overall mitigation plan for use of the funds, with input from the Nevada Committee on the Control of Emission of Motor Vehicles, known as the I/M Committee. As required by *Nevada Administrative Code* (NAC) Chapter 445B, the I/M Committee contains representatives from the Department of Motor Vehicles, the

Division of Environmental Protection, Clark and County Air Quality, Washoe County Air Quality Management, Department of Transportation, State Department of Agriculture, and a nonvoting member from EPA. The settlement requires the Division to seek and consider public input on the mitigation plan, which will set forth the criteria for eligible projects and the overall process under which Nevada projects will be funded. We welcome the participation of Mr. Milton and the Nevada Propane Dealers Association.

As drafted, A.B. 416 would require the mitigation plan, to the extent permissible under the settlement, to develop a program for vehicle replacement, with a priority on vehicles manufactured on or before 2005, that have over 200,000 miles, and that have been operated as part of a small Nevada business for at least half the time it has been owned by the current owner.

While this proposed program and priorities are not inconsistent with the settlements, I would like to point out that the settlement requires that the mitigation plan specifically address three items that may not necessarily fit A.B. 416 priorities.

First, the settlement requires that the funds be used to reduce NOx emissions. The Division interprets that we will evaluate eligible projects and weigh them, amongst other factors such as feasibility, primarily for cost benefit with respect to NOx emission reductions. Everything being equal, we would expect to prioritize projects which reduce NOx emissions higher than those which reduce NOx emissions less. This would not preclude the proposed A.B. 416 priority projects, but may not guarantee that they are prioritized above other projects that have greater NOx emission reductions.

Additionally, the settlement requires that the mitigation plan address how we will consider the potential beneficial impact of the selected projects on air quality in areas that bear a disproportionate share of the air pollution in the subject jurisdiction, which would be all of Nevada for purposes of this settlement. Similarly, this provision does not preclude A.B. 416 priorities, but will likely give greater weight to projects in urban areas with relatively higher air pollutant concentrations.

Finally, A.B. 416 identifies a priority on replacement of vehicles manufactured on or before 2005, while the settlement indicates eligibility would extend through vehicles manufactured in 2009. We note that over the ten-year life of the settlement, some competitive projects that would reduce NOx emissions in areas with relatively higher air pollution may involve replacement of vehicles manufactured after 2005.

On a separate note, in order to take some of the actions that may be prioritized by A.B. 416 or the mitigation plan, the Division of Environmental Protection would need to be provided grant or subgrant authority in *Nevada Revised Statutes* Chapter 445B. We would appreciate the opportunity to discuss this further with the bill sponsors and proponents.

That concludes my testimony, and Mr. Dragoni and I would be happy to answer any questions from the Committee. [Also provided written testimony ([Exhibit I](#)).]

Assemblyman Wheeler:

You made a lot of mention about NOx. Usually when nitrogen oxide goes down, hydrocarbons go up. Have you done any study on hydrocarbons or carbon monoxide emissions?

Danilo Dragoni, Bureau Chief, Air Quality Planning, Division of Environmental Protection, State Department of Conservation and Natural Resources:

No, not that I am aware, but I would be happy to consider that suggestion.

Vice Chair Cohen:

I will invite the sponsors back up for closing remarks.

Assemblywoman Swank:

I met with Mr. Lovato and the PUCN two weeks ago for our preliminary discussion. I am more than happy to meet with him again to ensure this will fit within the Consent Decree and what the PUCN has to work with. I think this bill is so that the Legislature has some good input on this process and is able to lay out some priorities, since we represent all the folks who are mostly impacted by the VW settlement.

Vice Chair Cohen:

I will close the hearing on A.B. 416. [Assemblywoman Swank reassumed the Chair.]

Chair Swank:

I will now open the hearing on Assembly Bill 298.

Assembly Bill 298: Revises provisions relating to water. (BDR 48-735)

Brian McAnallen, Government Affairs Manager, Office of Administrative Services, City of Las Vegas; and representing the Southern Nevada Forum Transportation and Infrastructure Committee:

The Southern Nevada Forum Transportation and Infrastructure Committee was co-chaired by Assemblywoman Swank, Assemblyman Edwards, Senator Manendo, and Senator Hammond. I would point out that the Committee was a bipartisan effort with representatives from both chambers that had over 40 Southern Nevada Forum stakeholder members come to meetings on more than a monthly basis. We had over 18 meetings since the last session ended to develop priorities for southern Nevada that also have statewide implications. Assembly Bill 298 is one of those. You, Madam Chair, have made the effort to ensure that this bill was introduced. If you recall, we all gathered as the larger forum, which is over 200 people, and we voted on those priorities. This is one of those that we selected to try to address the crucial issue of water and its importance to those of us in the Southwest. Many of these issues came up during the Governor's Nevada Drought Forum, and we were happy to hold those discussions at the Forum to work with the other stakeholders to bring this forward. I appreciate all of your time and effort with that committee. It was my honor to help facilitate those meetings on your behalf. The Forum certainly supports this bill as a top priority. The City of Las Vegas also supports this measure with the proposed amendments.

Andrew M. Belanger, Director of Public Services, Southern Nevada Water Authority:

I am here today to provide initial thoughts on monitoring, management, and mitigation plans (3M plans) and some of the history related to this bill. As mentioned, this concept was discussed extensively at the Nevada Drought Forum. One of the recommendations of the Forum was to clarify Nevada water law related to the State Engineer's inherent authority to provide for adaptive water management through implementation of 3M plans. There is another recommendation to clearly define fundamental water management principles in statute. This bill attempts to do both of those things. There are definitions related to perennial yield, environmental soundness, and unappropriated water that are in the bill and the amendment. The bill addresses the concept of 3M plans. Those plans were also discussed extensively during the Legislative Commission's Subcommittee on Water and, as Mr. McAnallen mentioned, during the Southern Nevada Forum.

The metropolitan area in southern Nevada uses less than 5 percent of the state's total water supply, and serves 7 out of 10 Nevadans and 70 percent of the economic output for the state. Monitoring, management, and mitigation plans are an important tool that the State Engineer can use as he is considering applications for water in Nevada. I do not need to remind you, even though the weather may contradict me a little, Nevada is one of the most arid states in the union. Water is precious and the allocation of water is a statewide responsibility that rests with the statewide regulator, the Office of the State Engineer. This bill respects the authority of the State Engineer to regulate water in Nevada and to ensure that water use is developed in a way that is responsible and recognizes important principles of existing law, including protecting existing rights, protecting protectable interest in domestic wells, protecting the public interest, and making sure, in the case of interbasin transfers of water, that they are environmentally sound.

You will hear, particularly as I outline the amendment to the bill, provisions that ensure that the State Engineer remains the person who approves applications for water and has to make the decision whether a 3M plan satisfies the statute. If the statute is not satisfied or if there is an impact on an existing water right holder, then the State Engineer has an obligation to reject that plan. The plan is there to address water use in those situations that are more complex. You will hear a little bit about the hierarchy for avoidance of conflicts. That is something we support. We believe conflicts should be avoided if possible. You may need to move a point of diversion; you may need to make a change in how you are developing water. We support that. We believe that you have to monitor, and for complex projects there needs to be an aggressive monitoring regime. We also believe that you should manage resources before you mitigate. Those are all principles that the water authority supports. We have an amendment that is a work in progress; we know there are concerns that people have with the bill and the amendment. We are open to having further conversations to hone and refine the language so that those concerns can be addressed. I will now walk through the amendment ([Exhibit J](#)).

Section 2 of the bill is the first substantive section. It addresses the definition of perennial yield, which means, as it relates to a groundwater source of supply, the maximum amount of groundwater that may be withdrawn each year over the long term without unreasonably or

continuously decreasing the groundwater source of supply. We spent a lot of time, as a work group, looking at that language. That is the language that we settled on. You can see that we struck the original definition that was in the bill and replaced it. This definition substantially conforms to the definition the State Engineer has used in a number of rulings over the course of the years. This is codifying in statute much of the practice of the State Engineer's office.

Section 3 of the bill is the most substantive part of the bill, and I will walk through each subsection so you can see the way it would work. Section 3 of the bill, as it relates to a complex application of water, states that the State Engineer may require an applicant to submit a 3M plan to address issues with potential conflicts to existing rights, protectable interests in domestic wells, the public interest, or environmental soundness. That is a decision of the State Engineer; he will decide whether a plan is even going to be required of an applicant.

If it is required of an applicant, the State Engineer, as it relates to subsection 2, shall consider the plan at the same time he hears the application for water. That allows any protestant to participate in that process. It allows any person who has an existing water right or domestic well to participate and provide comment on the plan and what the plan does. It also allows for judicial review of that plan to occur at the same time that the actual applications are undergoing judicial review.

Subsection 3 ([Exhibit J](#)), says if an applicant is required to submit a plan, then any protestant can submit a plan as well. Anyone who has an existing water right can also submit a plan. The State Engineer does not just hear from the applicant, but from anyone who is a party to that process; anyone who could be affected has the right to submit a plan related to 3M. It also allows for an applicant, a protestant, an existing water right holder, or a domestic well owner to submit a joint plan. Clearly, I think a joint plan would be the preference. The applicant and the protestant would have worked out issues prior to hearing and bring a plan together that they jointly support. Subsection 3 provides for jointly working together.

Subsection 4 says if, during a hearing on an application, the State Engineer finds that a monitoring, management, and mitigation plan (3M plan) is required, the State Engineer can postpone the hearing and require the applicant to submit a plan to be considered at a later point. The State Engineer would reschedule the hearing when the plan is developed. If that occurs, there is notice that occurs as well to the protestants so they can also submit plans. Both plans would then be considered at the same time.

Subsection 5 clarifies that a plan can be used to address issues with existing rights, protectable interests, public interest, or environmental soundness.

Subsection 6 lists the things that a 3M plan must include. It must include a list of all of the existing rights, domestic wells, and any important environmental issues with which the application may conflict. It must include an explanation of how all conflicts with existing rights, protectable interests in domestic wells, the public interest or environmental soundness will be eliminated through the measure set forth in the plan. Subsection 6 requires that

a monitoring plan be established and triggers and thresholds to avoid, manage, and mitigate any conflict, or standards and procedures for the subsequent adoption of triggers and thresholds, or both as applicable. This is an important point and probably a point of continued conversation that needs to occur. I want to underscore that what subsection 6 says is that the applicant must designate what the triggers and thresholds should be or define when they should be developed in the future. Sometimes additional science may need to be done before they are established. It does not mean that those triggers and thresholds have to be accepted by the State Engineer. The State Engineer still has to consider whether those measures are going to be effective in addressing the concern.

Subsection 7 ([Exhibit J](#)) outlines some things that could be included or may be included to eliminate a conflict, such as the furnishing of replacement water of a sufficient reliability, quantity, and quality to be used for the approved beneficial use of the existing right or domestic well, recognizing that existing rights and domestic wells do not have a right to a specific source of water. This was a conversation that we heard, and you may hear comments later that it may be inappropriate to truck water as an approach to addressing furnishing replacement water. We agree with that. We believe that if you are going to furnish replacement water, it has to be of sufficient reliability, quality, and quantity as the original water. So if the original water has the ability to flow year-round and in all conditions, the replacement water has to have those same characteristics.

Section 4 of the bill addresses adding public interest and environmental soundness, and specifies that if the State Engineer approves a 3M Plan, the State Engineer shall enforce the provisions of the 3M plan.

Section 5 deals with replacement water. It states that if replacement water is used, the person who will be furnishing the replacement water must file a notice with the State Engineer setting forth the quantity of water that will be furnished, the duration of time that the water will be furnished, and the place of use of the water that will be furnished. Also, the person furnishing replacement water is not required to submit a change application. This is an area in subsection 2 where there needs to be continued work with the State Engineer's office. We are happy to do that, as we know there is still a point of disagreement.

Section 6 allows for amendments to 3M plans. If there are amendments, there is another round of notification that goes out. People with existing rights have the right to provide comment on the amendments; protestants do as well. The State Engineer's office has a bit of a concern that we have heard about related to this section. They want to ensure that changing a monitoring location does not trigger this section of the proposed language. We are happy to work with them to address that language as well.

Sections 7, 8, 9, and 10 are all conforming changes.

Section 10 includes the definition of "environmentally sound." This is a definition that we worked through with the workgroup. The new definition of "environmentally sound," for the purposes of interbasin transfers, is that the use of groundwater for an interbasin transfer will

not cause an unreasonable harmful impact on wildlife and plant communities—there has been a suggestion that we include native in front of plant communities to address the issue of noxious weeds, we do not want that problem to exist—or, the inability to support wildlife and plant communities in the basin from which the water is transferred under new groundwater equilibrium conditions resulting from the interbasin transfer of water. Unappropriated water means the quantity of groundwater that is available for appropriation based on the perennial yield of the source of supply without requiring actual capture of the recharge or discharge from the source of supply. The definition of existing right is put in there so that it is clear that it includes vested claims, permits, certificates, federally reserved rights, and decreed rights.

Sections 11, 12, 13, 14, 15, 16, 17, 18, and 19 are all conforming changes to ensure the language that is being added is included.

Section 20 and 21 are the transitory provisions of the bill that set forth that these are changes that are conforming to the State Engineer's long-standing practices and that they would apply prospectively and retroactively ([Exhibit J](#)).

Assemblywoman Titus:

I just want to clarify, this amendment is the working document, correct? Section 3, subsection 1 states, "The State Engineer may, before considering any application . . . ," but this is not a must. So he could look at the application without requiring any further information. I have even more concern with section 3, subsection 3 that the applicant is required to submit a 3M plan, and then the State Engineer may consider applications and monitoring 3M plans from the people who will be affected from any existing water right holder. I am very concerned that the State Engineer may or may not decide to consider these applications when he is making his decision and certainly extremely concerned that someone who is affected may not have a chance to express his concern. Where are the property owners' rights in this mitigation? There is no mandate that the State Engineer take that into consideration.

Andrew Belanger:

It is correct that the State Engineer has to choose whether or not to require a 3M plan. The State Engineer's office said, in our work group, it is only in complex cases that we would require a 3M plan to begin with. It is not a tool that would be used in every case. It is not a tool that is mandatory, that needs to be heard all the time. It is something that if the State Engineer requires one of an applicant, he also must allow the protestant and any existing water right holders to submit one as well. We think that is fair because if there is an application that proposes something that a senior water right holder believes might have an impact, the burden is on the applicant to address the impact, either through a 3M plan or through a different agreement. If that is not addressed to the satisfaction of the State Engineer's office, then he is obligated, under law, to reject the application. That exists in current law. Nothing is changed by this bill. In fact, I failed to mention that section 3, subsection 8 specifically says that nothing in this act requires the State Engineer to accept the provisions of a 3M plan if the State Engineer finds that the plan does not adequately address

the requirements of the act. If the State Engineer feels that a 3M plan does not adequately meet the statutory obligations to protect existing rights, or protectable interests, or the public interest, he has an obligation to reject that application, notwithstanding a 3M plan.

Assemblywoman Titus:

I hear what you are saying; that makes me even more concerned. What I heard you say was that it is up to the State Engineer to decide that. What if the person being affected, the property owner of water, says, I am affected, but the State Engineer says, I do not think so. I do not see where, when someone protests or feels that he is the one being affected, the State Engineer must ask for a plan.

Andrew Belanger:

The State Engineer has that discretion now, as the regulator. He should have discretion to ensure that the law is being followed. The statute is clear as it relates to those provisions of law. The 3M plan is simply a tool that the State Engineer's office may choose to employ in certain instances. It gives additional clarity as to what can be done in relation to a 3M plan. It does not require a 3M plan to be done. That is certainly something we could address, and I am happy to have a conversation with you regarding what the instances are in which the State Engineer's office must require a 3M plan. I do not know that this legislation needs to be that prescriptive. We want to ensure there is a tool available, but we also want to make sure that the tool is used in the appropriate situations.

Assemblywoman Carlton:

Looking at the amendment versus the actual bill, there have been some pretty significant changes. Can you give me an overview of who you had at the table to discuss these issues.

Andrew Belanger:

We had a group that was composed of a number of folks who had participated in the Legislative Commission's Subcommittee on Water, who had testified related to 3M plans. That included the Southern Nevada Water Authority, Great Basin Water Network, Nevada Farm Bureau, and some of the mining industry folks from the Nevada Mining Association. It included Central Nevada Regional Water Authority and the Nevada Conservation League. It was a pretty broad group of folks. The tribes were there for some of the meetings, the Humboldt River Basin Water Authority was present. I do not want to leave the impression with the Committee that everyone who participated in that group supports this amendment. But, everybody who was in that group has had several months to provide feedback on the draft and to provide comments related to this bill so that we can provide something to the Committee that has a modicum of support. I think, particularly related to the definitions of the 3M plan, there is still some worry that we need to address.

Assemblywoman Carlton:

Perennial yield has been a constant discussion for as long as I can remember. How did you get to this definition of perennial yield?

Andrew Belanger:

The definition of perennial yield is substantially similar to the State Engineer's definition that he has used in rulings. It has been changed a little. If you look at the document from the Great Basin Water Network ([Exhibit K](#)), you will see that our amendment uses "withdrawn" and the previous definition used "extracted." Our amendment uses "unreasonably or continuously decreasing" instead of "without depleting" the groundwater reservoir. It is very similar to the language the State Engineer has always used. I hate to admit it, but it took about 2.5 hours to get that definition.

Assemblywoman Carlton:

Thank you for all of the hard work that these groups have put in. We know that these issues are never easy and it takes a lot of folks to get them done. I appreciate it.

Chair Swank:

Are there any other questions? Seeing none, I will first hear those in support.

Danny L. Thompson, representing Laborers International Union Local #872/AFL-CIO:

We want to go on record in support of this issue. Economic development can only happen with a reliable source of water, and we are dealing with that now at Apex, Nevada. There is a huge opportunity there and now that there is water available to that site, it can do nothing but grow.

David Rigdon, representing Taggart & Taggart, Ltd.:

Our firm represents a wide variety of water users throughout the state, including farmers and ranchers, miners, ski resorts, municipalities, and individual property owners.

We are here in support of A.B. 298 with the amendments submitted by Southern Nevada Water Authority. As I mentioned, our firm represents a diverse cross section of water stakeholders. I think it is important for this Committee to note that out of the dozen or so water bills that have been introduced this session, A.B. 298 is the only bill we are aware of that was vetted by a large stakeholder group before it was submitted to the Legislative Counsel Bureau for drafting. Southern Nevada Water Authority has gone out of its way to seek input on the purpose and language of this bill and has incorporated many of the suggestions put forward by participants in the process.

The need for this legislation is clear. In its recent decision in *Eureka County v. State of Nevada State Engineer*, [131 Nev., Advance Opinion 84 (2015)], the Nevada Supreme Court failed to answer a fundamental question of Nevada law: whether a conflict between existing rights and an application for a new appropriation can be resolved through implementation of an approved 3M plan. This question will surely come before the court again. The Legislature needs to provide a clear answer to this fundamental question of public policy, not a question of law. It is important for the Legislature to provide that public policy input, not the court.

I would like to provide some additional information on one particular issue. Our office has done a tremendous amount of research on this issue over the years. Objections have been raised to the provisions in the bill that allow an applicant to provide replacement water as a mitigation measure. It is important to understand that these provisions strictly codify existing common law. The prior appropriations doctrine has always allowed a junior priority right holder to use mitigation water as a remedy when their use of water inadvertently captures water from a senior priority right holder. This is well established. All this bill does is to codify this principle in statute. I can provide the Committee with additional background and case citations on this issue if you so desire.

As I mentioned, this bill has been extensively vetted. As occurs with any group effort, not everyone got everything they wanted. While the proposed bill may not be perfect, we encourage this Committee to keep it moving through the legislative process. We believe that it is vital for the Legislature, not the courts, to establish the public policy of the state related to water.

Paul J. Moradkhan, representing Las Vegas Metro Chamber of Commerce:

The Chamber would like to offer its support to A.B. 298. As Mr. McAnallen indicated, issues arose at the Southern Nevada Forum. As many of you know, that is a collaborative effort in southern Nevada with about 300 to 400 community stakeholders engaged in the process. We are very comfortable with how this legislation has been brought about. The Chamber also believes that, obviously, clarifying water law will benefit southern and northern Nevada and the rural communities in the state. Helen Foley had to leave the room, but she asked me to put her on the record in support of this bill on behalf of her clients. She represents real estate, commercial land developers, home builders, and retail.

Lucas Ingvaldstad, representing General Moly:

I am here in support of A.B. 298. General Moly is a mining company within Eureka County and appreciates the efforts of the interim committee and all those involved who put together a bill that provides the State Engineer the ability to specify mitigations plans for projects like ours.

Tyson K. Falk, representing Southern Nevada Home Builders Association:

I would like to ditto everything that has been said. As the economy continues to grow and we look to building more homes, predictability is certainly important to the homebuilders, and we would like to lend our support.

Amanda Moss, representing Retail Association of Nevada:

Ditto.

Gary Milliken, representing Nevada Contractors Association:

I am a member of the Southern Nevada Forum Infrastructure Committee. We are in favor of this bill as amended.

Jonathan P. Leleu, representing National Association for Industrial and Office Parks:
We are in support of A.B. 298.

Stephen Hartman, representing Vidler Water Company:

I submitted some written comments ([Exhibit L](#)). We are generally very much in favor of the amendments on A.B. 298. My caution is, in this area, do not be too specific in your tying a noose around the State Engineer's neck on various issues. He needs the flexibility to deal with very different situations. I would urge you to understand that we are trying to shine a light down a path and not put walls on each side of the path.

Rusty McAllister, representing Nevada State AFL-CIO:

We also stand in support of this bill as amended. We believe that, from a jobs perspective, the ability to continue growth in a controlled fashion and have the resources available to do that are very important for the southern Nevada economy.

Kandis McClure, representing The Howard Hughes Corporation:

We also would like to lend our support to the bill as amended and appreciate all the work that has gone into it.

Warren B. Hardy II, representing Virgin Valley Water District:

I am speaking in support of the spirit of the legislation and what they are trying to accomplish here. We do have some outstanding questions that we are still working through with the sponsor. In terms of the spirit of the law, we are in favor of that.

Chair Swank:

Is there anyone else in support? [There was no one.] I will now hear those in opposition.

Howard Watts, III, representing Great Basin Water Network:

I want to say that we appreciate being included in discussions and conversations around this bill. We are here in opposition because we believe that despite the few meetings that we participated in, this bill is just not quite there yet. Some of our concerns have not been addressed by some of the language in the proposed amendment.

I have submitted some in-depth remarks for you to consider ([Exhibit K](#)). I would like to highlight a couple of things. On page 4 of my exhibit, I think this is important because it lays out the principle of sustainable water development. The linchpin of Nevada water law is that applicants have to demonstrate that there is adequate unappropriated water available for a new appropriation or a changed use, because if there is not, the new appropriation would deprive existing water rights holders and domestic well owners of their property rights. It would also result in the long-term depletion of scarce, limited water resources, which is also known as groundwater mining. We believe that some of the language in the bill, even as amended, does not quite satisfy some of our concerns related to that.

The document that we submitted ([Exhibit K](#)) is on the bill as written. We got the amended language late last week, and we were unable to update our document to reflect the amendment, but I will discuss it very briefly. Most of the things we have written still apply. When it comes to perennial yield, there are a lot of different factors that are considered by the State Engineer. You can see that the definition has been pared down so that it does not put the State Engineer in too specific of a box, but we believe there are different circumstances, and in every single order that the State Engineer gives, he defines perennial yield within that basin. You will see within our document the recommendation for a definition of perennial yield that is essentially a carbon copy of what the State Engineer commonly uses in his designations. We do not believe it needs to be legislatively defined, but if it were, that is some potential guidance.

On the 3M plan, we note that one of the sticking points is that mitigation can essentially be forced onto existing senior water rights holders. One of the things that has been discussed is at least prioritizing an attempt to get the applicant and existing rights holders who may have conflict to come together and reach some sort of agreement. At least make an attempt to do that, and if they can reach an agreement, then the State Engineer does not have to come up with a monitoring and mitigation plan independently.

Another issue in section 3 subsection 6(d), is around the subsequent adoption of triggers and thresholds. We believe that one of the critical things about the Supreme Court decision mentioned that this legislation is trying to address, specifically found that you cannot create a 3M plan that is essentially a promise to develop the details later. That is concerning. You will note that we had concerns related to the definition of environmentally sound. Some of those concerns have been addressed somewhat in the proposed amendment, but we have also submitted for your consideration a revised definition if you would like to include that in statute as well.

Assemblywoman Carlton:

We did receive your document. It is not particular to the amendment, so we will need to do some collating, so could you please send the current objections that you have. It seems like we have out-of-date information here. You were part of the working group that addressed this. Does Great Basin Water Network support these types of plans at all, or are you in general opposed to the 3M plan?

Howard Watts:

First, in relation to the document we submitted, I am happy to provide some updates specifically with regard to the definition of "environmentally sound." I think that is the main diversion. Otherwise most of the concerns that we have outlined in this document also apply to the amended language. With regard to 3M plans, we are not against them. We believe they are already authorized under law. Our main concern is how they are carried out in the public up front with everything determined in advance, and if possible in a way that seeks a level of agreement between the applicant and the existing rights holders. There is another piece of legislation on the Senate side that seeks to address 3M plans. While we believe there are a few tweaks, we could support that one. We are not categorically in opposition.

I would note that we participated in the group and we were happy to be participants in the group. The group did not come to a final consensus, and we are open to continuing to participate in dialogue to try to refine this language to a point where we can reach that consensus.

Assemblywoman Carlton:

I have found in my almost two decades in this building that consensus on water issues is very, very rare. People will always be unhappy with what is in front of them. Has Great Basin Water Network ever sued anyone over a 3M plan?

Howard Watts:

We have engaged in legal action. I do not want to misrepresent the details of that since I am not an attorney for the Great Basin Water Network. We have challenged decisions by the State Engineer regarding the granting of water rights, and those have gone through the court system.

Assemblywoman Carlton:

I notice on your letterhead that you have Baker, Nevada, listed, but Great Basin Water Network is actually located in Colorado, if I remember correctly?

Howard Watts:

No, Great Basin Water Network is based entirely in Nevada. We are a statewide organization. Our address is listed in Baker. I am based in Las Vegas. We have folks in Reno and Carson City. We are a Nevada-based organization. We have a couple of participants from Utah, along the Nevada-Utah border because of some of the relevant issues, but primarily, we are a Nevada organization.

Assemblywoman Carlton:

I apologize, I must have confused you with another organization.

Jake Tibbitts, Natural Resources Manager, Department of Natural Resources, Eureka County, Nevada:

We have provided written testimony, which is on NELIS ([Exhibit M](#)). I will step through the highlights. I do want to also go on record that we, too, are grateful to the Southern Nevada Water Authority for holding these stakeholder workshops to work on these issues. We do know that the most recent language in the amendment is much improved. We believe there is a long way to go, but we want to thank them for their effort. We also want to go on record for dedicating our time to continue to work to try to find solutions and language that we can all live with.

I will not repeat some of the concerns about the definitions, I will just say that we support the definitions the Great Basin Water Network has put forward. I think there is a little more work that can be done on those. One of the main items is that we are just not aware of the court suggesting that there are issues with some of these terms. The State Engineer has defined them and the U.S. Geological Survey (USGS) has defined them in many locations. We are not sure that is something that needs to be clarified in statute.

You have heard testimony about the *Eureka County* Supreme Court opinion. Much of this bill was based on that decision. The Court left it open-ended whether you could mitigate a conflict with a contingency for approving applications. They really did not get into the whole 3M plan. Page 5 of the case is very specific to just mitigation. We state in our written testimony ([Exhibit M](#)) that we are fully supportive of a 3M plan. We believe 3M plans are best reserved for things that are unknown, uncertain, and not always having the best information. Moving forward, it is the best management practice to have a 3M in place; for conflicts that will happen through a water appropriation, the only option is mitigation. That is a very sticky issue to talk about because of all that it entails.

In Eureka County, for these large appropriations, there have been basically three best management practices that were used before an applicant even applied to the State Engineer. They configure the points of diversion and diversion rates to eliminate the conflict. They reduce the size of the project or improve the water efficiency to eliminate the conflict, or they work out a mutual agreement with impacted people. That was not the case with the Koebe Valley Ranch in the Supreme Court decision. That did not occur. Those are the three best management practices that should occur. We think this bill will circumvent those three best management practices and allow junior appropriators to trample on the rights of senior rights holders.

We are concerned about the due process for existing water rights holders and their ability to protect their rights. These water rights holders would have to come up with a lot of money to bring a plan forward. We are just not sure that is the way we want to move forward with public policy. There is no analysis required in the plan to develop a list of potentially conflicted rights. We feel that applicants will go through an extreme effort to come forward with a list that is as short as possible, since there is no analysis required behind it.

Section 3 outlines a list of things that could be in a plan. Most of them are related to mitigation. One of our big concerns is replacement, when you replace surface water right with the groundwater right. We are not sure whether that passes legal muster. That is something we ask you to consider, especially related to vested rights. *Nevada Revised Statutes* 533.085 says that nothing in the statute can impair or affect vested rights. That poses the question, could you replace a vested right with a groundwater right? Also, in many of these areas, there is no replacement water to be had. This becomes a negative feedback loop, because you are replacing water, then you are pumping more water and creating more impact. It seems like we do not want to go down that road.

We share some of the concerns that the State Engineer has in his neutral testimony that we have read. Also, the amendment by Southern Nevada Water Authority proposes to have 3M plans to not only mitigate conflicts with rights, but the conflicts with environmental soundness and the conflicts of the public interest. We question whether you can actually mitigate the public interest. Something is either in the public interest or it is not. We do not feel that is a provision that can be mitigated.

Kicking the can down the road on establishing some of these thresholds and triggers was outlined in the Supreme Court decision. It related more to mitigation, but they made it very clear that if someone has to challenge something that is developed in the future, they can only get to the heart of the 3M plan. They are never challenging the application that was approved. That is a due process issue. Again, for the record, we are willing to continue to work on this.

Assemblyman Ellison:

Were you part of the negotiating team this summer? I know Senator Goicoechea and Assemblyman Oscarson were there.

Jake Tibbets:

We did participate in the Subcommittee to Study Water. We provided testimony at their meeting in Dyer. This issue was brought up, and we provided a white paper that we put together as well. We were at the work session when Senators Goicoechea and Ford chose to pursue a bill draft request to address this issue as well. Senate Bill 134 is a dueling bill that is related to this and is trying to meet the same thing, using different angles of attack.

Assemblyman Ellison:

Has Senate Bill 134 come out of the Senate yet?

Jake Tibbets:

No, that bill has not been heard in the Senate Committee on Natural Resources.

Assemblyman Ellison:

My big concern is, no disrespect, but when I see all of Las Vegas looking at the issues of water of this magnitude, it has an effect on the little guys out there. I want to ensure that we do this right and not pass something before we make sure the T's are crossed and the I's are dotted. I know you watch this pretty closely, more than we do. I appreciate that.

Laurel Saito, Nevada Water Program Director, The Nature Conservancy:

The Nature Conservancy's mission is to conserve the lands and waters on which all life depends. No issue is more important to protecting Nevada's natural resources than effective management of the state's limited water resources.

We recognize that 3M plans are an important tool for protecting the interests of the natural environment and existing water rights holders. However, like so many water policy topics, the devil is in the details. For reasons detailed in the comment letter submitted to Committee

Chair Swank yesterday ([Exhibit N](#)), The Nature Conservancy is in friendly opposition to A.B. 298 in the form of the amendments we were shown last Friday. However, we do see merit in continuing the discussion of A.B. 298, especially in relation to S.B. 134 that also addresses 3M plans. If our recommendations could be worked into the legislation, it is conceivable we could become supporters of the bill.

Before I highlight the main areas articulated in our letter, I want to express The Nature Conservancy's appreciation for the work that Southern Nevada Water Authority has put into bringing this bill forward and discussing the bill with the water community.

First, we believe that several key terms that A.B. 298 seeks to define in law would be better left to a rule-making process led by the State Engineer's office. The terms "perennial yield," "environmentally sound," and "unappropriated water" are basically scientific terms, and each is critically important for protecting the natural environment.

Above all, the definitions of these terms must be based on sound science. Although we recognize that the Southern Nevada Water Authority's amendments reflect discussions about the definitions over the past several weeks, we recommend that the Legislature direct the State Engineer to promulgate regulations that define these terms to enable input from scientists and allow the definitions to evolve as more data and knowledge are gathered.

Our remaining points relate to having a clear and inclusive public process in development of 3M plans that includes water rights holders and environmentalists, among others, and considering the source of supply for replacement water and subjecting replacement water to the same evaluation process and procedures as any new appropriation or change of use application.

Thank you for this opportunity to provide comments on A.B. 298, and we again note that we hope to continue discussions with Southern Nevada Water Authority and other stakeholders to move legislation forward on 3M plans in this session or in the interim session.

Kyle J. Davis, representing Nevada Conservation League:

We are in opposition to A.B. 298 as drafted and also the amendment that is before you today. I would note, as other speakers have noted, that I have been a part of the discussions that have been convened on this bill. They have been very long and largely productive discussions. I would hope for the opportunity to continue to have discussions about the contents of the bill. Unfortunately, we cannot support the bill as amended.

I will be brief, as I generally agree with the concerns of the speakers before me. Our concern is that this bill could create a situation that allows for water to be allocated without appropriate safeguards to ensure that basins do not become overallocated or further overallocated. Excessive groundwater pumping can have a very detrimental impact on the plant life and wildlife in specific areas. Our concern is that this sets up a system where mitigation plays a much more significant role than it currently does, or should, play. As Mr. Tibbitts mentioned, we feel that 3M plans should be used in areas where there is great

uncertainty about the impacts of what is going to happen, certainly not in cases where the impacts are known on the front end. If we know that there is going to be a significant impact with existing rights or will be a very detrimental effect on the groundwater system which would result in impacts to plants and wildlife, the appropriate action ought to be to reject that application. I think that is something we want to continue to have discussions about.

I share some of the concerns on definitions. We had long conversations about the definitions in our working group. We got a lot closer, but still share some of the concerns brought up by previous speakers.

As a technical point, in section 3, subsection 2, where it says the State Engineer shall consider a 3M plan, this says that this is optional for the State Engineer. I think that should be adjusted there, but this is just a technical concern.

I think that when we are talking about the idea of triggering, there should not be impacts if you are effectively doing or avoiding the management. Triggers are for when we actually see those impacts and are figuring out what mitigation ought to look like.

I have a real concern with the concept of replacement water, especially as it relates to environmental concerns. I do not see how replacing water could be considered an appropriate mitigation for potential environmental impacts that could happen, especially as we are talking about the impacts to plants and potential water sources for wildlife. I do not see how you can mitigate that with replacement water. I would also add that it seems like a very logistically challenging problem to try to get to a point where you can ensure that replacement water is of a sufficient quality. Are we going to be testing the truck every time it pulls up with water to ensure it is of the same quality as the water source that the water right holder has access to?

Also, the requirements that if there is a change in manner or place of use on that replacement water that should be subject to the existing law.

I would also point out that on the concept of evidence of impacts, in some cases in the amendment it talks about substantial evidence, in other cases we talk about evidence. I think in all cases, it should be substantial evidence.

Steve Bradhurst, representing Central Nevada Regional Water Authority:

The Central Nevada Regional Water Authority is an eight-county unit of local government, which starts in Churchill County, and continues to the southeast, including White Pine, Nye, and Esmeralda Counties. The authority appreciates the opportunity to provide testimony on A.B. 298. Also, we appreciate the opportunity that Southern Nevada Water Authority provided us to participate in the statewide work group on this legislation.

As far as the Central Nevada Regional Water Authority's position on A.B. 298, the Authority had a meeting last Friday and discussed A.B. 298 in some detail. The vote was unanimous in three areas. One is that the Authority voted to recommend the Committee not approve

A.B. 298 as it was before them at that point in time. Two, it recommended that the Authority concur with the Great Basin Water Network document that identifies problems with A.B. 298. Three, the Central Nevada Regional Water Authority voted to support the primary concepts and the themes in S.B. 134, since it provides an appropriate way to eliminate a conflict between an application for water and an existing water right holder or domestic well owner.

I have to add a comment regarding NRS 533.370, subsection 2. This is the foundation of the Nevada Water Law in terms of the Prior Appropriation Doctrine. That is, first in time, first in right. We see the Prior Appropriation Doctrine in NRS 533.370, subsection 2. It says the State Engineer shall not approve an application to appropriate water if the proposed use or change conflicts with existing rights or with protectable interest in existing domestic wells.

That provision in state law tells me that if a conflict exists, the State Engineer must eliminate that conflict. The question before you now is how does the State Engineer eliminate that conflict. Certainly, one way to do that is to try to come up with some sort of agreement between the party that is going to be impacted and the applicant. The other way would be to have some sort of a mitigation plan. The problem that I see with that is, if you were to eliminate the conflict, you cannot eliminate a conflict down the road. The conflict needs to be eliminated at the front end, not the back end. That is a concern that I think most people have. If I made an investment as an individual and I have a permit to take water out of the ground, I have made an investment. I have wells, infrastructure, and what have you, and I depended on state water law to protect me. If someone else comes in after me and he wants to take water out of the ground, if there is a conflict, I need protection. Protection is not someone putting together a plan saying, Down the road when we get around to taking water out of the ground, we will make sure that if there is an impact, we will try to address it. It seems to me that the way the NRS reads now is that conflict needs to be addressed at the front end. My thinking is the only way to do that is that you have to have the parties who will be impacted be included in some sort of consent agreement. In the final analysis, a conflict is best eliminated when the party or parties impacted by an application consent to the solution. They need to be a part of the solution.

There is another concern regarding a 3M plan itself. Norman Frey is one of our members. He has been a farmer in the Fallon area for many years. He was a county commissioner for 12 years and president of the Nevada Association of Counties. Mr. Frey raised some legitimate concerns about how a 3M plan might work and how it would impact the average person with a water right. I suggested to Mr. Frey that he put something in writing and send it to his legislators. His comment was that in terms of a 3M plan, it is very difficult for the average person to be able to participate in the development of a 3M plan, much less be at a point where he can take care of himself down the road when the impact occurs. That is why it is important to determine the impact on the front end.

In closing, I want to thank you for the opportunity to say something about A.B. 298, and the Central Nevada Regional Water Authority certainly looks forward to continued participation in this process. [Also provided written testimony ([Exhibit O](#)).]

Anne Macquarie, member, Toiyabe Chapter, Sierra Club:

I have a very short prepared statement, but basically we agree with what has been said by everyone else who has spoken in opposition to A.B. 298. We urge you to oppose and abandon this bill. We think the negative consequences of this bill will forever damage our precious and limited water supply by allowing, essentially, water mining, damaging the environment by permitting successor species of weeds and pests to replace native species and allowing new appropriations of water that would damage senior water rights. In listening to the opposition testimony, there is one thing that our concerns are circling around, that is the term "environmentally sound" and the very fuzzy definitions of "environmentally sound" that are in both the legislation and the proposed amendment. Following what Ms. Saito of The Nature Conservancy said, I really believe that this needs to be pinned down much more in any proposed legislation. The suggestion that it might be more properly done in regulation rather than in legislation is one that I think bears consideration.

Will Adler, representing Pyramid Lake Paiute Tribe:

Pyramid Lake Paiute Tribe is one of the largest senior water right holders in northern Nevada, off of the Truckee River Basin. They have some extremely large issues with some of the degradation of senior water rights that you would see in the passage of A.B. 298. The definitions are also worrying in that we are trying to define currently undefined wording that is used in judicial review right now. They have won prior cases for their water rights based upon these definitions that were previously undefined. Trying to put water rights that have been judicially reviewed into a box with new definitions does cause issues in their minds because they were previously undefined and were done under judicial review. Putting a more stringent or incorrect definition on "environmentally sound" or "perennial recharge" does cause issues in their minds. I would also like to ditto most of the comments made previously in opposition.

Tobi Tyler, Private Citizen, Stateline, Nevada:

I am here to express my opposition to A.B. 298 in its current form for the reasons presented by The Nature Conservancy and the Great Basin Water Network. I am extremely concerned about the long-term viability and health of the wetlands and marshes in Nevada, such as Ruby Marsh, which provide essential habitat for migratory birds and other wildlife. These concerns are in light of climate change, the clear connection between surface water and groundwater, and the seemingly endless attempt by southern Nevada to grab northern Nevada's water. I am also extremely concerned, specifically, about the definition of "environmentally sound" as others have expressed, which includes the phrase "unreasonable harmful impact on wildlife and plant communities." What is the definition of unreasonable? In fact, it should read no harmful impact. I urge you to vote no on this bill in its current form.

K. Neena Laxalt, representing Nevada Cattlemen's Association:

I will say I agree with what they said.

Chair Swank:

Is there anyone else in opposition? [There was no one.] Is anyone in neutral?

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:

We have also been a participant in the ongoing working group that has been working on trying to resolve the issues and come to common ground. The reason for our being in the neutral position at this point is because we want that process to continue, and we do not believe that we are done. In our minds, opposition or support is premature from the standpoint that there is still more work to do in our conversations. We believe that existing water rights owners need to be assured that their rights are protected. We also need to further develop the concepts in A.B. 298 to provide clarity with regard to protecting existing rights and how to deal with resolving the issues of a 3M plan if it does not work. That is part of the conversations, the mechanics of how a 3M plan would be put together and operated is something that we have not gotten to in our conversations. Prior to any kind of action from our point, we want to see how it all works and where we might be able to resolve issues.

Mike L. Baughman, Executive Director, Humboldt River Basin Water Authority:

I am going to read an abbreviated portion of my written testimony, which has been submitted and is on NELIS ([Exhibit P](#)). The Humboldt River Basin Water Authority's legislative subcommittee voted March 27, 2017, to oppose A.B. 298 as introduced. However, I am testifying neutral with concerns today because the subcommittee did not have the benefit of reviewing the amendment offered today by Southern Nevada Water Authority (SNWA), and in recognition of the effort being made by SNWA in its proposed amendment to address a variety of stakeholder concerns with the original bill. I would note that following my review of the amendment offered today by SNWA, there remain many issues of concern needing to be addressed in the bill. Eureka County is a member of the five-county Humboldt River Basin Water Authority and the Authority's legislative subcommittee was generally supportive of the issues which have been raised by Eureka County with regard to A.B. 298 as introduced. In addition, several counties which are members of the Central Nevada Water Authority are also members of the Humboldt River Basin Water Authority and accordingly, the Humboldt River Basin Water Authority generally supports the concerns which have been raised by the Central Nevada Water Authority with A.B. 298. There is a background of issues in my written testimony, which gives a sense of why we are concerned about this bill in our area. It is largely because we have a very complex hydrologic region that we are operating in that has 1,000 miles of river and tributaries and 34 groundwater basins, 24 of which are overappropriated and several of those are subject to being designated by the State Engineer as critical groundwater management areas.

Based upon scientific analyses developed by the U.S. Geological Survey (USGS), the Division of Water Resources has determined that groundwater pumping in the Humboldt River Basin is contributing to reductions in the base flow of the Humboldt River and its tributaries. The Division has embarked upon a multimillion-dollar, groundwater right holder-funded, four-year study by the USGS and the Desert Research Institute to quantify the location and magnitude of subbasin-specific conflicts between groundwater pumping and surface water flows within the basin. Ultimately, these conflicts will require monitoring, management, and mitigation to resolve in a manner which protects existing decreed surface water rights.

Some of the concerns of the Humboldt River Basin Water Authority with A.B. 298 as introduced and with the amendments to the bill offered by SNWA include the following: First, A.B. 298 appears largely structured to address conflicts between existing groundwater rights and applications for new groundwater rights. However, as indicated for the Humboldt River Basin, there are significant conflicts between existing decreed surface water rights, existing groundwater rights, and applications for new groundwater rights. The Authority has not had the time to fully analyze the implications of A.B. 298 and the amendments offered by SNWA for the resolution of conflicts such as those occurring within the Humboldt River Basin. Passage of A.B. 298 as introduced or as proposed to be amended could have unanticipated adverse consequences to future efforts to resolve the conflicts within the basin. Conversely, elements of A.B. 298, as introduced or amended, could be beneficial to the resolution of said conflicts. The Authority has only recently been invited to participate in discussions among the various stakeholders addressing A.B. 298 and the related SNWA proposed amendment thereto. The issues addressed in A.B. 298 are complex and may require further review and consideration during the interim to fully flesh out and get right.

Second, the definitions of perennial yield, environmentally sound, and unappropriated water included in sections 2 and 10 of the bill have led to debate among interested stakeholders. They have important implications throughout Nevada and should not be rushed. These definitions may be better addressed through an open and participatory regulatory process by the Division of Water Resources.

Third, section 3, subsection 5 of the SNWA proposed amendment indicates on lines 11 and 12 that a plan "submitted by the applicant" may be considered by the State Engineer before rejecting an application. This section and elsewhere do not have the State Engineer also consider reviewing a monitoring, management and mitigation plan submitted pursuant to section 3, subsection 3, paragraphs (a), (b), or (c) of the proposed amendment, those prepared by parties other than the applicant.

Finally, I would note that the fiscal notes for A.B. 298 suggest little impact to the Division of Water Resources and other counties that were asked about an impact.

Chair Swank:

We are not a money committee, and we do not discuss fiscal notes.

Mike Baughman:

With that, I would just note that we may have lots of conflicts in our basin as well, and this bill, as drafted, clearly was focused on resolving groundwater conflicts that would also apply in our area. We are very concerned about the anticipated consequences.

**Jason King, P.E., State Engineer and Administrator, Office of the State Engineer,
Division of Water Resources, State Department of Conservation and Natural
Resources:**

We, too, want to thank SNWA and all the other entities that worked together on this bill. I think progress has been made.

We are testifying as neutral on A.B. 298 as amended, not on the bill as introduced. While we have several concerns with the amended bill, I do want to get on the record that our office has used monitoring, management and mitigation plans or, as they are commonly called, 3M plans, as tools in the appropriation of our state's water resources and we believe they have considerable value.

Additionally, we note for the record, like other water bills in this session, this bill is meant to provide guidance on issues that our office has or is litigating. In this instance, the issues surrounding the use of 3M plans are a result of cases decided by our office that have been before the Nevada Supreme Court several times and might be back before the Court on the very issues this bill addresses. Therefore, we want to be somewhat careful about engaging in dialogue on this matter in order to assure we remain neutral in the performance of our work. However, we do feel it is important that we weigh in on such an important bill.

I am not going to go through each of our concerns here. We will openly share them with the bill sponsor and the other interested parties for further discussion. I do want to mention a few of our more substantive concerns.

In section 3, we propose that "monitoring" be exempt from requirements found in subsection 6. Monitoring impacts from pumping are very dynamic. Our office needs the ability to be able to require additional monitoring or change existing monitoring relatively quickly, and we do not see the need for the movement of monitoring to go through the whole formal process. It will just slow things down. If all the notification requirements found in the bill would have to be adhered to, the ability to make changes to monitoring cannot quickly occur.

Section 5, and by extension the conforming language in sections 12 and 18, we do not agree with. The provision in section 5, subsection (2), states that the person furnishing replacement water is not required to submit an application to change the point of diversion place or manner of use or for the tolling of the statutory requirements for that replacement water. We believe that a water right application needs to be filed and subsequently approved. How can we manage the water resources of this state if we do not know how they are being used?

With that, we look forward to working with the bill sponsor and the other parties on this important bill. I would be happy to answer any questions. [Also provided written testimony, ([Exhibit Q](#)).]

Assemblywoman Cohen:

Will you give us a brief understanding of how water replacement works, the mechanics of actually replacing water?

Jason King:

I would say, generally speaking, the citizens of Nevada are not going to see a lot of 3M plans. It is not like there is going to be an application coming before us every week. It has been our experience that these really occur in large projects in basins where we do not have any data.

We are not exactly sure how the aquifer will respond to different pumping scenarios. This is not your average application, necessarily, for stock watering 300 head of cattle. Just to give you some sense of how often I believe we will see 3M plans, I do not believe it is going to be all that often. There have been occasions where an applicant will come into a basin where there is plenty of water to appropriate based on the perennial yield of the basin and how much is committed. Perhaps the only private land in that basin that the applicant can use is where they filed the water right application.

As it turns out, there may be one other domestic well in the area, or there might be a spring that flows 0.5 gallons per minute. We know, based on the fact that they want to pump 2,000 acre-feet for five pivots of irrigation, that there is a good chance that it is going to dry up that spring.

Let us say the spring was used for stock watering 100 head of cattle. Even though there is plenty of water in the basin, do we deny that application up front because it is going to conflict with that spring—it is going to dry it up—or is it better policy that we say that applicant can drill a new well, put in a solar pump, and have water delivered to that same 100 head of cattle. That is one instance of replacement water. When you start talking about this, again, like so many things related to water, the discussion goes to the extreme. People say, So if you have the chance of drying up my spring that flows 5 cubic feet per second, you just want to pump more water and give me 5 second-feet. That is not what we are talking about here. We are trying to provide some good policy for the driest state in the nation as to when it makes sense to mitigate a conflict and to avoid a conflict.

Assemblywoman Titus:

Inside this building we see many, many water bills that I am sure you are anxiously debating, some for and some with concerns. I know that we have a limited amount of water, and I am seeing in testimony today mostly developers, builders, and Southern Nevada Water Authority. Do you see a time when we reach our maximum capacity of what water we can supply to systems of this state?

Jason King:

Yes. We have a limited supply, just like every place does. We have estimates of our perennial yield of all our groundwater basins. We have good data on our major river flows; most of them are fully appropriated. I do believe there will come a time when, perhaps, all the perennial yield is spoken for. Before we get to that point, we need to have good water laws set in place, good conservation, and look at alternative supplies.

[Other testimony provided but not mentioned include ([Exhibit R](#)), ([Exhibit S](#)), and ([Exhibit T](#)).]

Chair Swank:

With that, I will close the hearing on A.B. 298. I will open this meeting up for public comment. Seeing none, we are adjourned [at 3:55 p.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblywoman Heidi Swank, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is the Work Session Document for Assembly Bill 16, dated April 4, 2017, presented by Susan E. Scholley, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit D](#) is the Work Session Document for Assembly Bill 34, dated April 4, 2017, presented by Susan E. Scholley, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit E](#) is the Work Session Document for Assembly Bill 138, dated April 4, 2017, presented by Susan E. Scholley, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit F](#) is a letter dated March 13, 2017 to Mr. Danilo Dragoni, Bureau of Air Quality Planning, from the Nevada Propane Dealers Association, provided by Bryan Milton, President, Nevada Propane Dealers Association.

[Exhibit G](#) is written testimony submitted by Bryan Milton, President, Nevada Propane Dealers Association, in support of Assembly Bill 416.

[Exhibit H](#) is a copy of the Energy Policy Act of 1992, enacted October 24, 1992, provided by K. Neena Laxalt, representing Nevada Propane Dealers Association.

[Exhibit I](#) is written testimony regarding Assembly Bill 416 presented by Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources.

[Exhibit J](#) is proposed amendments to Assembly Bill 298, submitted by Andrew M. Belanger, Director of Public Services, Southern Nevada Water Authority.

[Exhibit K](#) is a document titled "Problems with A.B. 298 as written," submitted by Howard Watts, III, representing Great Basin Water Network.

[Exhibit L](#) is written testimony, dated April 3, 2017, in support of Assembly Bill 298, submitted by Stephen Hartman, representing Vidler Water Company.

[Exhibit M](#) is written testimony in opposition to Assembly Bill 298, provided by Jake Tibbitts, Natural Resources Manager, Department of Natural Resources, Eureka County, Nevada.

[Exhibit N](#) is a letter dated April 3, 2017, in opposition to [Assembly Bill 298](#), to Assemblywoman Heidi Swank, authored and presented by Laurel Saito, Nevada Water Program Director, The Nature Conservancy.

[Exhibit O](#) is prepared testimony in opposition to [Assembly Bill 298](#), dated April 4, 2017, presented by Steve Bradhurst, representing Central Nevada Regional Water Authority.

[Exhibit P](#) is written testimony dated April 4, 2017, regarding [Assembly Bill 298](#), presented by Mike L. Baughman, Executive Director, Humboldt River Basin Water Authority.

[Exhibit Q](#) is written testimony dated April 4, 2017, regarding [Assembly Bill 298](#), presented by Jason King, P.E., State Engineer and Administrator, Office of the State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources.

[Exhibit R](#) is a copy of an email dated April 4, 2017, regarding [Assembly Bill 298](#), to Chair Swank and Committee Members, from Jeremy Drew, Legislative Spokesman, Nevada Board of Wildlife Commissioners.

[Exhibit S](#) is a letter dated April 2, 2017, in opposition to [Assembly Bill 298](#), to the Assembly Natural Resources, Agriculture, and Mining, authored by John F. Bosta, representing Private Well Owners Association of Nye County.

[Exhibit T](#) is a letter dated April 4, 2017, in opposition to [Assembly Bill 298](#), to Assembly Committee on Natural Resources Members, authored by Kenny Bent, Private Citizen, Pahrump, Nevada.