

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

**Eightieth Session
February 27, 2019**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Heidi Swank at 4 p.m. on Wednesday, February 27, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada and to Room 203, Carl Diekhans Center Industrial Tech Bldg., 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/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Heidi Swank, Chair
Assemblywoman Shannon Bilbray-Axelrod, Vice Chair
Assemblyman Alex Assefa
Assemblywoman Maggie Carlton
Assemblywoman Lesley E. Cohen
Assemblyman John Ellison
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Sarah Peters
Assemblywoman Robin L. Titus
Assemblyman Howard Watts
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Jann Stinnesbeck, Committee Policy Analyst
Allan Amburn, Committee Counsel
Nancy Davis, Committee Secretary
Alejandra Medina, Committee Assistant

OTHERS PRESENT:

Bradley R. Crowell, Director, State Department of Conservation and Natural Resources
Tim Wilson, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources
Micheline Fairbank, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources
Rupert Steele, Chairman, Confederated Tribes of the Goshute Reservation, Ibapah, Utah
Robert McDougal, Commissioner, Board of Commissioners, Pershing County
Norman Harry, Environmental Director, Environmental Protection Department, Washoe Tribe of Nevada and California
Norman Frey, Private Citizen, Fallon, Nevada
Jeff Fontaine, Executive Director, Central Nevada Regional Water Authority and Humboldt River Basin Water Authority
Jake Tibbitts, Natural Resources Manager, Department of Natural Resources, Eureka County
Kyle Roerink, Executive Director, Great Basin Water Network
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation
Patrick Donnelly, Nevada State Director, Center for Biological Diversity
Tobi Tyler, Executive Committee Member, Toiyabe Chapter, Sierra Club
Laurel Saito, Nevada Water Program Director, The Nature Conservancy
Mark Butler, Executive Council Member, Coalition to Protect America's National Parks
Susan Juetten, Private Citizen, Reno, Nevada
Kenny Bent, Private Citizen, Pahrump, Nevada
John Hiatt, Conservation Chair – Press Liaison, Red Rock Audubon Society
Patti Jesinoski, Private Citizen, Henderson, Nevada
Ed James, General Manager, Carson Water Subconservancy District
Andrew M. Belanger, Director of Public Services, Southern Nevada Water Authority
Adam Sullivan, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources
David G. Hillis, Jr., Principal Engineer, Turnipseed Engineering, LTD, Carson City, Nevada
Steve Walker, representing Douglas County; and Storey County
Bennie B. Hodges, Manager, Pershing County Water Conservation District
Rebekah Stetson, Private Citizen, Reno, Nevada

Anthony Sampson, Tribal Chairman, Pyramid Lake Paiute Tribe
Will Adler, representing Pyramid Lake Paiute Tribe

Chair Swank:

[Roll was called. Committee rules and protocol were reviewed.] Assembly Bill 62 will be heard on another day, in order to allow enough time for public participation. I will begin with a presentation by the Division of Water Resources, State Department of Conservation and Natural Resources.

Bradley R. Crowell, Director, State Department of Conservation and Natural Resources:

Thank you for holding this hearing today to discuss the important topic of how best to manage Nevada's most precious resource, our water. Before we provide some background for the Committee on Nevada's water statutes and the manner in which those statutes are implemented, I would like to introduce the leadership of our Division of Water Resources and then take a moment to offer the big picture of the challenges Nevada faces today in managing our limited water supply. I am joined by Mr. Tim Wilson, Acting State Engineer and Administrator of the Division of Water Resources as well as the two deputy administrators, Adam Sullivan and Micheline Fairbank. We are happy to answer any and all questions you have today.

To help set the stage for this hearing, I would like to highlight three indisputable facts: One, Nevada is the driest state in the nation. Two, Nevada has been one of the fastest growing states in the nation for the past two decades and is continuing to grow and diversify its economy. Three, climate change is real. The impacts are being felt in Nevada and it is our responsibility to take the impacts into account in managing Nevada's water resources. These three facts demand we take a proactive approach to responsibly manage our water in every corner of Nevada. It is imperative that we recognize these fundamental truths and exercise our collective responsibilities to protect the best interests of all Nevadans.

There is a fourth potential reality lurking just around the corner, which is the very real and growing possibility that the federal government will enact mandatory curtailment of our water supply from the Colorado River. If this reality comes to pass, our water challenges in Nevada will become magnified exponentially.

We are here today not to ignore these challenges, but to recognize them and to take action. Taking action will require both courage and shared sacrifice. There can be no winners and losers when there is a collective understanding of the challenges we face and the willingness to ensure a sustainable water future for all Nevadans. I am optimistic that we can and will rise to this challenge.

With regard to the bills we will discuss today, these are our neutral and good-faith attempts to address complex issues based on years of experience and expertise within the Office of the State Engineer which is within the Division of Water Resources. We have not cornered the market on the best ideas, and we welcome the informed views and suggestions of this

Committee and the many stakeholders who are here today. One thing is without question, the status quo is not an option. We look forward to your questions and discussing the legislation that is before us today.

Tim Wilson, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:

I would like to provide an overview of Nevada water law, our agency, and some of our water issues. Most people know that our mission statement is to conserve, protect, manage and enhance the state's water resources for Nevada's citizens through the appropriation and reallocation of the public waters [page 2, ([Exhibit C](#))].

What we do is quite a bit more than that. Page 3 shows a short list of some of the many activities we perform—many are very important, such as well drilling, dam safety, innovative solutions like aquifer storage and recovery, and many others.

In recent years, the Division has also made a concerted effort to use advanced technology to improve our services to the public. We are utilizing modeling techniques in processing power, in cooperation with other agencies and the University of Nevada to better understand basin-scale hydrology. We are utilizing unmanned aerial vehicles for dam safety inspections and for mapping to complement, but not replace, boots on the ground for inspections. We use geographical information systems to improve mapping, public accessibility, and historic and current data. We have some really good Truckee-Carson Irrigation District mapping, Smith Valley and Mason Valley interactive monthly pumpage reports, and historic hydrologic data that was formerly only in paper records and is now all on interactive databases.

Page 5 shows a few quick facts about Nevada. We sometimes argue with New Mexico over who is the driest, but we think we still hold the moniker as the driest in the nation, averaging approximately 11 inches of precipitation annually. When I started with the state of Nevada, it does not seem very long ago but it was 1995, there were about 1.5 million people in this state. Our population is now over 3 million. I point that out because the amount of water we have is the same, obviously, about 4 million to 5 million acre-feet of surface water and about 2 million acre-feet of groundwater. We manage our water resources that are available through 14 hydrographic regions divided into 256 groundwater basins. We group those basins and assign them to water resource specialists. Any time you contact our office, if you tell us what groundwater basin you are in, you will be directed to a water resource specialist who is assigned to that basin and can personally assist you.

Page 6 shows who uses our water. Most of it is irrigation. Irrigation for surface water takes up about 64.9 percent. The second largest user of surface water is recreation and wildlife at almost 19 percent; this amount represents instream flow rights, recreational rights, and evaporation off of terminal lakes. Municipal use is third at about 16 percent; this includes Las Vegas' use of the Colorado River water and the Reno and Sparks use of the Truckee River water.

Page 7 shows groundwater use; irrigation use is the dominant use at about 67 percent, mining is at about 10 percent, and municipal use at about 9 percent.

Our water rights are committed through permits and vested claims. Page 8 is a chart comparing groundwater pumpage to the water that is actually committed for each manner of use in the state. If you were to add up both columns, the actual usage is about 50 percent of the committed rights for all manners of use.

Page 9 ([Exhibit C](#)) is a simple illustration showing that on a statewide scale, even though we use less than 50 percent of our total committed supply, we do exceed our committed resources in many localized areas. This map shows the ratio of committed groundwater resources—that is the addition of permits, certificates, claims, and domestic wells versus the amount of water we estimate is available through perennial yield. We estimate about 106 basins are over our estimated perennial yield. I would also like to point out that there are about 54 of the 256 basins for which commitments are more than double their perennial yield. These are some very serious issues.

Page 10 gives you an even better picture where actual groundwater pumpage exceeds the perennial yield on about 51 of our 256 basins. These are the basins that are most likely to be experiencing significant water level drawdown and conflict amongst users. In some cases, we have worked with local management very actively to prevent harmful effects: notably, Las Vegas Valley, Truckee Meadows area, and Diamond Valley.

I would like to discuss Nevada water law. We have three basic tenets of Nevada water law: the prior appropriation doctrine, which means if you are first in time—you are the senior user—you get your water first. Beneficial use is an expectation that you place your water to beneficial use, that is the limit of the right to use of water. Related to the beneficial use is that if you are not using your water, you can lose it to cancellation, abandonment, or forfeiture.

Page 12 describes a very important concept that comes up that some people do not realize. It is by statute that the public owns the water in the state of Nevada, above and below the ground. What people have through the statutory permitting process is the right to the use of the water. That is considered a type of property right. It is appurtenance to the property, it can pass from seller to buyer, it can be sold and leased, but it is still a permit.

Page 14 makes it look like it is very easy to obtain a permit. It can be a very complex process to file an application. If you meet all of those statutory criteria, you can be issued a water rights permit. As part of the permit terms, you will be required to do a proof of completion of work and proof of beneficial use. If you do so, then you will be allowed to have a water rights certificate, which is the last step in the process. If you were using your water prior to the enactment of Nevada water law, you can make a vested claim to water as well. We have an entire section that does the adjudication process to make a determination on those claims—prior to 1905 for surface water, 1913 for artesian wells, and 1939 for groundwater.

There is not a lot we can do when someone files an application. We are either going to approve it, approve it with conditions, or we are going to deny it [page 15]. Many times, in addition to the regular permit terms, we will condition permits on monitoring. We have conditioned permits on mitigation, pumpage reporting, the depth of the well as far as limitation, and reducing the rate of flow and volume that were requested in the application. Or we can deny the application. Any of our decisions in that regard can be appealed to district court.

Page 16 ([Exhibit C](#)) shows four basic conditions of approval. The ones we will be looking at today are part of *Nevada Revised Statutes* (NRS) 533.370, which deals with conflicting with existing rights. We also consider whether the use of the water will prove detrimental to public interest, whether there will be a conflict with existing domestic wells, and whether there is unappropriated water available.

We also consider legislative directives, which are in NRS 533.024. "Conjunctive use" was recently added. We will discuss Assembly Bill 51 later, which attempts to address this part of the legislative declaration. "Conjunctive use" means managing the surface water and groundwater as a single source and recognizing the interaction between the two. Previously, under Nevada water law, we have treated surface water and groundwater separately, and we will talk about that when we discuss our bills.

We have another bill that is not going to be heard today. It really helps add to the antispeculation doctrines we have in statute. If you apply for a permit, you cannot just hold the spot, you have to actually diligently apply yourself to place your water to beneficial use—construct the works necessary, drill your well, construct your ditches, and actually use the water beneficially and in accordance with the terms of your permit. We have a lot of antispeculation doctrines to keep people from grabbing a spot. If they do not intend to use the water, they need to move aside and let the next person in line have that water.

Page 19 shows that we have a tenet that you can lose a water right permit through cancellation, forfeiture for five years of nonuse of certificated groundwater, and also abandonment.

We have many significant water management challenges. In 2017, the Legislature directed the Division to conjunctively manage all waters, regardless of their source. Since the water laws traditionally treated surface water and groundwater as separate sources, there is a lot of room for statutory changes to allow our office to fulfill this mandate. Concentrated areas of domestic wells are a continuing concern in dealing with conflicts, along with overappropriated basins and litigation are our largest challenges.

To tie this all together, the Division would like to have additional statutory authority. We have three bills this session and I look forward to explaining the bills and addressing any misconceptions about the intent of our bills that may be out there. We are all in this together and I hope we can all come together and work toward solutions. As Mr. Crowell mentioned, we may not have all the ideas, but we are willing to listen to everyone's ideas and bring

everyone together to work toward bringing some statutory structure and correcting some mistakes from our past, as you can see by the overappropriated basins.

Chair Swank:

Thank you for the presentation. We will now move to the bill hearings. I will open the hearing on Assembly Bill 30.

**Assembly Bill 30: Revises provisions governing the appropriation of water.
(BDR 48-214)**

**Tim Wilson, Acting State Engineer and Administrator, Division of Water Resources,
State Department of Conservation and Natural Resources:**

I am here today to present testimony in support of Assembly Bill 30. As I enter my testimony, it is imperative to stress that this—and every bill the Division of Water Resources, State Department of Conservation and Natural Resources has offered this session—is the product of extensive experience managing Nevada’s limited water resources ([Exhibit D](#)). To adapt to today’s water resource challenges, the Division of Water Resources needs opportunities for flexibility to best manage Nevada’s limited water resources and to fulfill its legal duties and responsibilities. As Nevada’s population grows, there will be an ever-increasing demand on our water resources. These demands will inevitably create conflicts, and therefore the responsibility to manage those conflicts is imperative.

Nevada’s water resources belong to all Nevadans, and it is the responsibility of the State Engineer through the Division of Water Resources to manage our shared water resources with consistency, in accordance with the law, and using the best available science. And to preemptively dispel any rumors that I have heard and to put to rest any perception that this, or any Division bill, is intended to, or is for the purpose of facilitating large water development projects, let me be clear: This is absolutely untrue. These bills are the Division’s best effort to address real challenges and issues the Division grapples with regularly in all parts of the state. The Division of Water Resources has heard an abundance of criticism of A.B. 30, much of which we believe misinterprets the bill, and we are open to an ongoing dialogue as to how to best achieve the purpose of this bill.

The intent of this bill is to bring needed consistency and clarity to Nevada’s water law. Assembly Bill 30 seeks to harmonize existing provisions of Nevada’s water law under *Nevada Revised Statutes* (NRS) Chapters 533 and 534. Specifically, the mandate within NRS 533.370 subsection 2 that applications conflicting with existing rights be denied in contrast with the express authority under NRS 533.024 subsection 1, paragraph (b) to mitigate conflicts with domestic wells and the additional express authorities under NRS 534.110 subsection 4, permitting the use of monitoring, management and mitigation plans (3M plans) as a condition on approval of water rights, and the allowance for the reasonable lowering of the groundwater table. These provisions currently provide conflicting guidance to the Division of Water Resources regarding the issuance of water rights and the ability to resolve potential conflicts among water rights holders. Assembly Bill 30 is intended to help resolve this discrepancy by providing the Division clear legislative direction to help avoid or

eliminate a potential conflict when deciding whether or not to grant a water rights application.

Nevada water law anticipates that any water appropriation may result in some degree of foreseen or unforeseen conflict or impact to existing water rights. And, while the terms “mitigation” and “3M plans” have been somewhat villainized due to conflict over a particular groundwater development project, the fact of the matter is that current law authorizes the State Engineer to resolve a conflict based on the principle that any impacted senior water rights holders are made whole and the overreaching public interest remains balanced.

This bill merely seeks to provide needed clarity and consistency in Nevada water law. The commitment of the Division of Water Resources is that harmonization of the law will be applied in a balanced, responsible manner through consultation with and contribution by affected water rights holders and domestic well owners, and based on the most current and best available hydrologic and engineering data.

In offering additional context within Nevada water law as to why this bill is both permissible and necessary, Nevada’s water resources are owned by all Nevadans, as enshrined in state law under NRS 533.025 since 1913. Whereas, a water right does not confer ownership, but merely the right to the use of water in a specified quantity and manner as allowed for under the terms of a water rights permit. For the purpose of this bill and today’s testimony, there are two important principles to keep in mind regarding the right to use water: Every new water rights permit is conditioned on and subject to existing water rights. If a new junior right is determined to impair a senior right in a manner that cannot be resolved, the junior right holder must cede to the senior right holder; any water right in Nevada, whether it is a prestatutory vested claim, a decreed right, or a statutory appropriation, carries with it the requirement that all water rights must be put to beneficial use. A water rights holder neither holds ownership nor title to the water itself, but only the particular beneficial use as approved according to the underlying water rights.

This is important because Nevada water law accounts for the fact that certain water rights appropriations may result in an adverse impact to existing rights. The Nevada Division of Water Resources has applied this statutory provision by seeking to minimize, avoid, or eliminate any existing or reasonably foreseeable impacts on all impacted water users. This basic principle is the foundation for managing Nevada’s limited water resources without undermining the responsible development of water to provide for the continued economic growth of our state.

Before I walk through the specific provisions of A.B. 30, I want to address certain perceptions and concerns regarding the Division’s water management practices. First, the Division routinely conducts, or requires holders of water rights to conduct, water monitoring to better understand local groundwater conditions and the effects of a particular project on the sustainability of groundwater development in a particular basin or region. Currently, the Division of Water Resources has approximately 90 groundwater monitoring plans in place as a condition of existing water right permits within one or more of Nevada’s 256 groundwater

basins. Monitoring is necessary because we cannot predict with absolute accuracy what the impacts of pumping will be, even utilizing the best available science. Accurate monitoring data improves the science, which in turn leads to better management. Second, 3M plans are not the panacea to achieving balanced water development in Nevada, and we recognize that. In fact, very few water rights permits have been granted with a requirement for a 3M plan, only one of which was developed by the applicant, accepted by the State Engineer, and implemented. In short, 3M plans may be applicable or useful in the future, and may be an appropriate proposal for the elimination or avoidance of a conflict, but 3M plans should not and will not be used to push through any questionable water development projects. With that, please allow me to provide a summary of A.B. 30.

Section 1 proposes to add a new section to NRS Chapter 533. This new statutory section would harmonize and bring consistency to Nevada's water statutes by clearly identifying the conditions under which the State Engineer may consider a proposal to avoid or eliminate a conflict. A proposal may only be considered if water is available for appropriation.

Section 1, subsection 1, paragraph (a) grants the State Engineer discretion to consider a proposal that would avoid or eliminate a conflict, and sets forth the criteria the State Engineer may consider within such a proposal. This includes an agreement between the water right applicant and the owner of an existing water right or domestic well, if there is concern that a conflict may manifest. An example could include the deepening of an existing well where the anticipated reasonable lowering of the groundwater level would interfere with the well's use. These types of agreements are only limited by the needs of the individual water rights holders.

Section 1, subsection 1, paragraph (b) allows for the development of a 3M plan. These plans should be viewed in their proper light as contingency plans, not as forgone conclusions to address conflicts that cannot be avoided. Depending on the known and unknown conditions of a groundwater aquifer and the inherent degree of uncertain response by a particular groundwater project, a 3M plan may be the most appropriate option. The Division of Water Resources will continue to use its technical expertise to require stringent standards, primarily focused on the first two "Ms" of monitoring and proactive project management, to be the mechanism to avoid conflicts. But because the exact effects of pumping are never certain, and environmental conditions will always be variable, a comprehensive and in-depth analysis of the possibilities with flexible responses aimed to avoid or eliminate conflicts is an important tool needed to facilitate the management of Nevada's water resources. Therefore, responsible management of our water resources requires this type of upfront, proactive management rather than after-the-fact conflict resolution.

The third option outlined in section 1, subsection 1, paragraph (c) is, "Any other plan to avoid or eliminate the conflict or replenish the source of supply impacted or depleted by the conflict." Again, providing the Division of Water Resources flexibility to consider alternative proposals and solutions that may be "out of the box" or creative alternatives is imperative as water conflicts become more prevalent, particularly when these solutions are proposed and agreed to by the impacted users themselves, which is always the Division's

preferred scenario. The concept of mitigation should not be universally maligned, and the Division welcomes any and all creative solutions to best manage our shared water resources in a manner consistent with the fundamental tenets of Nevada's water law.

Section 1, subsection 2 expressly authorizes the State Engineer to grant a water rights application if the proposal is found to avoid or eliminate the conflict, and to condition the appropriation on the applicant's performance of the measures or actions in the proposal determined to be necessary to avoid and eliminate the conflict.

The remainder of Assembly Bill 30, sections 2 through 10, contains conforming changes.

The Division of Water Resources recognizes and appreciates extensive feedback to A.B. 30; however, resolving the existing statutory conflict is imperative. Furthermore, despite many misplaced concerns regarding 3M plans, particularly the concept of mitigation, this effort is the Division's attempt to implement the direction of the Legislature to utilize tools such as 3M plans as a condition to appropriations. The Division believes there is, at some level, consensus that proposals to avoid or eliminate conflicts is good water policy in instances where water is available to appropriate. The Division is open to, and welcomes, alternative ideas as to how to address these issues. A constructive dialogue should be a priority for every stakeholder because the status quo is not, in the end, serving the interest of the public who owns Nevada's water. At this time, I am happy to take any questions from the members of the Committee.

Assemblywoman Cohen:

Looking at section 1, subsection 1, paragraph (c), can you give an example of what one of those agreements might look like?

Tim Wilson:

We have one approved 3M plan within our office. It is quite extensive. It lays out all of the monitoring requirements that will be necessary, it lays out pumping management, and it follows up with mitigation measures that could be used if conflicts arise. It is not a simple plan, it is very complex and it took a lot of effort to bring everyone together as much as possible to come to some type of consensus. It is difficult to get a consensus amongst everyone, but we thought we had the best plan we possibly could to set the applicant up front to have to be responsible for mitigation as a final contingency. That is the significant point to the 3M plan. When you have an applicant that only has to do monitoring and management, we can tell them to stop using the water. If they do not have a specific up-front responsibility for mitigation, then they are not on the hook for mitigation. We do not want them to walk away, we want them to be up front and responsible.

Assemblywoman Cohen:

Are you already able to develop a 3M plan?

Tim Wilson:

That is correct. In statute, we have a mention of monitoring, management, and mitigation plans and a requirement to consult with local counties as part of issuing those plans, and we have conditioned permits on the 3M plan. We have lesser versions of 3M plans also. As I mentioned, we have a significant number of conditioned permits on monitoring and management of pumping.

Bradley R. Crowell, Director, State Department of Conservation and Natural Resources:

The issue with the authorization of the 3M plans is that we have authorization to do 3M plans in instances where water is available. The 3M plan would be to mitigate a conflict, but there is also statute that says, when there is a conflict, you have to deny the application. Those two provisions are inconsistent. If we take one route, we get sued by people who think we should have taken the other route. If we take the "no" route, we get sued by people who think we should take the mitigation route. We are stuck in a lose-lose situation from a management perspective.

Chair Swank:

Will you please repeat the two pieces that conflict for me?

Bradley Crowell:

I would like to have Ms. Fairbank repeat that in a more articulate way.

Micheline Fairbank, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:

We have two statutory provisions under NRS 533.353: We have an allowance in which our office is authorized to approve an application to appropriate water, contingent on a monitoring, management, and mitigation plan. Yet, under NRS 533.370 subsection 2, as was spoken to earlier, we also have the requirement that if there is water available to appropriate and/or whether that new appropriation would conflict with existing rights. Inherent in the 3M plan is an anticipation of conflict, and we have a requirement to deny that application; on the other hand, we are guided by the Legislature to consider these plans in determining whether to appropriate water.

Chair Swank:

Would this bill, should it pass, solve that conflict currently in Nevada water law?

Micheline Fairbank:

Yes, this bill would resolve that conflict or at least bring harmonization to these different provisions with the state. We also have provisions that allow for our office to mitigate conflicts with domestic wells under certain conditions and to allow for reasonable lowering of the groundwater table in NRS Chapter 534. Again, in each of those is the inherent idea that there is conflict. We have provisions that allow us to mitigate conflict. We are trying to provide that harmonization so that we have a clear direction as to when and under what conditions that we proceed with applications.

Chair Swank:

Is it fair to say that there is not a lot in this bill that is new, and this bill is mostly a harmonization of things that we already have in statute?

Micheline Fairbank:

Yes, that is correct.

Assemblyman Watts:

Do you see the 3M plan as applying to mitigating the public interests, or in the case of interbasin groundwater transfers, environmental soundness? Or do you see this only applying to conflicts with water rights holders or interest in domestic wells?

Micheline Fairbank:

The idea behind 3M plans is not necessarily to mitigate conflicts to the public interest. Certainly, the idea of the public interest is out there in terms of the balancing of development of water and balancing that as to what those interests are with that particular project. To the extent that it talks about the interbasin transfers, within the statute we also have to have environmental soundness when it comes to interbasin transfers. It is a very in-depth and complex analysis that has to take place based upon each individual application and project. That is one of the challenges; there is not a universal one-size-fits-all solution. We have to look at each project, each application, the hydrographic basin, and the conditions within that basin on an individualized basis to provide the balance. Our office has denied applications on the basis that it is not in the public interest due to multiple considerations. We take great care, and we try to strive to do that balancing within the confines of the statute.

Assemblyman Watts:

Would a 3M plan apply to monitoring, management, and mitigation in those areas, or is it geared toward monitoring, managing, and mitigating conflict between water rights, only?

Bradley Crowell:

What we are seeking in this bill is the expressed authorization to build regulations governing 3M plans. Part of that process of building regulations is the stakeholder or public process. With that interaction, we hope to strike a balance between various interests, including the environmental concerns and the public interest. Instead of being overly prescriptive in the legislation, or having the State Engineer do it without the utmost transparency, we are asking for direction to undertake the regulatory process with stakeholders to strike that balance.

Assemblyman Watts:

I know that sometimes we have legislation that asks for regulations to be promulgated, so I appreciate the clarification of the intent. I want to make clear where my question was coming from and my concern. If we were to set the foundation in legislation, I am concerned that we can have a situation where conflict between water rights is being mitigated, but that the mitigation measures—which I know this legislative framework leaves wide open—could potentially result in harm to the public interest or to environmental soundness. I am concerned if this is focused on mitigating conflicts for water rights, we could end up with

things like aquifer decline, groundwater mining, or other things that have negative impacts in those other areas that would not be considered under the policy framework.

Bradley Crowell:

There are some environmental concerns and public interest determinations that cannot be either fully or partially mitigated.

Assemblywoman Titus:

I have an observation: using "harmony" and "water law" in the same sentence is a little bit of an oxymoron. In your presentation prior to the bill, you gave us a review on water law in the state. You mentioned that one of your tenets—one of the things you do not want to do—is upend decades of decisions. Then, looking at A.B. 30, section 1, begins, "If there is water available for appropriation in the proposed source of supply, before rejecting an application because the proposed use or change set forth in an application conflicts with existing rights." It seems that very first line upends the very tenet of our Nevada water law since its inception—the first in time is the first in rights.

Tim Wilson:

We feel that instead of an outright rejection of the application, there should be an opportunity to bring the parties together to resolve the conflict. We might even have an ability to avoid the conflict through management of the project. That management could be staged development, altering points of diversion, or reducing pumpage from certain wells. We think that in order to maximize our available water resources, and again, we are talking about when water is available for appropriation, that we need to have the opportunity to try to avoid conflict through a 3M plan and not outright reject an application.

Assemblywoman Titus:

Frankly, you did not answer my question. What I asked was this: Because you want to take permittees to arbitration or discussion, you are saying that the person with the senior right—which is the one this protects—you are forcing him into a negotiation or a conflict. By nature of doing that, it takes away his right to say, "I am the senior water rights holder, and this interferes with me." Is that not what this is trying to change?

Tim Wilson:

I think Ms. Fairbank might be able to assist me.

Micheline Fairbank:

I think the direct answer to your question is, the right to the use of water is merely to the use. It is not the actual ownership to the particles of the water; it is not even necessarily the place of diversion or the source of the water, so long as the senior water rights holder is made whole in some manner. Again, there are a lot of variables and different types of scenarios. That is why it is difficult because what might be an appropriate resolution to avoid or eliminate the conflict may be through the reasonable lowering of the groundwater table if someone has a shallow well. That well is no longer going to be functional, or the draw may not be sufficient based upon the lowering of the groundwater; therefore, that alternate plan

could be simply something as simple as deepening the well. You are still providing access and respecting the prior appropriation because you are ensuring that the senior water rights holder is being made whole in an appropriate manner which satisfies their manner of use and their beneficial use. You are also balancing the development of the available water without allowing a particular water rights holder to hold hostage available water that could be used for the development and economic growth of a particular area where water is available. It is a balancing of interest. There is not an easy dialogue because you must look at each one on a case-by-case basis. Overall, that fundamental tenet in the Nevada water law is that you have the right to the use of the water.

Assemblywoman Titus:

Would you agree that the water is a property right, a right of ownership?

Micheline Fairbank:

You have a right to the use of the water, but it does not give you the ownership over the particles of water because that belongs to the public.

Assemblywoman Bilbray-Axelrod:

You used the term "reasonable groundwater levels." How is "reasonable" defined?

Tim Wilson:

In NRS 534.110 subsection 4, all groundwater appropriations allow for reasonable lowering of the water table. There is no definition of "reasonable"; it is left to the State Engineer's discretion.

Assemblywoman Bilbray-Axelrod:

Did any outside agencies, such as the Southern Nevada Water Authority (SNWA), offer any language or advice or supply any help in drafting these bills?

Tim Wilson:

No, absolutely not. We did not meet with SNWA when we were drafting this legislation. These are bills that we feel are necessary to address unclear statutory language, in particular with this bill, to eliminate what we feel is a conflict in the statute. Our next bill is something that we feel goes straight to the directive of the Legislature on conjunctive management.

Assemblywoman Bilbray-Axelrod:

To be clear, no other agency has asked you to bring this forward?

Bradley Crowell:

The response to your question is an emphatic "no," be it the entity that you mentioned or any other stakeholder.

Chair Swank:

I would like Mr. Amburn to talk a little bit about both of these bills. We have received a lot of comments about a lack of due process. We have had our staff look at that, and I would like him to talk about those issues for both this bill and the next one.

Allan Amburn, Committee Counsel:

When we were drafting these bills, our office looked into whether these bills violate due process concerns or issues. Essentially, our conclusion was that there were no due process violations or issues coming as a result of these bills. There are procedures in place, either by regulatory action or in statute, that allow someone to be heard if there is an issue. We are also talking about a situation in which there is the taking of water, there is adequate compensation provided with replacement of water, or in Assembly Bill 51, financial compensation.

Chair Swank:

We have a lot of people who are sending in comments to that effect. I think it is important to have that cleared up.

Assemblywoman Hansen:

Along the lines of a 3M plan, if a senior water rights holder is injured, what does the remedy look like?

Tim Wilson:

We look to developing these plans when they are needed. It has been rare that we try to utilize the 3M plans. For the mitigation process, we need to know what source might be impacted. Is it a nearby well that is not drilled very deep and could easily be deepened? Is it an issue where it could be a conflict with a spring? Springs are more problematic, you cannot replace a spring if it has other intrinsic values to it. There are instances, one in particular, in which we have a spring that is basically a hole someone dug in a shallow water table. Someone put a piece of casing in it and called it a spring. It is very small and maybe produces one or two gallons per minute. It is not very useful, but there is a certificated water right on it. It could easily be mitigated and that water rights holder could be made whole with an even better water right that flows year round. In this particular case, there is nothing dependent on the spring. There is no obvious evidence of any flora or fauna or dependent species—considering that it was most likely a hand-dug hole and was not originally a spring. We think something like that can be mitigated with a replacement well, for instance.

Bradley Crowell:

Every water system is different, so every solution to address an impact or conflict is going to be different. The idea is that the burden for keeping that senior water rights holder whole is not on them: so if there is a deepening of a well, it is not at their expense; it is at the new water right applicant's expense. To the greatest degree possible, it is done with the consent and agreement of the senior water rights holder.

Micheline Fairbank:

To elaborate a little more, when you look at A.B. 30, section 1, subsection 1, paragraph (b), the emphasis is on "monitoring." The idea is that if you have a project that is going to be affecting groundwater, you are going to be monitoring the effects of that project so that you can get in front of potential impacts to those senior water rights holders. If you see that the monitoring is demonstrating that there may be an effect or that an adverse impact could occur, that is when "management" steps in. Management is that you manage that project either by reducing pumping or moving the location of pumping—or any other variables—to avoid getting to "mitigation." Again, mitigation has been characterized as the last resort, or the contingency plan, and that is if all the other things occur in an unanticipated way, then you have some form of recourse. The idea is that mitigation is the last resort, and monitoring and management should be the focal point that provides protection for those senior water rights holders.

Assemblywoman Hansen:

Is it agreed that because of the state we are in, if we implement this, there could be some severe hardships to current senior water rights holders? My concern is, it is not a matter of just deepening a well, it could have some severe impact to their ability to maintain their operation. What would the remedy be for them if this bill were to pass?

Tim Wilson:

Remember, we are talking about cases in which water is available. If there is obviously not enough water and you are going to impact the senior water rights holder, we are not going to approve the application. We would never get past the denial stage. It is in cases in which there is great uncertainty whether there will be any impact, and we would like to have the ability to try to avoid that impact through monitoring and management. Even then, if we see that it is not working, we can order the pumpage to stop. We only want mitigation to hold the applicant responsible just in case.

Assemblywoman Peters:

With regard to environmental protection, we really do not talk about water quality and ecosystem management in water law. Many of those things are rather new to water law in the state of Nevada. I have concerns with that not being explicitly within the language of this mitigation, that we have to consider those issues. I think Assemblyman Watts touched on that. I also have a dilemma with the idea of the authority for conflict determination. We have an opinion from our legal counsel that due process is not impacted by this, but I just do not understand how the process of determining that a conflict is avoided takes into account the complexities of water in Nevada. We have water use, water availability, history, and culture of the water use for the impacted user. We have primary water rights and senior water rights—all of those things that have play in the idea of a conflict. Just coming up with an engineered plan will not necessarily mitigate those conflicts, those emotionally attached conflicts. How do you envision this mitigation, or even management, to do that in addition to the general management of water and beneficial use in this state?

Bradley Crowell:

With regard to appropriately taking into account environmental concerns and public interest, which in many instances is the same, I would have no problem making that more explicit in this bill because our intention is to take into account all those considerations. What we are asking for here, as I mentioned to Assemblyman Watts, is to get the green light from the Legislature to undertake a process in which we can talk to stakeholders on all sides of an issue and hopefully come to an agreed upon resolution about what degree of environmental concern should be taken into account, whether it can be mitigated, on all of those issues. I know there has been concern that past decisions have not adequately taken that into account, but in putting together new regulations with transparent data and robust stakeholder participation, I am hoping we can get to that place. In terms of conflict, I will let Ms. Fairbank describe how they identify those issues.

Micheline Fairbank:

Again, when we are talking about trying to resolve the conflict, there is no easy answer. We all know that is why water law is not the most fun topic. When we are talking about trying to resolve all of these different variable conflicts—that is part of the stakeholder general process. That is what we strive to encourage and find manners and mechanisms to utilize that stakeholder input and process to guide and direct decisions that our office is making. We do engage with the stakeholders to try to come up with different types of plans to the extent possible, but these plans also have to be guided by science and by our existing law. To the extent that there are different interests that are not necessarily represented in the four corners of our existing water law, that is what our office is confined by. The opportunity to be able to have more options and more authority to engage in these different types of issues and create solutions is what is going to resolve those conflicts and move the process forward.

Assemblyman Wheeler:

As I read this, the end of section 1, subsection 1, says that "the State Engineer may instead consider a proposal to avoid or eliminate the conflict, which may include, without limitation:" and then paragraph (c) states, "Any other plan to avoid or eliminate the conflict." Given the answers we have heard here about "existing law" and "in the appropriate manner," what I am taking away from this bill is that the State Engineer will have unlimited power to give water and take water away from someone regardless of right. I am not saying that you would do that, I am saying that this particular bill gives you that power. Then we have to wait for the appropriate manner and existing law that might be usurped by this.

Tim Wilson:

I respectfully disagree that this gives me the power to take away water rights. This section goes to NRS 533.370, which currently says that if there is any type of conflict with an existing right, the State Engineer shall deny. This conflicts with other sections that allow for a 3M plan. What we are looking at here is an applicant who comes forward and meets all of the statutory criteria and there is water available at the source, which is the first criteria for approval. If it is a possibility, should they have the ability to avoid a conflict or mitigate a conflict? Should they have that ability or should we deny their water right outright? Those are the only two options I have. I have to do one or the other. I cannot take away the

existing water user. As I said, the whole point of this process is to keep the existing user whole, to keep the senior water rights holder protected. We have to protect senior water rights, which is a basic tenet of our water law—prior appropriation, first in time, first in rights. We feel that this gives us additional abilities to protect those existing water users. They may not get their water out of a one hundred foot well, maybe they need a two hundred foot well, but it is the applicant that drills the new well.

Assemblyman Wheeler:

Again, I understand and agree with what you are saying, to a point. That is not what the bill says. I think maybe some different language needs to be used. I believe that this law would usurp the statute you stated because this would be the newer law giving you the right, or your successor twenty years from now, the right to make up his own mind. It says right in the bill, any other plan "to avoid or eliminate the conflict."

Allan Amburn:

Looking at section 1, subsection 1, paragraph (c), it is essentially a catchall provision and it is very broad, as you have pointed out. The goal of that is, we are dealing with a situation where there is not an agreement among the parties as in paragraph (a)—it is not a 3M plan as in paragraph (b), it is something else. It essentially provides flexibility. When it comes to someone who has an issue with the plan being proposed, based on section 2, he can still protest that: He can still protest whether the application is approved or denied. There are other procedures that he can also appeal this plan with.

Assemblyman Ellison:

Will this impact wildlife and the environment? Right now we are looking at some of the endangered species in the desert. The Bureau of Land Management (BLM) within the U.S. Department of the Interior, estimates 305 springs and 112 miles of streams, 8,000 acres of wetlands and 191,000 acres of shrub habitat. I am asking if this bill passes, with the BLM study, you could endanger the wild horses, sage grouse, elk, big horn sheep, tortoises, not counting 20 threatened and endangered species.

Tim Wilson:

In short, I would say no.

Assemblyman Ellison:

Have you met with the Department of Wildlife?

Tim Wilson:

I have not met with the Department of Wildlife regarding Assembly Bill 30. However, this is for instances in which there is water available at the source. We are looking at potential impact that can be mitigated. If there is an impact that cannot be mitigated, the application does not meet our threshold for approval and would be denied. This cannot be used in any way to dry up springs. Those applications would be denied. This is for very specific instances where we might be able to come to an agreement where we think monitoring and management can avoid a conflict and have mitigation as a fail-safe. That is our goal.

Assemblyman Ellison:

By the time the springs start to dry up, it will then be a little too late.

Tim Wilson:

Monitoring is key. Having an aggressive monitoring plan in place will give us early warning of any potential impact. If we see, for instance, a propagation of drawdown headed toward a sensitive area that we are monitoring, we will be able to act before that impact takes place. That is the idea behind a 3M plan.

Assemblyman Ellison:

Is A.B. 30 necessary? Most of the new language attempts to codify the Supreme Court's decision in the *Eureka Cnty v. State Engineer*, 359 P.3d 1114 (2015).

Bradley Crowell:

It is necessary because without it, we are left with two conflicting directions under statute that, no matter which one we follow, we end up in court over our decision. I personally do not think that we should be abdicating the decisions on water policy to the courts. I think we should be clarifying the law so it could be implemented appropriately. I think it can be done, but as the law stands now, there is the inevitability of litigation, which is not the scenario that any of us want.

Assemblywoman Carlton:

What has been the cost of litigation that has gone on? Will this solve any of that so things are clearer so that no matter which way you rule, you will not end up in litigation?

Micheline Fairbank:

In terms of the costs, we pay an allocation for representation by the Office of the Attorney General. This last biennium, that cost allocation has gone up substantially based upon the hours that have been spent by the attorneys representing our office. I can say, having once been the attorney representing the Division of Water Resources, that the propensity and frequency of litigation is increasing. Is this bill an absolute bar to future litigation? The answer to that is no. What this bill does do is create a consistency and it provides resolution of conflicts within the statute that has that purpose and to at least remove that particular dispute from being litigated. This allows us the authority, explicitly, that we can consider these different alternatives where there is water available to appropriate. In the scenario that was addressed earlier, if we deny an application even though there is water available to appropriate, then we are challenged on the basis that we could have allowed mitigation or an alternative plan to avoid or eliminate the conflict. On the other hand, if we approve an application, then we are again subject to litigation because we did not deny it because it conflicts with existing rights. At least this bill takes that particular issue and claim out of the arena and we can move forward on other things. I do not foresee, in the near future, litigation going down extensively, but we have to start somewhere.

Assemblywoman Carlton:

That is only if you decide there is water available. If the decision is that there is no water available, that applicant is denied?

Micheline Fairbank:

That is correct.

Chair Swank:

With that, I will give everyone the lay of the land for testimony. Just to remind everyone that we may not always agree, but we can always be civil. I will allow 30 minutes for support, 30 minutes for opposition, and 30 minutes for neutral. If we do not use all of the 30 minutes for support, then we still only have 30 minutes for opposition. Each person will get two minutes. Also, if we have any currently elected officials who have come in today, please come forward first. We are going to start in Las Vegas. Is anyone in Las Vegas in support? Seeing no one, is there anyone in Carson City who would like to speak in support? Seeing no one, is there anyone in Elko who would like to speak in support? Seeing no one, I will go to opposition.

Rupert Steele, Chairman, Confederated Tribes of the Goshute Reservation, Ibapah, Utah:

[Opening remarks were spoken in Shoshone.] I come here to stand before you with a good cause and much respect that we ask you to vote no on A.B. 30 and A.B. 51. The language in bills sounds attractive, deceptively so. But behind the language is another side that would help lay ruin to one of Nevada's great cultural and historic resources, a national historic property called Swamp Cedar Natural Area, or "Bahsahwahbee."

We have been fighting a good fight to protect this special place. The SNWA aims to drain it—and water from other senior water rights holders—in order to pipe the water 310 miles to Las Vegas. Last summer, the State Engineer denied all of SNWA's groundwater applications but approved their monitoring and mitigation plan, one that the White Pine County District Court previously rejected due to serious and deceptive flaws. It was a sham. Now in their latest plan, SNWA would not mitigate impacts on Swamp Cedars until every last cedar tree is dead. They would be the sole decision-makers as to when and how to mitigate.

We believe this is very wrong. Wrong because, as the site of the largest Indian massacre in United States history, and two more that followed, it is a place to be protected. Wrong because Swamp Cedars is holy to us. It is a place where we pay our respects to our ancestors and where we go to pray and hold spiritual gatherings. The State Engineer agreed it was wrong. He denied certain water rights because it is in the public interest to preserve Swamp Cedars in perpetuity, rather than draining its medicinal waters and killing the sacred trees, both of which we use in our traditional ceremonies.

Assembly Bill 30 and Assembly Bill 51 would undo efforts to protect Swamp Cedars. The bills would pave a new way for SNWA's groundwater project while making rural Nevadans suffer. We would be left high and dry.

Please vote no on A.B. 30 and A.B. 51. [Additional material was provided ([Exhibit E](#)).]

Robert McDougal, Commissioner, Board of Commissioners, Pershing County:

I am here to encourage you to vote no on A.B. 30. One of the problems that I see with it is that it is a top-down approach that the State Engineer would be using when, in fact, where there are conflicts existing, it should be a cooperative effort on the part of the users. We are a small rural community in Pershing County. The Lovelock Valley is dependent on the existence of the prior appropriation doctrine. The farmers in that valley hold some of the oldest water rights on the Humboldt River. They have already felt the impact of conflicts due to over-pumping in certain areas upstream of the Humboldt River that have negatively impacted flows in the river. That study is ongoing and we look forward to its completion to find out exactly how much damage that has caused.

The State Engineer's solution in our case is a conjunctive management plan that would include mitigation. In all likelihood, it would mean money, not water, to the farmers of the Lovelock Valley. We have already seen, due to the drought, the loss of hundreds of residents who used to work on the farms. They left permanently because there was no work to be done. They went to the mines and other places.

I think we would like to see 3M plans implemented where existing conflicts happen. The difficulty in two conflicting statutes that the Division of Water Resources spoke to—the solution is to remove that portion of the statute that allows 3M plans in the granting of new water rights and rather restrict that to being used as a solution to existing problems.

Norman Harry, Environmental Director, Environmental Protection Department, Washoe Tribe of Nevada and California:

I have worked with several tribes within Nevada addressing their groundwater and surface water rights negotiations. I would like to quickly state that there seems to be some major issues that could probably be clarified through language if this were to pass. What are the thresholds? Also looking at mitigations, since we are talking about mostly federal lands, does it require the U.S. Environmental Protection Agency involvement with something that is going to accompany and substantiate these concerns? I think those things should be included if this were to pass. On the other hand, the language that is being used generally is soft language. It talks about harmonizing and so forth. The bottom line is these valleys are overappropriated with groundwater. In review of the mitigation plans, what are the thresholds? Are they going to impact more than 100,000 acre-feet, or 20,000 acre-feet? There is no defined threshold. If the water right permittee is going to pay for that, I see the prospect of some industry coming, and, again, if they are impacting the senior water rights holder, the big company could throw \$1 million at you to deepen your well. According to the state, if the Division wants to appropriate almost every drop of water, there is nothing there for the future for all of us.

Chair Swank:

I would like to clarify that this does not apply to water on federal lands. The federal government does not have to tell us anything about how much water they have in Nevada.

Norman Frey, Private Citizen, Fallon, Nevada:

I am a farmer in the Fallon area. My family has been farming in this state since the mid-1850s. I was a county commissioner in Churchill County, and the president of the Nevada Association of Counties. I was embroiled in a battle over transferring water rights from one place to the other on my own property; it cost me a lot of money to do that. It gets very expensive for a senior water rights holder to be involved in the process of developing a 3M plan. We do not have the expertise; that has to be hired. For senior water rights holders, sometimes it makes the difference in making improvements to your operation or sending your kids to college, et cetera. It is very expensive and puts a hardship on the farmers that have been there. I am in opposition to the way this legislation is written; 3M plans can work. Many of the issues have been addressed by others in their testimony.

Jeff Fontaine, Executive Director, Central Nevada Regional Water Authority and Humboldt River Basin Water Authority:

Central Nevada Regional Water Authority and Humboldt River Basin Water Authority are units of local government; together they have nine Nevada counties. As members, these nine counties encompass 70 percent of the land in Nevada, including communities, agriculture, mines, and vast expanses of public lands. These authorities were formed to protect the water resources in the membered counties. These membered counties not only have an economic future, but their value of quality of life and natural environment is maintained. These authorities share Director Crowell's and Acting State Engineer Wilson's concerns and certain interests in addressing the substantial and critical water issues that are facing our state. We must oppose A.B. 30. Arguably, A.B. 30 undermines the prior appropriation doctrine and weakens protections for existing water rights. We believe A.B. 30 will create uncertainty for the future.

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

Eureka County opposes A.B. 30 for many reasons similar to what we had with Assembly Bill 298 of the 79th Session. We would like to point the Committee to our input and testimony we provided then and ask you to consider that. [Continued to read from prepared testimony, ([Exhibit F](#))].

The language in A.B. 30 to allow plans to "avoid conflicts" is misleading and unnecessary. If a conflict is avoided, there is no conflict. Regardless of a plan or a private party agreement, the State Engineer would find that there is no conflict. Options to avoid conflicts are available today without a change in the law. These include what I consider the three best management practices of sound water policy. First, applicants need to configure their points of diversion and diversion rates to eliminate the conflict. Second, reduce the size of the project or improve water-use efficiency to eliminate the conflict. Third, work cooperatively

with existing water rights holders, including domestic well owners, to resolve conflicts by mutual agreement before an application is even considered by the State Engineer.

That is the best management practice that we follow in this state, where we put it on the applicants to do the necessary work to come forward before they ever apply for the water. This bill would bypass that process.

We do not support 3M plans in the way this bill proposes. If a conflict with existing rights is identified when the application is considered, then it is apparent that the applicant has not done the groundwork necessary. We believe this bill pays "lip service" to prior appropriation in name only.

Regarding 3M plans, the only reference to monitoring, management, and mitigation in the statute is due to a bill that Eureka County brought forward in two separate attempts in two separate sessions. In 2011 there was an extreme effort to shelve the bill and place it in the drawer and it was not even brought forward. Our second try in 2013 through Senate Bill 133 of the 77th Session resulted in the language that is in statute today. I find it a little ironic that we are now speaking about a bill that is granting authority for a 3M plan in a way that it was never intended.

Monitoring, management, and mitigation need to be part of the process. Eureka County does not disagree, but we need to look at it in a surgical manner and in a way that protects prior appropriation, or it will be prior appropriation in name only.

Vested rights are under a different statutory scheme. These are rights that were put to use prior to 1905. Much of the mitigation that we have seen is to replace vested surface water rights with groundwater. There are some major considerations that you need to take in looking at replacing water that is under a totally different statutory scheme in our water law.

Kyle Roerink, Executive Director, Great Basin Water Network:

We represent ranchers, farmers, indigenous communities, public land advocates, and businesses who call the Great Basin home. Although A.B. 30 purports to be about 3M plans, it is a bill to further empower the powerful. Simply put, the bill would give the State Engineer the unfettered discretion to skirt current laws in order to give somebody's property that is senior in right to someone who is junior in right. This bill upends Nevada water law as we know it and attacks the prior appropriations doctrine.

Essentially, all of section 1 in A.B. 30 would give the State Engineer the ability to allow applicants to spend and buy their way around the law to get permits for water, even if granting those permits harms someone else. Considering that there are no long-term protections or guidelines for public participation in this bill, it is clear what entities this bill has in mind. This bill may not explicitly say Las Vegas pipeline, but those implications are all over it. We are currently in litigation over SWNA 3M plans that were erroneously approved by the State Engineer. Clearly, this is not the time for this bill. Indigenous communities, environmentalists, farmers, ranchers, elected officials from rural counties, and

even former and current Clark County commissioners all agree with this assessment. We stand united against a bill that will harm Nevadans and the environment. We ask for bottom-up, stakeholder-driven opportunities to collectively work on water policy. This bill was written by a State Engineer who did no public outreach and who no longer serves. We want to be involved and we are ready to do the work. [A letter was also provided ([Exhibit G](#)).]

Chair Swank:

If you would like to be involved, please reach out to the Division of Water Resources.

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

The Nevada Farm Bureau Federation is opposed to A.B. 30. Simply put, our opposition is our concern over the way in which senior water rights holders will be impacted by a mitigation plan that may reduce their water availability. One of the points that we would like to make is section 1, subsection 1 where it mentions water available for appropriation. We would like to make sure there is a clarification that the water that is available matches what the application is actually calling for, versus just "having water available" that may or may not relate to that particular perspective.

The other point I would like to raise is a question. I have looked through A.B. 30, and I did not see, in my initial review, where the regulation provisions are identified for how mitigation might go forward. I think if there is going to be a promise of creating some type of a regulatory structure, that needs to be spelled out in order for stakeholders to effectively participate in that process. We are opposed to the bill and we urge that the Committee not pass it.

Patrick Donnelly, Nevada State Director, Center for Biological Diversity:

We are a nationwide nonprofit that has been active in Nevada for a decade. Our No. 1 issue has been fighting against the Las Vegas pipeline, which we have successfully litigated in federal court. The SNWA's pipeline would pump billions of gallons of groundwater per year from the aquifers in eastern Nevada and ship it 300 miles to Las Vegas. The BLM's own assessment showed the widespread drying of springs, wetlands, marshes, and the dying off of groundwater-dependent vegetation. The Nevada Department of Wildlife said it would result in the wholesale localized extinction of native fishes and the drying of water sources would cause collapses in mule deer and antelope populations. In short, it would be the most destructive project in the history of the Silver State's environment.

Assembly Bill 30 would enable the Las Vegas pipeline, make no mistake. The State Department of Conservation and Natural Resources may say that is not the intent of this bill, and I think we can take them at their word on that because there are broad challenges we need to address with Nevada water law. If they are serious that this bill is not intended to authorize the Las Vegas pipeline, they can take steps in that direction, such as carving out large-scale interbasin transfers from the language of this bill. As it stands right now, our attorneys, who are the experts on this issue and have been working on it for over a decade, are very clear—this would enable the pipeline. The pipeline has lost in court repeatedly because of the inadequacy of its mitigation. Indeed, as Mr. Crowell said, there are some

things that simply cannot be mitigated. Withdrawing 100,000 acre-feet of water a year—billions of gallons—from the basins of eastern Nevada cannot be mitigated. Those losses are permanent, irreversible, and unmitigatable. This law would change the requirements of mitigation to allow the State Engineer to dictate his own terms of that mitigation. You can see how this would enable the pipeline by moving the goalposts for what is adequate mitigation. We are strongly encouraging the scrapping of this bill and starting over with a stakeholder-driven process. All the people in this room who care about water oppose this bill. Not a single person stood up to support this. The people in this room are the ones who are going to be affected, they should be the ones helping to determine the water future in Nevada. [A letter was also provided ([Exhibit H](#)).]

Tobi Tyler, Executive Committee Member, Toiyabe Chapter, Sierra Club:

The Toiyabe Chapter of the Sierra Club, representing more than 30,000 members and supporters in Nevada, is strongly opposed to A.B. 30. We urge the Assembly Committee on Natural Resources, Agriculture, and Mining to oppose and abandon this bill.

We oppose A.B. 30 because of the impacts it will have on Nevada's environment and its ability to facilitate a pumping and piping project that will siphon 58 billion gallons of water annually from eastern Nevada near Great Basin National Park to Las Vegas.

The bill allows the Nevada State Engineer to appropriate water when a conflict exists by giving junior water rights applicants the ability to negotiate away conflicts with senior water rights holders by any means, veering far from the current law and setting a dangerous precedent for the future. In the nation's driest state, it is most important for regulators to appropriate our limited water resources wisely.

Additionally, the bill allows replacement water as an acceptable tool for mitigating a conflict created by a junior rights holder against the environment or someone with senior rights. Replacement water is not an environmentally acceptable means of conflict resolution. Neither pipelines nor trucks full of water will ever make up for what Mother Nature naturally provides, nor will it ever guarantee that senior rights holders will be made whole with water of sufficient quality or quantity.

The aforementioned provisions would give life to disastrous projects like the Las Vegas pipeline and other water grabs in our state without providing sufficient long-term due process or public input.

Nevada's current water protections are among the most progressive in the West. All committee members must ask themselves: Why are we rushing to change a good thing? [A letter was also provided ([Exhibit I](#)).]

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

Our mission is to conserve the land and waters on which all life depends, and no issue is more important to protect the ecosystems and natural resources of Nevada than effectively managing the use and conservation of the state's limited water resources. Water is the

lifeblood of Nevada's residents and communities, and it is also essential for Nevada's natural environment—all plants, fish, wildlife, and people depend on freshwater resources.

We are testifying in opposition to A.B. 30 because we have concerns about this bill enabling the granting of applications where a known conflict exists with current water rights, domestic wells, and/or environmental resources in the public interest. In addition, we do not agree with using 3M plans to address known conflicts, and we do not believe that replacement water for environmental resources is a viable approach.

In addressing conflicts, The Nature Conservancy advocates applying the mitigation hierarchy for conflicts with water for the environment and existing water rights and domestic wells. The three tiers of the mitigation hierarchy are firstly, to seek to make water management decisions that avoid impacts to the environment and conflicts with existing water rights and domestic wells; secondly, to minimize impacts; and lastly, to mitigate, offset, or compensate impacts. Current Nevada water law is consistent with this hierarchy because it requires the State Engineer to deny applications with known impacts and conflicts, thereby avoiding them in the first place, and it serves to incentivize applicants to seek points of diversion that would not conflict with existing water rights or domestic wells or impact the environment.

Regarding section 1, subsection 1, paragraph (b) of A.B. 30, well-designed 3M plans are useful tools for protecting water for the environment in cases where it is uncertain if a conflict may occur. In the case presented in A.B. 30, however, 3M plans could be used where a known conflict occurs. In our view, this would put in statute a broader and riskier use of 3M plans that would weaken the incentives to avoid conflicts in the first place.

Finally, the replacement of water to replenish the source of supply is rarely ever adequate. Nevada is the driest state in the nation, yet it ranks eleventh in biodiversity with over 170 known endemic species; these are species found nowhere else in the world. The vast majority of these endemic species are associated with natural springs and other water resources on Nevada's landscape. We believe that it is highly unlikely that the unique geochemistry and physical habitat that species and ecosystems are adapted to can be replicated with water imported from elsewhere. [A letter was also provided ([Exhibit J](#)).]

Mark Butler, Executive Council Member, The Coalition to Protect America's National Parks:

I am also here on behalf of the National Parks Conservation Association to express our opposition to two bills before the Committee, Assembly Bill 30 and Assembly Bill 51.

We oppose A.B. 30 because of the potential to enable large-scale pumping projects that could cause irreparable harm to Great Basin National Park's unique water-dependent resources. Assembly Bill 30 would also expose Lake Mead National Recreation Area to harm by facilitating groundwater extraction from nearby aquifers where testing has shown that there has already been adverse impacts to the region's water resources from pumping at only one-third of current appropriations.

In our view, A.B. 30 would codify a "trust us" attitude rather than rely on sound science. The bill would give the State Engineer an overwhelming amount of discretion to continue appropriating our groundwater basins, even when the water does not exist for the taking. Those allocations will likely come at the expense of our parklands, public lands, and families who reside in these communities and regions.

Assembly Bill 51 would also enable large-scale pumping projects because it will alleviate the requirements to prove that water applicants' wants actually exist, by potentially masking or minimizing pumping impacts by using so-called conjunctive management. Conceivably, this bill could allow any applicant to sidestep the current groundwater protections that have worked in Nevada for decades.

Thanks to ongoing leadership in this Committee and others, Nevada offers spectacular outdoor recreational opportunities at many treasured destinations, including the Sierra Nevada Mountains, Great Basin National Park, Red Rock National Conservation Area, Lake Mead, and more than two dozen Nevada State Parks. These treasured destinations provide Nevadans with places to adventure and recharge while also bringing in billions of dollars into Nevada's economy. It is absolutely in line with the current preferences expressed by Nevadans as documented in a recent 2019 study, an astounding 81 percent of Nevadans believe that the outdoor recreation economy is important to the future of the state. An equally impressive 83 percent believe it is important to protect and restore the health of the state's rivers, lakes, and streams. Preserving our precious groundwater resources from overappropriation is the key to long-term health to many of the state's most wonderful outdoor recreational locations. Therefore, we urge members of this Committee to oppose this legislation. (A letter was also provided ([Exhibit K](#)).]

Susan Juetten, Private Citizen, Reno, Nevada:

I am representing Great Basin Resource Watch (GBRW), a Nevada-based nonprofit public interest organization which has been monitoring mining and extractive industries on our public lands since 1995. I will speak about both bills. Assembly Bill 30 proposes that the State Engineer may consider a proposal to avoid or eliminate the conflicts that occur between a new appropriation and an existing water right. The bill apparently provides no constraints or clear guidance on what is an acceptable proposal for conflict resolution. As a result this bill will give the State Engineer too much power, which has proved to be problematic in the past. For example, the State Engineer first approved water applications by Eureka Moly, LLC as Kobeh Valley Ranch, LLC (KVR) for the Mt. Hope Mine, a proposed molybdenum mine in Eureka County. However, these applications were in conflict with existing senior water rights, and it was necessary for the senior water rights holders to appeal the State Engineer's decision all the way to the Nevada Supreme Court. The Supreme Court overturned the decision of the State Engineer, stating in conclusion: "In sum, substantial evidence does not support the State Engineer's finding that KVR would be able to 'adequately and fully' mitigate the fact that its groundwater appropriations will cause Kobeh Valley springs that source existing rights to cease to flow."

In conclusion, Great Basin Resource Watch opposes A.B. 30. [A letter was also provided ([Exhibit L](#)).]

Kenny Bent, Private Citizen, Pahrump, Nevada:

I have to say our Assembly members asked some excellent questions. The public has given some brilliant testimony which helps me a lot. When I came in here, I was slightly nervous about this bill; now I am downright afraid. Assembly Bill 30 seeks to give the State Engineer even more undefined powers to use at his discretion. On its face, this type of power given to an unelected bureaucrat defies the established concept that laws should be clear, defined, and unambiguous. This bill allows him to approve water use that will very likely conflict with existing uses, including domestic use. It basically allows the State Engineer to create a future problem with the high hopes that the damaged parties will have to accept the outcome. It still feels likely that this bill was intended for a specific purpose not disclosed here.

These types of bills will likely lead to unintended consequences, including the type of court battles that inevitably end with the corporations with the most money prevailing over any opposition. The individual will almost always be the casualty. As far as the applicant paying the fees, if someone like Tesla moved in next to me, I do not think money would be an issue. I think applications that are in conflict should be denied, just as they are now. I do not see a reason to do this, it gives me a feeling that this is a 3M plan with an "M" for money.

Undefined powers are a very bad idea. This is what has led to the massive over-appropriation and a lot of the problems we have instead of following clear defined laws.

"Trust us" does not work for me.

John Hiatt, Conservation Chair – Press Liaison, Red Rock Audubon Society:

I would like to speak on behalf of the public interest and groundwater-dependent ecosystems which are not addressed in this bill and have historically been given short shrift by the State Engineer. We have many significantly overappropriated basins in Nevada. My concern is that we are going to do the same with additional basins, particularly places like Spring Valley which has a very vibrant groundwater-dependent ecosystem. There is nothing in this bill, or any other bill that I see, that will address those problems. Therefore, I have to oppose A.B. 30 and I think we need a much different process for resolving some of the conflicts in the Nevada water law. Looking to the future at how we actually preserve a living environment in the state of Nevada so that we do not repeat the problems we have in both Las Vegas and Reno, where vibrant groundwater-dependent ecosystems were essentially obliterated by development and no consideration, I am opposed to the bill and strongly suggest we go back and start over and come up with some legislation which really will address the problems and lead to sustainable groundwater development in the future.

Patti Jesinoski, Private Citizen, Henderson, Nevada:

I grew up in a small rural area in Minnesota, so I feel for the 16 counties outside of Clark County. At the budget meeting of the Henderson City Council last year, they were ecstatic of the 450 current permitted building projects going on at the same time. Building takes water.

The SNWA meeting last fall spoke to us about using our reclaimed water within budget—we were only using 10 percent.

However, these major building projects are not reclaimed water. Now we have the new Las Vegas Stadium that is being built. Last month, at a Henderson City Council meeting, it was stated that we may need to start looking for some other water conservation in our homes. We are only using 10 percent of what we are allowed to use in our homes. Our conflict at this time is too much building. I support the rural areas with a no on A.B. 30.

Chair Swank:

Is there anyone else who would like to testify in opposition? [There was no one.] Would anyone like to testify in neutral?

Ed James, General Manager, Carson Water Subconservancy District:

We are a multicounty, bistate organization dealing with water resources in the Carson watershed. We have had an opportunity to meet the State Engineer's staff and also many of the people in this room to talk about these various water bills. We applaud the State Engineer for being proactive in trying to take action, but sometimes you can hear the issues that need to be vetted a little more. We believe that with opportunities with this group and working with the State Engineer, we can make some better laws than this. Nevada has some very good, strong water laws today, but there is a need to look at some of these changes. We applaud the State Engineer in trying to do that, but again, I think we need to be working cooperatively with him. You will never hear consensus and water law in the same sentence, but I think we have a chance to work together to come up with better laws. If we do not move forward, we will start falling backward.

Chair Swank:

Is there anyone in Las Vegas who is speaking in neutral?

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

I wanted to testify today in a neutral capacity. We at the SNWA are focused on three main things this year, as we indicated prior to session. We are focused on completing the low lake level pumping station at Lake Mead, completing the drought contingency plan on the Colorado River, and increasing water conservation in southern Nevada. Those are our priorities. While we worked on a 3M plan bill last year, and while we agree with the State Engineer's office that these issues are complex and that they require legislative action to solve, we also recognize that there is a lot of concern about what this bill will do.

We recognized that last session when we withdrew our bill, and we recognize that today. We encourage the Legislature to address the issues of the 3M plan. We cannot support the bill in its current form, but we do not oppose the bill in its current form. We do believe that if the Legislature does not act at some point in the future, you are going to spend a lot more money in the courts than you are today. This is just a fact. Southern Nevada uses 5 percent of the state's water supply, with 70 percent of the state's population. Over the 50-year planning horizon that we look at when we consider the future, the groundwater project moves our

water demand from 5 percent to 6 percent. That is the context we are talking about here. While we appreciate some of the concern we are hearing from the opposition, there are a lot of overblown statements, distortions, and misinformation. There is a huge legislative record. The 2007 Legislature addressed staged development of water; in 2013, the Legislature addressed 3M plans. That record is there for your perusal.

Chair Swank:

Is there anyone in Elko who is speaking in neutral? Seeing no one, does the bill sponsor have closing remarks?

Bradley Crowell:

I want to say to everyone who made statements, we appreciate them. Specifically, I want to remind folks that in the context of A.B. 30, we are talking about available water and within that context, the best way to manage available water. There is obviously disagreement about the best way to manage it. I hope there is not disagreement about the need to manage available water. We do not have enough water in Nevada to let it be locked up or held hostage. We need to find a path forward if we are going to smartly and strategically use our limited water resources. I want to reference Mr. Tibbitts' remarks specifically. I appreciate his comments in that context, and I actually do not think we are that far apart. There are instances that are not being addressed or thought through. If you have a senior water rights holder with a groundwater well that has been there for 100 years and has been used—and through more contemporary science, we have learned that the aquifer is much deeper and more plentiful, and there is available water—if the senior water rights holder is unwilling to allow his well to be deepened so that others can access that water, he is holding hostage Nevada's water that belongs to everyone. It is those kinds of instances that we are trying to address with this legislation. It is clearly not perfect, but I hope the intent and understanding is common among us. There were a few folks who provided solutions, and I want to thank them. I understand criticisms, but I sure hope they come with solutions if we agree that there is a problem. As the Department, and as the Division of Water Resources, we stand ready to work with anyone and everyone in a collaborative process to understand concerns and come up with constructive solutions. I leave that as an open invitation.

Chair Swank:

I will close the hearing on A.B. 30. [Also provided but not mentioned are ([Exhibit M](#), [Exhibit N](#), and [Exhibit O](#)).] We will open the hearing on Assembly Bill 51.

**Assembly Bill 51: Revises provisions governing the management of water.
(BDR 48-213)**

Bradley R. Crowell, Director, State Department of Conservation and Natural Resources:

Assembly Bill 51 addresses the very real and prudent scenario of conjunctive management, which is recognizing that our surface waters and groundwaters are connected and we should manage them in that way. Nevada is a leader among our peers in the West in recognizing this. However, in recognizing the connectedness of water and managing it conjunctively, we

are going to have conflicts arise. We have been managing groundwater and surface water separately for over 100 years. If we now start to look at them as connected entities—which we should because the science is undisputable—we are inevitably going to have conflict among the existing right holders. We are not talking about new available water, we are talking about existing water rights holders, senior, junior, and everything in between. When we look at our waters conjunctively, we are going to have some conflict. Assembly Bill 51 is designed to recognize that and get some direction from the Legislature as to how to best manage that situation.

**Tim Wilson, Acting State Engineer and Administrator, Division of Water Resources,
State Department of Conservation and Natural Resources:**

I am here today to present testimony in support of Assembly Bill 51, which addresses the implementation of “conjunctive management,” an important water management concept approved by the Legislature in 2017. [Continued to read from prepared testimony ([Exhibit P](#))]. Please allow me to begin with a bit of background and context. In 2017, the Legislature amended *Nevada Revised Statutes* (NRS) 533.024, subsection 1, and added a new paragraph, (e), requiring the Division of Water Resources within the State Department of Conservation and Natural Resources “To manage conjunctively the appropriation, use and administration of all waters of this State, regardless of the source of the water.” This simple amendment acknowledges that surface water sources and groundwater sources that are hydrologically connected need to be managed conjunctively.

My office has provided the members of the Committee with PowerPoint slides that I will walk through to illustrate the concept of conjunctive management and how it relates to the bill before you today ([Exhibit Q](#)). When Nevada’s foundational water statutes were adopted in 1903, the statutes focused exclusively on surface water sources and did not even consider underground sources of water. Therefore, the implementation of Nevada water law initially focused only upon the allocation and management of surface water sources. During the period of early statehood and into the 1900s, this approach was sufficient given Nevada’s small population and an economy that utilized water primarily for agricultural and mining needs. However, as groundwater well technology was developed and our economy expanded and diversified, the need to utilize and regulate additional water sources increased. In 1939, NRS Chapter 534, Underground Water and Wells, was adopted and specifically directed the management and administration of all groundwater sources. Because groundwater management is compartmentalized into its own chapter, since 1939 the State Engineer and the Division of Water Resources generally administered surface water and groundwater sources independently.

This practice, however, did not fully account for the fact that many surface and groundwater sources are hydrologically connected. In 2017, the Legislature took a proactive step to reconcile this disconnect. Specifically, the Legislature issued a declaration directing the Division to conjunctively manage all waters of the state, regardless of the source of water, as a necessary and appropriate first step towards harmonizing our laws with the science [Senate Bill 47 of the 79th Session].

Assembly Bill 51 is the next step to effectively and accurately implement conjunctive management practices in Nevada.

While the 2017 Legislative declaration helpfully recognizes the hydrological connection that often exists between groundwater and surface water sources, existing statute does not provide the framework necessary to effectively implement the Legislature's policy direction. Assembly Bill 51 seeks to incorporate conjunctive management into Nevada water law while balancing the interests of these formerly separately administered water sources in a legally defensible manner. This is a critical need, for unless statutes provide additional legislative direction for the manner in which the Division should implement the conjunctive management of Nevada's water resources, the ambiguity will ultimately be decided by the courts without the benefit of any substantive legislative intent to guide these inevitable judicial decisions.

As a continuation of the 2017 policy directive, Assembly Bill 51 proposes two basic first steps: First, it directs the Division of Water Resources to adopt regulations for the conjunctive management of groundwater and surface water resources. Regulations need to be specific to the affected region to account for different hydrologic settings and different manners of use. The process of developing regulations will include full public and stakeholder participation with full transparency. It is critical that any new regulations for conjunctive management have the benefit of careful consideration and a clear, understandable outcome. Second, A.B. 51 authorizes the Division of Water Resources to create the programs necessary to develop regulations and effectively implement conjunctive management of groundwater and surface water. Please allow me to walk through the language to accomplish the purposes as set forth in Assembly Bill 51.

Section 1 establishes a new section of NRS Chapter 533 with provisions allowing for the development of regulations and programs for the conjunctive management of connected surface and groundwater sources.

Section 2 incorporates domestic well owners, who are legally authorized to withdraw up to 2 acre-feet of groundwater without possessing a water right, into the definition of a "groundwater user." This does not require domestic wells to acquire a water right, but simply ensures that groundwater pumping from domestic wells is factored into overall usage when managing connected ground and surface water resources.

Section 3, subsection 1 directs the State Engineer to adopt conjunctive management regulations. This section further directs that any conjunctive management regulations must recognize existing uses of water while protecting senior water rights holders. Further, section 3, subsection 2 establishes certain elements that may be included in the adoption of conjunctive management regulations, including: (a) requirements or guidelines for establishing mitigation plans to address conflicts between groundwater and surface water users; (b) the creation of a conjunctive management program to help manage and mitigate conflicts between groundwater users and surface water users; and (c) establish additional methods as appropriate and necessary to effectively facilitate conjunctive management.

To provide some context regarding the hydrologic interaction between surface water and groundwater sources, page 2 ([Exhibit Q](#)) shows an illustration of how the Division of Water Resources historically administered surface water and groundwater sources. As illustrated, groundwater was administered as if there were an artificial barrier between appurtenant surface water sources. This was not a scientifically supported manner of administration. Today, we recognize that decisions made decades ago have incrementally led to conflict between surface water and groundwater users.

As illustrated on page 3, a groundwater source may have direct hydrological connectivity with a surface water source, such as a river or stream. When a well is first pumped, water is derived from aquifer storage. Over time, the water removed from aquifer storage may be replaced by capture from surface water. Capture can occur by reducing groundwater discharge to a stream or by inducing infiltration from the stream. Depending on the distance and hydrologic conductivity between the stream and the well, these effects may take years to manifest and many more years to recover, even after the pumping has ceased. The effects may also be muted by variability between wet and dry years.

Although groundwater pumping may capture surface water flows, this does not automatically mean there is a conflict with the surface water uses. Practically every stream and river system in Nevada is a fully appropriated system, meaning the totality of the flow of the surface water source is allocated to existing uses. The vast majority of these surface water rights are senior to all groundwater uses. Surface water rights are administered based upon “priority” and the seasonal flow of the river. If a surface water is flowing at a rate that satisfies each of the existing rights along the system, there is no harm or “conflict” to senior surface water rights, even if groundwater use has captured some of the flow, because all senior rights have been fully satisfied.

Conjunctive management is the mechanism for the Division of Water Resources to identify where, when, and how groundwater uses may cause near-term or long-term conflict with existing surface water uses. Presently, the Division has contracted with the United States Geological Survey (USGS) within the U.S. Department of the Interior and Desert Research Institute (DRI) to develop a capture model for the Humboldt River basin, depicted on page 4, which spans nearly 300 miles and includes 34 groundwater basins. Once completed early next year, this capture model will provide the best available science to accurately identify whether over a specified period of time, groundwater pumping results in capture of Humboldt River surface water. Based upon the results of the capture model, the Division will be able to determine the amount of conflict, if any, with senior surface water rights along the river system. Page 5 ([Exhibit Q](#)) demonstrates how the capture model helps identify a groundwater well location, and determine the quantity of water captured from the Humboldt River. The image on the lower right shows a hypothetical well located near the river. The different colors indicate model results of capture at any location after a certain duration of pumping. The chart on the upper left shows the percent capture of that same hypothetical well after pumping for 10 years. In this case, capture of stream flow is about 40 percent of the water pumped by that well.

Availing ourselves of the best available science is imperative when considering the development of conjunctive management programs. As illustrated on page 6 ([Exhibit Q](#)), unlike other states, Nevada is attempting to “sharpen the pencil” and identify with particularity whether a specific groundwater use is actually resulting in capture of surface water. Based upon that data, the Division has the ability to calculate the amount of conflict. Identifying a conflict using best available data is only the first step. Resolving conflicts based on sound management practices is equally important.

Each basin dominated by surface water in Nevada is hydrologically unique. The science and response in one region may not be appropriate in another region. Accordingly, the ability to develop regulations to address these unique areas is critical to assuring that the Division applies the best available science and avails itself of the best available management approaches.

Section 4 addresses the proposed scope of conjunctive management programs administered by the Division of Water Resources. Specifically, subsection 1, paragraph (a) provides that if the Division of Water Resources adopts a conjunctive management program, it is not required to curtail a conflicting groundwater use if it can be demonstrated that curtailment or the cessation of pumping will not result in the delivery of water to the conflicted surface water right. This is often referred to as the “futile call doctrine” because curtailment of a particular junior use is futile and will not result in an actual delivery of water to the senior use. In such instance, the junior use is not required to cease its use.

Section 4, subsection 1 paragraph (b) allows the Division to require a groundwater user, who is capturing surface water flow that results in conflict to senior users, to provide replacement water. It also requires the replacement water to be of sufficient quality to satisfy the use of the senior user. In essence, this provides the opportunity for a groundwater user to replace conflicted water rights by providing its own surface water rights or acquiring them from another surface water user. However, many groundwater users found to cause some conflict with surface water uses may not have substitute surface water available to use or offer to an impacted senior water rights holder.

Unfortunately, in these instances, curtailment of such uses may take years, if not longer, to reverse the surface water depletions and eliminate any conflict, with the very real potential to cause significant economic injury to those curtailed users and the communities in which they live. Therefore, section 4, subsection 1, paragraph (c) provides the Division of Water Resources authority to levy a special assessment for the purpose of creating a fund that would provide financial mitigation to senior surface water users in cases where replacement water is not immediately available. The mitigation fund would allow certainty for groundwater users and would provide a mechanism to make senior surface water users economically whole. It could also incentivize conservation, by exempting groundwater right holders from assessments if they choose not to pump. Subsection 1 paragraph (d) also allows the assessment of fees to pay the expenses of administering the conjunctive management program. It is important to emphasize that these assessments are not ad valorem taxes.

Section 4, subsection 2 addresses the mechanism for the collection of the assessments. Section 5 allows the Division of Water Resources to suspend the “use it or lose it” provision in law to help promote conservation over excessive use or waste as well as the unfair forfeiture of a water right when a conjunctive management plan is adopted. If a conjunctive management program is adopted, the best practice is to encourage water conservation. Accordingly, it is imperative that voluntary conservation, or mandated nonuse, of water does not subject the water rights holder to a claim of abandonment or forfeiture while the conjunctive management program is in effect. The goal of conjunctive management should be for the benefit of all users within the bounds of what the water resources in question can support over the short, medium, and long term.

Sections 6 through 9 contain conforming and clarifying language regarding existing law and establish that this bill would become effective upon approval. At this time, I am happy to take any questions from the members of the Committee.

Assemblywoman Peters:

My question is dependent on federal decisions and implications that they have on the idea of conjunctive management and how we manage it in the state of Nevada. What would it mean to be in the middle passing a law like this or even conducting management on the existing statutes? We have two situations, one is the *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.*, 849 F.3d 1262 (C.A.9 (Cal.), 2017). That confirmed jurisdiction to tribal governments to an aquifer for which they pull water from. That is for managing water quality, in particular. The other is that the Supreme Court has agreed to review whether the Clean Water Act can regulate groundwater, which also has to do with water quality. If we are addressing conjunctive management, and we get to the point where we address water quality in conjunctive management, how would those impact how we address conjunctive management?

Tim Wilson:

I would like to bring our attorney, Micheline Fairbank back. She is more familiar with those cases.

Micheline Fairbank, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:

When we talk about conjunctive management in the context of the *Agua Caliente* case, or some of the other pieces of litigation, this really establishes the framework for which our office can go ahead and address those particular issues. The *Agua Caliente* case is an extension of the analysis and potential application of a Federal Reserved Right Doctrine, otherwise known as the *Winters* doctrine, and that extension to groundwater. There are still a lot of questions and undecidedness in terms of how that is going to actually interplay in Nevada with respect to our water laws and the application.

Without a framework and guidance in terms of how we establish these management programs, we are stuck with competing interests. This is a mechanism to pave the way of how we can go ahead, within the statutory framework and through regulatory process,

provide that management solution, so that any potential conflict that may arise with regards to those differing and conflicting interests, can then have a mechanism in state law to be resolved. Again, the public owns the water, and we have to operate within those confines. With respect to water quality issues, obviously there is a little bit of an overlap with regards to water management and water quality, but that is a different agency that has the integral association with respect to the management of water quality. Obviously, we look at water quality issues when we are addressing issues of appropriation, but in terms of long-term management, that is more of a collaborative process within our agencies.

Assemblywoman Peters:

Is there is a way in this language that we could include our relationship with tribal governments and their right to the water, their ownership of the water in these aquifers, as the *Agua Caliente* case rolls out? I believe there are appeals happening around that, but perhaps we can make it clear in this bill that we consider the tribes in the decision making and build our framework for conjunctive management around, or at least with that in mind?

Micheline Fairbank:

I think that is part of the dialogue when it comes down to the regulations in terms of stakeholder involvement. Certainly, the regulations are intended to build upon stakeholder involvement, making sure we have all of the appropriate stakeholders involved is part of that dialogue. Whether that is a statutory amendment to the bill is certainly open for discussion. With regards to how that rolls out, I think that is part of not being overly specific while still allowing the regulatory process to ensure that we are doing our role, fulfilling our duty in terms of making sure we have that stakeholder and collaborative process as part of the program.

Bradley Crowell:

This should be duly considered as appropriate and we can discuss and figure out how to incorporate it. This also reminds me, as a point of clarification, during the comments on the last bill, there was discussion about federal land and federal ownership of water. While we do have approximately 86 percent of land in Nevada under federal control, all of the water in Nevada belongs to the people of Nevada. We want to be careful as we change our laws and do not subvert any of our water rights to the federal government.

Another point of emphasis, before we get to implementing conjunctive management in a way that meets everyone's concerns, there is a lot of analysis and data that needs to be done. The example of the Humboldt River and what we are doing with DRI, and the USGS, we need contemporary, best science like that in many other places in Nevada. We have it in some places, but not everywhere. There is a lot of hydrologically connected systems that would benefit from understanding their function and connectivity as a first step to implementing any plans that balance interest within conjunctive management.

Assemblywoman Titus:

Getting back to the language in the bill, section 4, subsection 1 states, "If the State Engineer creates a program for the conjunctive management of groundwater and surface water in a

hydrographic basin, the State Engineer . . . " and then it goes on about being required to curtail groundwater use, does not have to deal with the conflict, et cetera. Does this totally upend the prior appropriation concept in our laws? Also, it seems to me, this would actually strip seniors of property rights, their priority date, and therefore a taking. Would you clarify that?

Tim Wilson:

In the past when we administered surface water and groundwater separately, surface water priority has never been used against groundwater priority and vice versa. By eliminating that artificial brick wall, if we are going to look at both of those priorities together, the senior rights are almost always going to be senior to the groundwater rights. When people first came here, they obviously used surface water; we did not have good well technology to drill deep wells and tap our aquifers. We see this as protecting those senior surface water rights against groundwater depletion.

That is what the groundwater models are doing—they are telling us, first, is there an issue. Groundwater can be very compartmentalized, there can be lots of faulting. What is under the ground is very difficult to determine. We believe we have the technology to use groundwater models to determine an impact to the river. We have a well that is pumping near the Humboldt River. We do not know what that impact is today, but we think we will know what that impact is. If it is having a conflict with senior water rights holders on the Humboldt River, we want to make those senior water rights holders whole. We want to find a method to compensate them for the amount of water being taken out by that well. That is the goal of this legislation. Deputy Administrator Sullivan is intimately familiar with this subject and might be able to elaborate.

Adam Sullivan, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:

I think there is an additional point that will help clarify the answers. We need to work within the prior appropriations system, and in order to address existing conflicts, we have very limited tools within statute. Simply put, until the senior water user gets 100 percent of their water, the junior water user does not get any. The response to that would be to entirely curtail a groundwater user. In this example of the Humboldt River, we could entirely curtail groundwater users, but because of the hydrogeology of the system, that still would not result in a full delivery of water to the senior surface water users. This is a problem that has developed over many decades, and it would take many decades to solve it in that manner. What we need is to have some flexibility to work with the stakeholders in the affected region to fully satisfy the senior users but also allow junior users at least a portion of their water to the extent that it does not conflict.

Assemblywoman Titus:

Acting State Engineer Wilson, you stated that the senior water rights holders will always have priority in "most" cases. Will you clarify that statement?

Tim Wilson:

If I did state that, I did not intend it. If you are a senior water rights holder, you are a senior water rights holder. Our state is a prior appropriation state; it is based on the date when your water right came into fruition, either through a permit or through decree, and that sets your priority date. If we are going to balance surface water priorities to groundwater priorities, as I mentioned, the surface water is going to be senior in almost every case. There could be a very old well, maybe someone hand dug a well in the 1800s and they have a vested claim on it. That vested claim has an earlier priority date, and as a groundwater rights holder, he could have a senior right to a surface water holder later in time. That is almost never the case.

Assemblywoman Titus:

I have water rights on my property in Smith Valley. I understand if there is a drought year, we only get 10 percent, even though I have so many acre-feet, I may only get 10 percent of that due to the curtailment. I understand that. There are folks downstream from me, especially the Indian reservation in Schurz, who have much older rights than I have. We have to make sure they get their water, and I do understand all of that. I just want to make sure that we are managing the water with due process. I am concerned that, with this wording, there is potential for a loss of rights.

Assemblyman Wheeler:

Section 4, subsection 1, paragraph (c), says, "Any such special assessment must be proportionate to the amount of conflict caused by the groundwater user to the surface water user whose water right is senior in priority." The State Engineer can levy a special assessment annually. How much is a domestic well user going to be charged? How is the usage actually going to be measured? Are you going to put meters on wells? We went through that last session, and it was not good. I am trying to figure out what the "special assessment" really is.

Adam Sullivan:

For the specific example of the Humboldt River, the assessment would be based on the value of the portion of water that is not delivered. This is a concept that has been developed through working group negotiations with stakeholders as a potential mechanism for making surface water users whole. The assessment would be specific to that area for a given period of time. In this particular case, we have engaged with agricultural economists at the University of Nevada, Reno to make that determination. To address the point about domestic wells, in recent negotiations with the stakeholder working group, domestic well owners would be excluded from the mitigation program.

Assemblyman Wheeler:

What you are telling me is that you cannot put a figure on the assessment. It will just be something that is studied and we will define it later? This does not say anything about measurement. That is why I am asking about the meters on wells, how do you measure it? How do you know how much is being taken out, et cetera?

Adam Sullivan:

In the Humboldt region, all permitted water rights have meters on their wells and report monthly data to our office. To the first part of your question, the answer is, yes, specific for a region, we would directly study the value of water and make that determination with the assistance of a neutral third party.

Assemblywoman Hansen:

Section 4, subsection 1, paragraph (b) states, "May require a groundwater user to furnish replacement water to a surface water user so long as the replacement water is of sufficient quality." When there is a loss and the senior user has to be compensated, do you have any projections of how much water would need to be replaced? I am trying to envision what that looks like. How is the water getting there? Where is the water coming from? What kind of quantities are we talking about?

Adam Sullivan:

You are absolutely right, these are very difficult things to quantify. It is what we have to do because there is no fixed direction within our legislative prerogative to give us a more direct approach to resolve the existing conflict to the extent that it exists. The first point that you brought up was how to determine how much water is not being delivered. In the case of the Humboldt River, we have over 100 years of delivery records, an understanding of the system, and how much water is available to deliver to each user in priority based on flow at a given measuring point. Where those delivery schedules are not met, the challenge is in fractioning out exactly how much was deserved to be delivered to that user, how much was due to drought, for instance, versus how much was due to capture from surface water by groundwater pumping. These are all the difficult questions that we are trying to resolve through groundwater modeling and with the assistance of the USGS and DRI, and with abundant stakeholder engagement and negotiations on regional solutions.

Assemblywoman Hansen:

If there is a determination of water that needs to be supplied, how does the water get there? Where is the water coming from? If it is not going to come from the Humboldt River, where is the supply of water coming from?

Adam Sullivan:

Preferably, in that situation, the water would come from the Humboldt River. It would be an exchange or agreement to not divert an upstream users' rights so that it can be delivered as wet water to a downstream user.

Assemblywoman Hansen:

Section 5 states, "If the State Engineer creates a program for the conjunctive management of groundwater and surface water in a hydrographic basin, a right to groundwater or surface water that is not being used because of the program is not subject to a determination of abandonment or forfeiture for as long as the program is in effect." The discomfort I have with that is it is essentially giving all the authority to the State Engineer, someone who is not an elected official. This does not have a lot of input from the elected body, per se. During

Mr. Wilson's presentation he said ambiguity would be decided by the courts. To me, this shows that ambiguity will be decided by the State Engineer. Are we giving a lot of power to the State Engineer that does not reside there now?

Tim Wilson:

Section 5 goes a little bit to my very first presentation that I gave on water law. One of our concepts is that if you are not beneficially using the water, you could be subject to cancellation, forfeiture, or abandonment. In this case, if this program is in effect, we do not necessarily want the groundwater user to pump. That may be his solution, he does not want to pay for the interference of the surface water, so he is just not going to pump his well. That is a good thing. That is essentially like a voluntary curtailment. We do not want to take away his right through abandonment or forfeiture. Forfeiture works after five years of nonuse on a groundwater right, so we want to toll that provision while this program is in effect, so that people who choose to turn off their wells as their mitigation, they will not lose their water rights certificate. They can hold their water rights certificate so if they choose to participate in the program at a later date, they can pump their well and either supply the extra surface water to make up for their impact or have a financial obligation.

Assemblyman Watts:

I need some clarification around judicial review and how that might work through this process. I know in this bill, part of the framework is the development of regulations. I assume that as long as those are constitutional, they are set in terms of framework. When it comes to individual plans, I am wondering what that process would look like. Who would be able to initiate judicial review of a conjunctive management plan once it was approved? If it would only be the affected water rights holders, or if others would be able to participate in that process.

Bradley Crowell:

It is nearly impossible to predict the outcome of judicial review, especially in water cases. We get quite a range of outcomes from judicial review. If the regulations on conjunctive management conform to all of the rules, laws, and regulations, and the data and science underpinning the decisions related to conjunctive management are sound and defensible, I would hope that would guide any judicial review to the correct outcome. We cannot predict that, we can just set the table as appropriately as possible for that review.

Assemblyman Watts:

When a water rights application comes in, people have the ability to protest. Those protestants can participate in judicial review after an order is released. Outside of the regulations, when a conjunctive management is approved, who do you envision would be able to challenge the findings in that plan?

Bradley Crowell:

In the instance of judicial review for conjunctive management, we are not talking about new water right applicants, we are talking about all of the existing water rights. It is a matter of

the balancing of priority of different rights, based on different situations and hydrological scenarios.

Chair Swank:

I would like Mr. Amburn to answer that.

Allan Amburn:

When looking at NRS 533.450, which is what we are addressing with the new language, it addresses the judicial review of orders and decisions of the State Engineer. It states that any person feeling aggrieved by any order or decision of the State Engineer, acting in person or through the assistants, they have the ability to have that reviewed by a court.

Micheline Fairbank:

To build upon that response, any decision or order is subject to judicial review. The implementation of regulations are subject to one component of judicial review, not necessarily under NRS 533.450, but if the State Engineer were to adopt a conjunctive management program, if that adoption were to come through an order or other form of decision, then it is subject to the NRS 533.450 judicial review process. As already stated, any person feeling aggrieved by a decision or order is available to bring that action.

Assemblyman Ellison:

We have had hundreds of letters in opposition. Out of all of them, I have not seen one that says please adopt A.B. 51. These hundreds include letters from ranchers, farmers, businesses, The Nature Conservancy, et cetera. All of these letters show concern about this bill. I have a concern about this bill. I also have a concern about the lost value and collateral items. If you look at ranching and agriculture, and the impact, and the ecosystem, also, with the Southern Nevada Water Authority and what they have to say—I think you need to go back and take a look at this and maybe look at some other way to come up with a different approach. Assembly Bill 51 is totally against the reins of the people. I hope you will take that into consideration.

Chair Swank:

Are there any more questions? Seeing none, we will go back to the same process for testimony. Thirty minutes for support, 30 minutes for opposition, and 30 minutes for neutral. Each person gets two minutes. I will start with support in Carson City, Elko, or Las Vegas. Seeing no one, we will start with opposition in Las Vegas.

Kenny Bent, Private Citizen, Pahrump, Nevada:

Assembly Bill 51 strikes me as a kitchen sink concept. It is highly relying on what we heard before with Assembly Bill 30 for the mitigation aspect of it. I think this bill could easily change the balance and control of water in this state. In something like this, there are a lot of unintended consequences. I think we should be very cautious approaching this. It makes more sense to try this on a per-basin approach, rather than statewide, and do a test run on it. Largely, I am having a little trouble with the whole domestic well issue. I appreciate what Assemblyman Wheeler said, but I am going to address the domestic well issue here because

this seems to keep dragging around in the shadows, pretending that the State Engineer has authority to regulate. I think I heard that we are not going to regulate domestic wells, just their water. Domestic use was purposely exempted from 17 of the 18 western states. That was for both moral and legal reasons. What seems to be lacking here is anyone coming up and saying, From this day forward, we are going to deal with new domestic wells. There seems to be an intent here to take the water, at least 75 percent of it, from the existing domestic wells. I think it is very important that all of you on this Committee understand that the domestic use is exempt purposely out of water law.

Chair Swank:

Is there anyone in Carson City in opposition?

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

The Nevada Farm Bureau Federation is opposed to A.B. 51. One of the complicating factors in considering perennial yield assessments involves a way in which groundwater and surface water provide their respective and relative contributions to the basins. In the reach of the Humboldt River, and I think a lot of this bill is focused on that specific area, there are 32 basins that interact with groundwater and surface water. There are variations and complexities that I think some of this fails to recognize. Modeling is being carried out to attempt to capture a scientific perspective, but at this point, that is still a work in progress.

One of the things I would like to point out is in the discussions for this bill, much of this mirrors what was proposed as possible regulations during the interim process. Those proposed regulations never went anywhere, but they had a lot of components that were outlined here. There was mention made of stakeholders being involved in the construction of that. There were six or eight people who were involved representing different areas, but it did not involve stakeholders as a whole. I think that is part of our concern, there needs to be a greater level of input from the local stakeholders in order to facilitate meaningful solutions.

David G. Hillis, Jr., Principal Engineer, Turnipseed Engineering, LTD, Carson City, Nevada:

I work and deal exclusively with Nevada water rights. I have had the privilege of working with hundreds of Nevada ranchers, farmers, municipalities, and miners all across our state. I commend the State Engineer's proactive approach with both bills. We have heard tonight that the State Engineer's office wishes to collaborate with experts and stakeholders; however, to my knowledge, no collaboration has taken place in the drafting of the actual bills that are before you. Assembly Bill 51 promotes the concept of conjunctive management. This concept is not new; however, it is new within our state. I feel that this bill would rush forward legislation which has had no input from experts and stakeholders across our state. I would suggest the State Engineer's office collaborate and revise the bill for resubmission to the Committee. In addition, Director Crowell stated that it is beneficial to rely on the best and current science available; however, within our state, within some basins, we still rely on a perennial yield estimate, which was estimated from Hardman precipitation maps from 1936. That is a little outdated when it comes to establishing our most sacred concept when it comes to perennial yield. The newest, latest, and greatest science needs to apply to first

establish accurate perennial yields before we can begin management, especially across many basin lines. In addition, under A.B. 51 it is possible when implementing this legislation that a senior groundwater rights holder could be curtailed while a junior groundwater rights holder may not be affected based on his geographic proximity to the Humboldt River, for example.

Steve Walker, representing Douglas County; and Storey County:

Statewide application of conjunctive use methodology being developed on the Humboldt River is premature. The rulemaking process needs to be accepted, completed, and implemented before making a blanket state law or methodology that could affect other river systems. Each river system is unique both hydrologically and also have different decrees. Conjunctive use plans should be adapted on a case-by-case basis to recognize its uniqueness. We inherently know there is a relationship between surface water and groundwater, and our existing law could be used to deal with the current and future conflicts.

Bennie B. Hodges, Manager, Pershing County Water Conservation District:

I am here to speak in opposition to Assembly Bill 51. The Pershing County Water Conservation District (PCWCD) is a surface water irrigation district. Our reservoir is Rye Patch Reservoir. The main source of our water is the Humboldt River. We have an irrigation district 40,000 acres in size, and we are the largest surface water holders in the Humboldt River system. However, the downfall is that we are at the bottom of the system. The prior appropriation doctrine, "first in time, first in right," has been the cornerstone of Nevada water law for over 100 years. If it is not broken, please do not try to fix it.

Assembly Bill 51 would allow for the creation of a monetary assessment for conjunctive management of groundwater and surface water within the Humboldt River drainage. This mitigation program would allow junior underground water users to cause an injurious depletion of senior surface water users.

Water rights for the PCWCD constituents range from 1862 to 1921. These water rights are senior to all groundwater rights in the Humboldt River drainage.

Under this mitigation program, PCWCD constituents would receive monetary compensation from junior groundwater pumpers for causing injurious depletion and affecting base flows of the Humboldt River. The PCWCD constituents do not want money, they want their water. If they are compensated with money, the water table will drop and drastically affect current and future irrigation with less water.

Passage of A.B. 51 will slowly lead to the demise of a rural way of life in the Humboldt River drainage basin, namely the communities of Lovelock, Winnemucca, Battle Mountain, Carlin, and Elko.

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

Eureka County does not support A.B. 51 as drafted. Again, we stand ready to continue our involvement in trying to find a good solution. I was happy to hear Director Crowell speak that this was intended to address existing appropriations in which there are conflicts. The bill as drafted does not make that clear. It seems that this bill could be used again, similar to our concerns with A.B. 30, where you could, under a conjunctive management rule, potentially appropriate new water that would be in conflict with existing rights. If the intent is truly to address conflicts that exist from rights that were already appropriated, I think there is some room to potentially find a solution. We have had this situation occur in Diamond Valley where we have had prestatutory vested rights affected and we feel that some rules to define situations like that are good to pursue. We do support localized approaches rather than a blanket conjunctive management rule for all of the state. We would support more localized rulemaking rather than blanket regulations. Again, we stand ready to assist in trying to find a common solution for this problem.

Kyle Roerink, Executive Director, Great Basin Water Network:

We oppose A.B. 51. We believe that A.B. 51 masquerades as conjunctive management, but the bill, in truth, intends to roll back existing laws and gives the State Engineer greater authority. State Engineers have the toughest job in the nation's driest state. I respect their service to Nevada, but over the years, State Engineers have overappropriated our basins and have lost many cases in court because the office mismanages its authority. We have to ask, why do we want to give him more power?

As written, A.B. 51 is a violation of constitutional rights under the Takings Clause. Section 4, subsection 1, paragraph (a) is a clear and explicit attempt to say that the "first in time, first in rights" doctrine no longer matters. Next, the bill sanctions unsound and unsustainable replacement water schemes. If someone takes your water, under A.B. 51 he can replenish it with something else—you could be getting your water from a pumper truck. Lastly, the bill sanctions monetary compensation as a means of repaying a harmed senior water rights holder. Assembly Bill 51 is giving the wealthy and powerful the upper hand with no recourse for the little guy. We envision scenarios where a powerful junior rights holder says, Take the money or take us to court. Money does not solve all problems in water policy, but A.B. 51 erroneously relies on that mantra and paves the way for powerful entities like the Southern Nevada Water Authority to build their disastrous 300-mile pipeline at the expense of hardworking families whose rights deserve protection. [A letter was also provided ([Exhibit R](#)).]

Patrick Donnelly, Nevada State Director, Center for Biological Diversity:

I think, with A.B. 51, what we have is an example of bad process leading to a bad outcome. This is really a top-down, heavy-handed approach with the State Engineer asking for almost unfettered discretion to pick winners and losers in our water system. We had Assembly Bill 298 of the 79th Session, which was an excruciating process involving the stakeholder negotiation in the committee room immediately before committee hearings. That was not the way to craft good water policy. In the interim, there have been no stakeholder processes on

this legislation. There are individual conjunctive management processes going on, some of which may result in good outcomes, but as far as addressing an overall framework, that has not happened. As a result, again, all of the people who would be affected by this legislation oppose it, even though I believe we all recognize groundwater and surface water are a single resource. I think there is widespread agreement that some form of conjunctive management is a good thing, and there is room for these parties to come together, but no effort has been made to do that. Instead, this seems like an attempt to railroad everyone who has an interest in rural water. Meanwhile, we have the ghost of former State Engineer, Jason King, looming over this process—these are Jason King's bills. These are not the current administration's bills. They are constituency lists. Nobody supports them, everyone who is affected opposes them, and we do not even have their progenitor in the room with us to defend them. These bills are a bad process leading to a bad outcome. They need to be scrapped and start over with a genuine bottom-up process to involve stakeholders to come up with something we can all at least live with, if not agree with. (A letter was also provided ([Exhibit S](#)).]

Tobi Tyler, Executive Committee Member, Toiyabe Chapter, Sierra Club:

The Toiyabe Chapter of the Sierra Club, representing more than 30,000 members and supporters in Nevada, is strongly opposed to A.B. 51. We urge the Committee to oppose and abandon this bill.

We oppose A.B. 51 because of the harm it will inflict on the people, wildlife, and scarce water resources of this state. It will encourage the overappropriation of our limited water resources and facilitate projects like the disastrous pumping and piping plan to siphon 58 billion gallons of water annually from eastern Nevada near Great Basin National Park to Las Vegas.

While the bill sets forth a path for outlining conjunctive management policies, the bill fails to mention any actual conjunctive management policies, only mitigation policies. The bill sanctions replacement water schemes, monetary compensation, and other unsound and inadequate gambits as a means for resolving conflicts when a junior rights holder harms a senior rights holder. This creates a situation where the powerful and wealthy will have the ability to push out anyone they like. That is not acceptable.

Most importantly, the bill completely upends Nevada water law's prior appropriations doctrine. The provision threatens the due process rights and constitutional rights of Nevadans by stripping senior water rights holders of a property right and their priority date, which results in a taking. After a permit is granted, an affected party would have only 30 days to file an appeal in district court. What about three months after? What about three years? Where is the recourse?

Progressive water policy ensures that a permit cannot be granted if conflicts exist between senior water rights holders, domestic well owners, and the environment. Nevada already has that enshrined in law. Our problem is not with the law. Our problem is with overappropriation of our scarce water resources. [A letter was also provided ([Exhibit T](#)).]

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

A goal of our Nevada water program is to ensure that there is water for people and nature for future generations. Dating back to the 2017 Legislative Session, The Nature Conservancy has consistently recognized conjunctive management as essential to the appropriate management of Nevada's scarce water resources. We commend the State Engineer's office for introducing A.B. 51 to address this topic.

However, we have some concerns with some areas of the bill and cannot support A.B. 51 in its current form. The bill should require conjunctive management to be environmentally sound. Most groundwater dependent ecosystems in Nevada are sensitive to the interaction of surface water and groundwater and could benefit from proper conjunctive management. Despite the importance of conjunctive management to the environment, the proposed legislation does not include any consideration of how conjunctive management regulations would influence or change the amount of water available for the environment. The Nature Conservancy recommends that the legislation be amended to direct the State Engineer's office, when adopting conjunctive management regulations, to recognize among existing uses of water not only water rights that are senior to priority, but also water that is being used by, and is necessary for, the environment. We believe this can be achieved by requiring that conjunctive management of groundwater and surface water be done in a manner that is environmentally sound.

As I said earlier, we support applying the mitigation hierarchy to avoid, minimize, and then mitigate. The language in A.B. 51 specifically mentions mitigation several times but does not acknowledge or require the need to avoid and minimize effects first. The Nature Conservancy recommends including such language to ensure that mitigation is not applied before all opportunities are explored to avoid and minimize conflicts first.

Finally, replacement water provisions are not appropriate for conjunctive management for environmental resources.

In summary, we are interested in working with interested parties to improve the legislation and hope that amendments can be made along the lines of our recommendations. Thank you for the opportunity to speak. [A letter was also provided ([Exhibit U](#)).]

Jeff Fontaine, Executive Director, Central Nevada Regional Water Authority and Humboldt River Basin Water Authority:

We are opposed to A.B. 51. That said, both authorities do support conjunctive management and certainly recognize the need to work within that arena. We also agree with Director Crowell's comments regarding the need for more detailed studies to determine the interaction between groundwater and surface water. We also agree very strongly with the previous speakers regarding the need for additional stakeholder input. The State Engineer has been working on promulgating regulations for conjunctive management in the Humboldt River Basin for about 18 months, and commented about the Humboldt River Basin working group to help craft those regulations. I have been a member of that group for a short period of time. There are not a lot of members, but to the extent that conjunctive management may, or can,

work out in a river basin, that may be the test case, or it may not. At this point we believe that the proposed legislation is probably not necessary and certainly premature.

Rebekah Stetson, Private Citizen, Reno, Nevada:

I am here representing our communities and specifically our children. Assembly Bill 51 is simply the destruction of Nevada's landscape history and future. Sustainability is most commonly defined as a way of meeting our needs while not limiting the ability of future generations to meet their needs. This legislation seriously puts in question the ability of our children to meet their needs in future generations. As written, A.B. 51 seems to encourage mismanagement of our most precious and already overappropriated resources in the nation's driest state. While we are looking at the effects of climate change, we are still uncertain of how severe that will be. Voting yes would be a modern day repeat of the Owens Valley disaster. Let us choose not to consciously and intentionally destroy our resources for our children. Please vote no on A.B. 51.

Anthony Sampson, Tribal Chairman, Pyramid Lake Paiute Tribe:

We oppose A.B. 51 for the simple fact that we have been through so much with water wars for over 100 years. We are dealing with water quality and the amount of water that is being flowed. We even have problems with our domestic wells in our area, to where we are looking at critical components of our groundwater in the Wadsworth area. When it comes down to it, you give the State Engineer all the power. He can do anything he wants. We were having problems with water recruitment; when it is going to happen, we do not know. That is something that is a reality. In opposing this bill, I hope that you will listen to what other people have to say about this. Some oppose it, some are for it. It is not about one group of people, it is about sharing it. We are a major stakeholder, one of the oldest in the state of Nevada. Thank you for your time. I hope you make the right decision.

Will Adler, representing Pyramid Lake Paiute Tribe:

I would like to ditto Mr. Sampson's comments and get a loud opposition to A.B. 51 on the record.

Chair Swank:

Is there anyone in Elko who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify in neutral? Seeing no one, are there any closing remarks?

Bradley Crowell:

I would like to thank the Committee's indulgence and everyone in the room for some very good discussion. In the 2017 Legislative Session, this body approved the language in NRS 533.024 subsection 1, paragraph (e), that says, "To manage conjunctively the appropriation, use, and administration of all waters of this State, regardless of the source of water." That is what we are attempting to do. We do not have any further direction or guidance on how to do that. Assembly Bill 51 is our best attempt to untangle and address a very complex problem. If there is the sentiment and the will to not look at our waters conjunctively, then we can choose to do that. If we are going to move forward and manage

our waters conjunctively, then we need guidance to implement that. I hope that at the end of this hearing there is at least a sentiment of continuing constructive dialogue.

To folks who mentioned domestic wells, I understand the sensitivity, but if we ignore the fact that domestic wells in certain places can affect groundwater and surface water users, we are pretending and are not playing in the realm of reality. We have to recognize that.

To the comments regarding the accuracy of perennial yield, we fully agree. We would love to have the resources to do that on as quick a basis as we can. Data is essential for anything we do here, no matter what we come up with.

To comments regarding localized solutions, that is absolutely our goal and intention. That is what we are doing in the Humboldt River; that is what we are doing on the Lower White River Flow System and the Muddy River in Clark and Lincoln Counties, which we are happy to discuss further if folks are interested.

To comments regarding keeping the status quo, I would ask if that means you do not see any problems now or in the future with how our water laws allow us to administer and manage water.

I appreciate the comments regarding the importance of conjunctive management as the proper approach that reflects science and data, and I also appreciate the comments regarding the fact that more upfront work is needed. We agree. The system is not always designed to allow us to do that, but going forward, we certainly have no opposition and hope we have the support and participation of everyone in doing that.

To comments regarding monitoring, management, and mitigation as a last resort, that is absolutely our intention. Mitigation is not the preferred outcome, nor is it the first solution. Through monitoring and management we hope to never have to do mitigation, but if you simply want to ignore the need for mitigation after monitoring and management has not shown to be able to manage the situation, then what are we left to do?

This is a long way of saying I appreciate everyone's comments and hope we can have some additional guidance from this body as well as the stakeholders in the room.

Micheline Fairbank:

I want to build upon one of the elements that was discussed—that is that there is a desire and emphasis for a localized solution. That is absolutely what the structure of this bill is intended to do. The first part of A.B. 51 allows and directs our office to establish conjunctive management regulations and to allow for the authorization to adopt conjunctive management programs. The second part of the bill references what a conjunctive management program may or may not include. The reality is, the Humboldt River situation and process has been partly instructive and guiding with regards to the language, but the Humboldt River is not the only system that we are actively engaged in with this process. It certainly is not representative of the state. We understand that each system is unique and has to have its own

independent and individualized regulation and program. That is what this bill is conceptualized to do. What is going to work on the Humboldt River, ultimately, is not going to be appropriate for the Lower White River Flow System and the management of that interconnected water system. That is the idea; we need the ability, we need direction, and we need to have that from this body because right now we are left with very little.

Chair Swank:

Thank you for all the work done this evening. I will close the hearing on Assembly Bill 51. [Also provided and not mentioned were ([Exhibit V](#) and [Exhibit W](#)).] I will open it up for public comment. Seeing no one, we are adjourned [at 7:20 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 a copy of a PowerPoint presentation titled "Division of Water Resources Overview," dated February 27, 2019, presented by Tim Wilson, P.E., Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources.

[Exhibit D](#) is written testimony dated February 27, 2019, presented by Tim Wilson, P.E., Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources regarding Assembly Bill 30.

[Exhibit E](#) material submitted by Rupert Steele, Chairman, Confederated Tribes of the Goshute Reservation, Ibapah, Utah, consisting of the following:

1. A letter to Assemblyman Ellison, dated February 26, 2019, in opposition to Assembly Bill 30 and Assembly Bill 51.
2. A document titled "Talking Points on Water."
3. A document titled "Swamp Cedars Massacre Site," dated September 19, 2016, offered by the Confederated Tribes of the Goshute Reservation.

[Exhibit F](#) is written testimony dated February 27, 2019, presented by Jake Tibbitts, Natural Resources Manager, Department of Natural Resources, Eureka County, in opposition to Assembly Bill 30 and Assembly Bill 51.

[Exhibit G](#) is a letter dated February 25, 2018, to Chair Swank, authored by Kyle Roerink, Executive Director, Great Basin Water Network, in opposition to Assembly Bill 30.

[Exhibit H](#) is a letter dated February 26, 2019, to Chair Swank, authored by Patrick Donnelly, Nevada State Director, Center for Biological Diversity, in opposition to Assembly Bill 30.

[Exhibit I](#) is a letter dated February 27, 2019, to the Assembly Committee on Natural Resources, Agriculture and Mining, authored by Tobi Tyler, Executive Committee Member, Toiyabe Chapter, Sierra Club, in opposition to Assembly Bill 30.

[Exhibit J](#) is a letter dated February 26, 2019, to Chair Swank, authored by Juan Palma, Nevada State Director, The Nature Conservancy, presented by Laurel Saito, Nevada Water Program Director, The Nature Conservancy in opposition to Assembly Bill 30.

[Exhibit K](#) is a letter dated February 26, 2019, to Chair Swank and Members of the Assembly Committee on Natural Resources, Agriculture, and Mining, authored by Mark Butler, Executive Council Member, Coalition to Protect America's National Parks, et al., in opposition to Assembly Bill 30.

[Exhibit L](#) is a letter dated February 27, 2019, to the Assembly Committee on Natural Resources, Agriculture, and Mining, authored by John Hadder, Director, Great Basin Resource Watch, presented by Susan Juetten, Private Citizen, Reno, Nevada, in opposition to [Assembly Bill 30](#).

[Exhibit M](#) is a letter dated February 26, 2019, to Chair Swank, authored by Richard Howe, Chairman, White Pine County Commission, in opposition to [Assembly Bill 30](#) and [Assembly Bill 51](#).

[Exhibit N](#) is a letter dated February 26, 2019, to the Assembly Committee on Natural Resources, Agriculture, and Mining, authored by Simeon Herskovits and Iris Thornton on behalf of Great Basin Water Network, submitted by Advocates for Community and Environment, in opposition to [Assembly Bill 30](#) and [Assembly Bill 51](#).

[Exhibit O](#) is a compilation of material in opposition to [Assembly Bill 30](#), consisting of the following:

1. A letter to Members of the Assembly Committee on Natural Resources, Agriculture, and Mining, written by Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada.
2. A letter dated February 25, 2018, to Chair Swank, authored by Tick Segerblom, Commissioner, Board of County Commissioners, Clark County.
3. A letter dated February 25, 2018, to Chair Swank, authored by Meghan Wolf, Environmental Activism Manager, Patagonia.
4. A letter dated February 26, 2019, to Nevada State Assembly, written by Dave Mendiola, Humboldt County Manager on behalf of the Humboldt County Commission.
5. A statement written by Delaine Spilsbury, Private Citizen, McGill, Nevada.

[Exhibit P](#) is written testimony dated February 27, 2019, presented by Tim Wilson, P.E., Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources, regarding [Assembly Bill 51](#).

[Exhibit Q](#) is a copy of a PowerPoint presentation titled "[Assembly Bill 51](#)" dated February 27, 2019, presented by Tim Wilson, P.E., Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources.

[Exhibit R](#) is a letter dated February 25, 2018, to Chair Swank, authored by Kyle Roerink, Executive Director, Great Basin Water Network, in opposition to [Assembly Bill 51](#).

[Exhibit S](#) is a letter dated February 26, 2019, to Chair Swank, authored by Patrick Donnelly, Nevada State Director, Center for Biological Diversity, in opposition to [Assembly Bill 51](#).

[Exhibit T](#) is a letter dated February 27, 2019, to Assembly Committee on Natural Resources, Agriculture, and Mining, authored by Tobi Tyler, Executive Committee Member, Toiyabe Chapter, Sierra Club, in opposition to [Assembly Bill 51](#).

[Exhibit U](#) is a letter dated February 26, 2019, to Chair Swank, authored by Juan Palma, Nevada State Director, The Nature Conservancy, presented by Laurel Saito, Nevada Water Program Director, The Nature Conservancy, in opposition to Assembly Bill 51.

Exhibit V is a letter dated February 26, 2019, to Chair Swank and Members of the Assembly Committee on Natural Resources, Agriculture, and Mining, authored by Mark Butler, Executive Council Member, Coalition to Protect America's National Parks, et al., in opposition to Assembly Bill 51.

[Exhibit W](#) is a compilation of letters in opposition to Assembly Bill 51, consisting of the following:

1. A letter to Members of the Assembly Committee on Natural Resources, Agriculture, and Mining, authored by Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada.
2. A letter dated February 25, 2018, to Chair Swank, authored by Tick Segerblom, Commissioner, Board of County Commissioners, Clark County.
3. A letter dated February 25, 2018, to Chair Swank, authored by Meghan Wolf, Environmental Activism Manager, Patagonia.
4. A letter dated February 27, 2019, to the Assembly Committee on Natural Resources, Agriculture, and Mining, authored by John Hadder, Director, Great Basin Resource Watch.