

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

**Eightieth Session
May 1, 2019**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Heidi Swank at 4:02 p.m. on Wednesday, May 1, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and to Room 125, McMullen Hall, Great Basin College, 1500 College Parkway, Elko, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Pete Goicoechea, Senate District No. 19
Senator Melanie Scheible, Senate District No. 9

Minutes ID: 927



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Will Adler, representing Pyramid Lake Paiute Tribe
Kyle Roerink, Executive Director, Great Basin Water Network
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation
Neena Laxalt, representing Central Nevada Regional Water Authority; and Humboldt
River Basin Water Authority
Laurel Saito, Nevada Water Program Director, The Nature Conservancy
Cassandra Rivas, Chair, Legislative Committee, Toiyabe Chapter, Sierra Club
Kyle Davis, representing Nevada Conservation League
Terry K. Graves, representing Vidler Water Company
Chaunsey Chau-Duong, Public Affairs, Southern Nevada Water Authority
C. Joseph Guild III, representing Southern Nevada Water Authority
Tim Wilson, Acting State Engineer and Administrator, Division of Water Resources,
State Department of Conservation and Natural Resources
Christi Cabrera, representing Nevada Conservation League
Laura Richards, Member, Executive Committee, Toiyabe Chapter, Sierra Club
Kurt Kuznicki, Private Citizen, Reno, Nevada
Daniel Alvey, Private Citizen, Reno, Nevada
Jose Witt, Southern Nevada Director, Friends of Nevada Wilderness

Chair Swank:

[Roll was called. Rules and protocol of the Committee were reviewed.] I will open the hearing on Senate Bill 140 (1st Reprint).

Senate Bill 140 (1st Reprint): Revises provisions relating to the use of groundwater in certain basins. (BDR 48-541)

Senator Pete Goicoechea, Senate District No. 19:

Senate Bill 140 (1st Reprint) is a good bill; it is a fairly simple bill that pertains to available groundwater in any basin that is not totally appropriated. This bill seeks to reserve 10 percent of the uncommitted groundwater in a basin and hold that 10 percent in reserve in case we missed the mark like we have in so many other basins over the years, ending up with basins being overappropriated. Presently, half of the groundwater basins in the state of Nevada are near or overappropriated; 58 of them are severely overappropriated.

This bill does not change any major issues other than establish a 10 percent reserve of the groundwater in a basin that has water available. I want to make sure everyone understands

that we are not talking about 10 percent of the perennial yield of that basin. If you are in a basin that has 30,000 acre-feet, we are not talking about 3,000 acre-feet. If you have a perennial yield of 30,000 acre-feet and there is 3,000 acre-feet that is unappropriated, or uncommitted, then we are talking about 10 percent of the 3,000 acre-feet, which would be 300 acre-feet.

This will establish a buffer, or cushion, as we move forward as the driest state in the nation and allow a little flexibility in case we miss the mark in these groundwater basins. The bill also states that if we are in a severe drought situation, the State Engineer can temporarily issue some of this reserved groundwater. The drought has to be a declaration of drought by the Governor, the U.S. Secretary of Agriculture, or the President of the United States. That water would only be available during the time of the declared drought. I think it would be very hard to hold 10 percent of uncommitted groundwater in a basin if you had a municipality or people who were suffering for water. This is only on a temporary basis and allows for the application.

There is a mock-up amendment that was presented on the Senate side after the bill went to the floor ([Exhibit C](#)). I did not feel comfortable amending the bill on the floor. I believe there is enough language in the amendment that it requires a hearing. First and foremost, I will say that I cannot support the amendment. I looked at it, and it is not good water law to establish carve-outs. We technically are doing carve-outs with the 10 percent, but as I look at this amendment, it would reserve up to 5 percent of the total uncommitted water in the same scenario, but it would technically be dedicated for future growth and development. If we put a piece like this in the bill, I am afraid the next amendment we see will be the State Department of Agriculture asking for 10 percent. I think there is a big difference between the 10 percent reserve that is established in all basins that are not totally committed and going into groundwater basins and starting to carve sections out for future growth. Nevada has a priority water law: the first in time is the first in right, and it has to be put to beneficial use. I will let the proponents of the amendment bring it forward and plead their case with you.

Chair Swank:

I have questions on section 1, subsection 3, regarding the declaration of drought. When there is a declaration of drought, during that time there could be an emergency. Is that correct?

Senator Goicoechea:

Typically, the Governor would declare one county as an emergency drought area. If it is a federal declaration, then the contiguous counties would be included in that declaration.

Chair Swank:

Is the emergency the declared drought, or is there a declared drought and then an emergency could occur?

Allan Amburn, Committee Counsel:

The way it is written it is talking about how the State Engineer may allow the use of the groundwater in an emergency, if there is a declaration of a drought by the Governor, the

U.S. Secretary of Agriculture, or the President of the United States. I believe that your interpretation is correct, Chair Swank.

Chair Swank:

As it is currently written, an emergency is declared which is a sub-event to the declaration of drought. They are not equal things, correct?

Allan Amburn:

That is the way I am reading it.

Senator Goicoechea:

In my mind, you have to have the drought declaration in place to ever declare an emergency.

Chair Swank:

Will you give me some examples of what that emergency would be?

Senator Goicoechea:

I would think it would have to be a severe emergency—it will require a substantial investment to access the groundwater, and it is only short term. That water can only be appropriated while the drought declaration exists. In my mind, it could be a municipality, or a small community such as Gabbs or Beatty. If the drought were severe enough that the water resource in one of those communities dried up, and if there was groundwater available in a basin next to them, I would deem that an emergency that the State Engineer could say, We will let you drill a water well here as a temporary short-term fix, understanding full well that when the drought declaration goes away, the water right goes away.

Chair Swank:

I am also wondering about temporary use. How are we defining "temporary use"? I know some things in water that are deemed temporary seem to be lasting quite a long time.

Senator Goicoechea:

In my mind that would be when the drought declaration goes away, the temporary use would go away also.

Assemblyman Ellison:

If there is a basin that is overappropriated, and a subdivision is being built, would this 10 percent be calculated into what the subdivision is asking for?

Senator Goicoechea:

There would be no reserve water in a basin that is totally appropriated or overappropriated. This reserve can only occur in a groundwater basin where all of the water resources have not been committed. Ten percent of those uncommitted resources will be held in reserve. This is trying to shore up some of the basins that are not in trouble yet. I think down the road, this will be a long-term benefit. Unfortunately, I think all of us have come to recognize that at some point we will have to start retiring water rights in some of these basins that are so

overappropriated in the state. I do not know why we would continue to issue water rights and max out all the basins. This would hold some in reserve.

Assemblywoman Bilbray-Axelrod:

How many uncommitted basins do we have in Nevada?

Senator Goicoechea:

Approximately half of the basins have at least some water available. I believe the State Engineer will have far more accurate information. Some of the basins have insignificant amounts of uncommitted water. Some of these basins would only be able to hold 100 acre-feet in reserve.

Assemblyman Wheeler:

In a drought situation, the State Engineer would be allowed to release some of the reserved water. Would that be his decision where the water is released, to whom, and how much?

Senator Goicoechea:

I want to emphasize, this is not a release. This is groundwater, and you will have to drill a well to access the water. Also, I think all of those decisions would be part of the State Engineer's consideration in an emergency. I do not believe he would allow you access to that water as an emergency measure just because it was dry and your hay crop was a little short. If you had a municipality with 1,000 homes without water, that truly is an emergency. At that point, I would think the State Engineer would entertain that and issue a temporary water right.

Assemblyman Wheeler:

You are saying that it is the State Engineer's decision as to where that water goes, correct?

Senator Goicoechea:

Yes, the bill says the State Engineer may allow the temporary use of groundwater from the reserve.

Chair Swank:

Are there any further questions? Seeing none, I will move into support. Is there anyone here to testify in support of S.B. 140 (R1)?

Will Adler, representing Pyramid Lake Paiute Tribe:

The Pyramid Lake Paiute Tribe is in support of S.B. 140 (R1) as it was originally written. We are not in support of the amendment that was proposed today (Exhibit C). This amendment seems to ask for a banking of an additional 5 percent of water for future development use, which seems to be muddying the whole concept of the bill. The bill, as written, is a good step in the right direction toward water conservation. We have counties and water boundaries that are not fully appropriated, and it makes sense to me and to the Pyramid Lake Paiute Tribe to bank that water now, and use it for that rainy day in the future, or the lack of that rainy day in the future. Having the ability to reserve 10 percent of the

water seems to be sensible and what we should be doing now. If we have the knowledge that we have some unappropriated water, let us save some for later.

Kyle Roerink, Executive Director, Great Basin Water Network:

We feel the same way as Senator Goicoechea does: we support the bill and oppose the amendment.

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

We are here today to speak in support of S.B. 140 (R1). In our mind, the idea and the concept of not appropriating 10 percent of the water that is not allocated is a smart move. Having it not be specific to any purpose and having it for temporary use is sound policy that we believe should be included in state law.

Neena Laxalt, representing Central Nevada Regional Water Authority; and Humboldt River Basin Water Authority:

Ditto.

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

I am pleased to provide comment in strong support of S.B. 140 (R1). The Nature Conservancy's mission is to conserve the lands and waters on which all life depends, and we are committed to working with you to identify solutions to Nevada's water resource problems that meet the needs of both people and nature.

We are fully supportive of S.B. 140 (R1). Many of the 256 groundwater basins in Nevada are overappropriated, meaning more water has been appropriated than is available. There is no "rainy day fund" for these basins in times of water scarcity and drought, and in some of these basins people with valid water rights are not able to get their water, and the environment has been negatively affected. For basins that are not yet fully appropriated, appropriation of the full perennial yield could eliminate all or most groundwater discharge in those basins with serious consequences for the environment. To keep the groundwater basins that are not currently fully appropriated from encountering the same challenges as those that are fully or overappropriated, we advocate reserving some water from being appropriated to provide more certainty and reliability that water would be available for people and nature in those basins over the long term. Senate Bill 140 (1st Reprint) will enable that to happen.

We are aware of the amendment to set aside another 5 percent of the available water for future economic development. The Nature Conservancy does not support this amendment. It does not belong in this because it is about reserving water for appropriation, whereas the original bill is about reserving water from appropriation. [A written letter was also provided ([Exhibit D](#)).]

Cassandra Rivas, Chair, Legislative Committee, Toiyabe Chapter, Sierra Club:

Our members and supporters in Nevada are in strong support of S.B. 140 (R1) as it was passed by the Senate. We urge you to pass this bill without the alterations in the amendment. I think this is a very smart move for Nevada, being that we are one of the driest states in the

nation. I think it is important to keep that in mind as we plan for our future. Thank you all for taking on these challenges. We do support this bill for all the reasons already mentioned. [A written letter was also provided ([Exhibit E](#)).]

Kyle Davis, representing Nevada Conservation League:

We are here in support of S.B. 140 (R1) for the reasons that have been previously stated. In addition, we also concur with many of the previous speakers in our opposition to the proposed amendment ([Exhibit C](#)). I think that realistically, the amendment raises a lot of questions without answers in terms of how this would be determined, who the 5 percent allocation would be available to, and whether it is a permanent or temporary water right. There are a lot of questions that are left unanswered by the proposed amendment. Additionally, it does not square up with the overall intent of the bill, which is to leave water unappropriated so it is available in times of drought and for the environment.

Terry K. Graves, representing Vidler Water Company:

We also support the bill as presented. In looking at the amendment, it seems to be putting land-use issues into this decision-making. We are not in support of the amendment.

Chair Swank:

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

Chaunsey Chau-Duong, Public Affairs, Southern Nevada Water Authority:

Our organization serves more than 7 percent of the state's population, using less than 5 percent of the state's total available water supply. We raised a concern about this bill in the Senate, which we believe has not been addressed. We have no objection to reserving 10 percent for future emergencies if we also kept the amount of water reserved for future growth and development in the basin of origin. This would create greater certainty and prevent double stacking of reserved water. We do have a proposed amendment that, if accepted by the Committee, would allow us to support the bill ([Exhibit C](#)). Our amendment allows the State Engineer to reserve up to an additional 5 percent of water for future economic growth and development. *Nevada Revised Statutes* (NRS) 533.370, subsection 3, paragraph (d), requires the State Engineer to determine if a proposed action to issue a permit is an appropriate long-term use which will not unduly limit the future growth and development in a basin of origin. The State Engineer's office has typically met this requirement through a reservation of water. This amendment allows the State Engineer to reserve an additional 5 percent, which would create a total reservation of 15 percent. This amendment leads to more water remaining in the basin and is consistent with the amount of water the State Engineer has reserved in other cases.

Furthermore, all those parties who supported this bill in the Senate acknowledge that the 10 percent reservation is an arbitrary number and that there is really no science behind it. Having opened the door to putting percentages in statute, we feel that this is an appropriate amendment and urge the Committee to adopt it.

I would like to clarify that this provision is already existing law. We are not creating new law; we just want to assign a specific number to it. The idea that this proposed amendment would lead to carve-outs for other entities such as agriculture and mining, in our view, those are typically types of economic development already. Frankly, I do not think it is necessarily a carve-out. I certainly understand where people are going with this, but again, to clarify, this proposed amendment is already existing law; we are just assigning a specific percentage to it.

Chair Swank:

You are saying that this 5 percent in the amendment is already existing law?

Chaunsey Chau-Duong:

The provision that we are referring to, NRS 533.370, subsection 3, paragraph (d), is already existing law. We are assigning the 5 percent number to that existing provision.

Allan Amburn:

What existing law is saying is that before rejecting an application for an interbasin transfer, the State Engineer has to consider certain factors. One of those factors is whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported. How the State Engineer makes that consideration, or goes about that process, is not fleshed out in that section. The 5 percent would be in addition to that in providing some clarification in additional requirements or authorization.

C. Joseph Guild III, representing Southern Nevada Water Authority:

I want to talk about the amendment being proposed ([Exhibit C](#)). With all due respect to Senator Goicoechea, with whom I have had a long personal and professional relationship, he laid the predicate in his testimony for what I am about to say. When he said the 10 percent is a carve-out, we support that notion, and therefore support the bill with the amendment.

If we are going to reserve 10 percent in a basin for conservation purposes and only use it in a limited circumstance that was described by the proponent of the bill, we think that this is a logical and balanced way to not establish a carve-out, but to reserve for future use.

Here is why NRS 533.370, subsection 3, paragraph (d), was used. It is tied to the interbasin transfer statute because most probably, future applications for unappropriated water in every other case will be for an economic activity in the basin that the application is asking the water to be removed from, for economic activity in that basin. I can envision a mining project, an expansion of an agricultural operation, even a housing development in the future when population pressures might require it. That economic activity will remain in that basin. In the case of an interbasin transfer of water, the economic activity will be in the basin of destination. Reserving 5 percent in the basin of origin for future economic activity is logical. It will make sure that if permits are issued for an interbasin transfer, a removal from that basin of origin, to a destination basin, at least there is 5 percent remaining in the basin of origin for future development. That is why it is tied to NRS 533.370, subsection 3,

paragraph (d). If we are going to reserve 10 percent in a basin where there is unappropriated water for conservation and temporary drought relief, it makes sense to us to put a number to the reference in the NRS that your Committee counsel aptly described; that is what our amendment proposes. One other thought occurred to me: If we are going to create this reservation, there are going to be increased responsibilities on the State Engineer, and it occurs to me that there might be future need for more personnel and more resources in the State Engineer's Office. That is actually an echo of things I have said for the last 20 years in dealing with water law issues.

Assemblyman Watts:

You talked about trying to avoid stacking, but this would be an addition, so it is 5 percent on top of the 10 percent that is contemplated under the bill as written.

Chaunsey Chau-Duong:

That is correct.

Assemblyman Watts:

Can you give an example of how you think this would be implemented? I am thinking of situations where all the unappropriated water in a basin has already been filed on, potentially for use in an interbasin transfer. The bill as contemplated only applies to unallocated water in a basin. Can you describe a situation where there would be an interbasin transfer in a basin that will still have water unallocated so that you would have both a conservation set-aside as well as this 5 percent set aside for growth and development in the target basin?

C. Joseph Guild:

It is not the target basin we are talking about. I am not sure I understand the question.

Assemblyman Watts:

I am wondering if you can provide an example of how this would apply. As I read the bill as written, it applies to a basin where there is water that has not been allocated—when I think of most interbasin groundwater transfers and applications, they are occurring to appropriate the remainder of water in that target basin.

C. Joseph Guild:

When you say target basin, do you mean the basin of origin?

Assemblyman Watts:

Yes.

C. Joseph Guild:

The example would be that there is unappropriated water in the basin of origin, and an applicant comes to the State Engineer and says, I would like to get a permit for 100 acre-feet of water to move out of that basin for this particular beneficial use in the basin of destination. The State Engineer determines that the perennial yield in that basin is 130 acre-feet of water. Ten percent has to remain because S.B. 140 (R1) currently applies to every basin in the state

where there is unappropriated water. Ten percent of 130 is 13 acre-feet. Five percent, if this amendment were to pass, would be added to the 13 acre-feet, so 19.5 acre-feet must remain in the basin, leaving 110.5 acre-feet. The application was for 100 acre-feet. I can anticipate the State Engineer saying, we are getting pretty close, so you will get 90 acre-feet for your permit. That is how I would see this playing out. Therefore, you would have 130 acre-feet, minus 90 acre-feet, which leaves 40 acre-feet of water available in the basin; 19.5 of which is required to remain in the basin. I hope that answers your question.

Assemblyman Watts:

That definitely explains how you envision the process working. I was wondering if there are actually basins specifically where you would see this being relevant to the Southern Nevada Water Authority or to projects that are proposed.

C. Joseph Guild:

Without speculating and endeavoring to answer a hypothetical question, I am not sure I can do that.

Assemblyman Assefa:

As I read the amendment, it essentially takes the 10 percent up to 15 percent. In your testimony a few minutes ago, you called the 10 percent arbitrary with no science behind it. I am trying to understand how you got to 5 percent. What is the justification and science behind that number?

Chaunsey Chau-Duong:

It is an arbitrary number as well. Through analysis and evaluation, we feel 5 percent would work, just like Senator Goicoechea thought 10 percent would work for his bill.

Assemblyman Smith:

Did you bring this amendment to the Senate when this bill was heard then?

C. Joseph Guild:

Yes, we did. As Senator Goicoechea indicated, he asked us to wait until we could have a full hearing here in the Assembly because it was close to deadline day. The Senator did not want to discuss the amendment on the floor of the Senate. We thought that would be the proper procedure to give it a full hearing in this house.

Assemblyman Smith:

Why was this amendment not presented at the very beginning of the bill introduction?

Chaunsey Chau-Duong:

We evaluated the bill and had discussions with Senator Goicoechea about this bill and our concerns. We went to the hearing to see if some of the questions we had would be answered. They were not; hence we had further discussions with Senator Goicoechea about a proposed amendment that would satisfy our concerns.

Chair Swank:

Is there anyone here who would like to testify in neutral?

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

The Nevada Division of Water Resources is neutral on Senate Bill 140 (1st Reprint). The Division worked with the bill sponsor on the Senate side and proposed amended language to the bill as introduced. However, we still have several concerns that remain with the bill in its first reprint.

In section 1, subsection 1, the Division remains concerned that the failure to explicitly include domestic wells as part of the committed use will leave ambiguity and potentially undermine the intent of the bill in certain areas of the state where domestic wells account for a significant portion of the groundwater use.

Existing Nevada statutes expressly provide that certain requirements "include, without limitation, withdrawals from domestic wells." If the members of the Legislature intend that S.B. 140 (R1) preclude domestic wells from capturing the 10 percent water reserve, it should be expressly and explicitly stated.

In section 1, subsection 3, the Division has reservations about the process and intended application of the allowance for temporary use during a drought emergency. There is also concern regarding potential conflict between this particular language in S.B. 140 (R1) and the provisions set forth in NRS 533.504 relating to temporary permits to appropriate groundwater to water livestock in a county under a declaration of drought. As written, S.B. 140 (R1) does not offer guidance regarding what rights are to take a priority or how the Division is expected to reconcile these two separate statutory provisions.

The Division believes that further specification and clarification regarding the types and prioritization of rights that may temporarily utilize the water under the circumstances set forth in section 1, subsection 3, is critical to the effective, and defensible, implementation of the bill.

Similarly, considering the very limited amount of groundwater available in certain arid basins even in wet conditions, it seems counterintuitive to allow additional withdrawals during times of drought. Guidance regarding prioritization of drought emergency uses would be beneficial, again, in the effective and defensible implementation of the legislation.

Another question that remains for the Division is if a reserve is established based upon information available upon implementation, how is the Division to address circumstances where the perennial yield is increased or reduced? Is the Division authorized to reduce the reserve to assure, in the event of an "emergency," the groundwater supply is not being overpumped? If the perennial yield increases, is the Division authorized to increase the quantity of water to represent 10 percent based on the revised perennial yield?

The Division also seeks clarification in this bill regarding whether there is an expectation that the Division periodically reevaluate the proposed reserve. If so, how often should that occur? How should this be applied to basins that share a perennial yield or are conjunctively managed on a system yield basis?

Finally, I would like to address the proposed amendment by the Southern Nevada Water Authority ([Exhibit C](#)). First, the Southern Nevada Water Authority's proposed amendment appears to seek to cap the reserved water at 5 percent rather than the 10 percent provided for in the bill if at some future time interbasin transfer applications are approved. If this is the intent of the amendment, it does not appear to align with the intent of the bill. Rather, as the Division understands, the intent of the bill is to create a reserve within basins currently below the perennial yield and that quantity of water is to be fixed throughout the state regardless of the types of applications or manners of use associated with those applications. Alternatively, the Southern Nevada Water Authority's amendment could be read to impose a maximum reservation of 5 percent of available water for future growth and development of a basin where interbasin transfer applications are pending.

Under NRS 533.370, subsection 3, in determining an application for an interbasin transfer of groundwater, the State Engineer shall consider whether the proposed action is an appropriate long-term use that will not unduly limit the future growth and development in the basin from which the water is exported. The proposed amendment is to use 5 percent of the perennial yield to satisfy this requirement. This is not needed, and it is contradictory to how our office determines the quantity of water to be reserved for future growth and development in a particular basin. The 5 percent of perennial yield number would vary wildly depending on the perennial yield of the basin and would be an arbitrary, not scientific, method of determining the amount of water that should remain for future growth and development. It would also defeat the intent of our interbasin transfer criteria, which protects the users within the basin of origin.

The Nevada Division of Water Resources continues its dedication to working with the bill sponsor to work through our concerns and to work with the members of the Committee on crafting a final bill that can be effectively implemented and defensible to legal challenges before the courts.

Chair Swank:

I would like to get a clarification from our legal counsel on the amendment ([Exhibit C](#)).

Allan Amburn:

The 5 percent in the amendment is not replacing the 10 percent that is discussed in section 1 of the bill. Basically, the 10 percent in section 1 is a 10 percent amount that will remain in the basin that it applies to. The 5 percent is in addition to that 10 percent number. The 5 percent amount could potentially be withdrawn from the basin in a future time.

Chair Swank:

In total, this bill, along with the amendment, would be setting aside 15 percent, correct?

Allan Amburn:

Yes, but the percentages would be applied in different situations.

Assemblywoman Peters:

I like the concept of this bill. I do have similar questions about the methods and implementation that you brought forward. Did you bring these same concerns up in the Senate?

Tim Wilson:

I did bring up many of these concerns on the Senate side; my testimony today is somewhat similar to that at the Senate hearing. I did not know about the proposed amendment; it just came up as we walked in today. We did have at one time domestic wells in the statute as amended, which was eventually taken out.

Assemblywoman Peters:

I was contemplating how, in the case of holding 10 percent of the unallocated water available in the basin, in times of emergency, the available water in the basin is much smaller. Is that 10 percent not touched as the yield goes down? How would we hold on to that 10 percent for emergency use versus allowing an underallocated basin that portion of underallocated water to be the first part of the water supply that goes away before we start curtailing other uses? Where does the 10 percent become a sacred 10 percent above priority? I am wondering about how this would be implemented and how we could maybe structure something that had a little more direction in it.

Tim Wilson:

I agree, and I expressed those same concerns on the other side and in my testimony here today. Section 1, subsection 3, seems to be counterintuitive in that we would appropriate additional water at a time when there is an emergency declaration of drought. I am not sure how that would work. I am not sure I can envision a scenario where we could appropriate that 10 percent on a temporary basis to someone. To go a little further on your question, the way we look at our basins right now is, we try to estimate a perennial yield in each basin. We do not readjust that every year based on whether it was a drought year or a wet year. That is a long-term number that we use. So if there was a severe drought, we would not necessarily adjust the perennial yield down because we realize that, theoretically, it will be balanced out by a wet year in the future. We do not just raise and lower our perennial yield each year. There is a current evaluation of every basin, and every basin has a perennial yield. We can calculate that 10 percent number quite easily, and that is what we would hold in reserve, and that would be the amount people would be looking to possibly appropriate during an emergency in a declaration of drought situation. I cannot see how that would work, but that is what is in the bill.

Assemblywoman Peters:

I think I have an idea of how this will work now, thank you.

Assemblyman Watts:

In looking at NRS 533.370, subsection 3, paragraph (d), it says that your office would have to consider whether it is an appropriate long-term use, which will not unduly limit the future growth and development in the basin. You mentioned that setting aside the 5 percent cap would be arbitrary. Would this actually cause your office to deny or reduce the water rights that would be granted? In essence this is getting around the cap because just saying that 5 percent is arbitrarily set aside does not necessarily mean that you could go up to that limit if doing so would still have a negative impact on the future growth in the basin from which the water would be exported. Do you think that would actually lead to you scaling back what you would consider past the 5 percent cap in order to preserve economic development in the basin of export?

Tim Wilson:

The way I read the amendment ([Exhibit C](#)), it would essentially tie my hands somewhat in determining the amount of water available for future growth and development within a basin of origin by capping it at 5 percent. I would have to choose a number somewhere between 0 percent and 5 percent and say that is the number available for future growth and development.

Assemblyman Watts:

It seems to me that if that 5 percent was inadequate, under current law, you would have to deny the application because if that is inadequate to protect the future growth and development in that basin, then there would be a conflict that would necessitate denial of the application instead of the flexibility to set aside past that 5 percent.

Tim Wilson:

I have to admit, I did not look at it from that perspective. That is an interesting perspective. I would have to have some legal counsel assistance in making that interpretation before I could go so far as to say I would deny if that 5 percent was insufficient.

Assemblywoman Bilbray-Axelrod:

I had asked the bill sponsor about the number of underappropriated basins we have in Nevada. Do you have that information?

Tim Wilson:

If we consider pending applications filed prior to the enactment of this legislation, and we assumed all of those pending applications were granted, we would have about 100 basins with available water. There would be about 300,000 acre-feet available, 10 percent of which would be 30,000 acre-feet. Overall, if all pending applications currently filed were

approved that were filed prior to the date of this enactment, we are looking at approximately 30,000 acre-feet of water that would be part of the reserve. Conversely, if we do not consider pending applications to appropriate water, that number goes up to about 500,000 acre-feet total, with about a 50,000 acre-feet reserve. We believe that with our preliminary calculations we are looking at between 30,000 to 50,000 acre-feet of water.

Chair Swank:

Is there anyone else who would like to testify in neutral? [There was no one.] Senator Goicoechea, would you like to make some closing remarks?

Senator Goicoechea:

The reason we deleted the domestic well language from the bill and changed it to committed language is because we did not want to influence a pending court case that is before the Supreme Court as it deals with domestic wells. We are clearly talking about committed water. If it is a domestic well in a basin, that water has been committed. You heard the conversation about the emergency stock water, that is completely different, that is not appropriation, that is not accessing emergency water.

In response to Assemblywoman Peters, if the emergency section is giving this Committee heartburn, I have no problem deleting it. In a real-world scenario, in this state, as dry as we can get, this is an effort to at least have a mechanism in place that in a true need, that water could be accessed. I have no problem deleting it if it gives the Committee heartburn to have the ability to access the water in an emergency. My major concern is to have a 10 percent cushion. In all fairness, we heard a lot of numbers here, back and forth, but why do we have 150 basins in this state that are overappropriated and some to the extent of 300 percent?

Assemblywoman Peters:

I do not mind the emergency section of the bill. I think there can be a more robust narrative around how we expect that emergency allocation to work. I would be happy to help pull something together.

Senator Goicoechea:

I appreciate that and look forward to working with you on this. This is only a safeguard to try to protect the basins we have left.

Chair Swank:

With that, I will close the hearing on S.B. 140 (R1). [A written letter was provided but not discussed ([Exhibit F](#)).] I will open the hearing on Senate Joint Resolution 3 (1st Reprint).

Senate Joint Resolution 3 (1st Reprint): Urges Congress to oppose the expansion of the United States Air Force in the Desert National Wildlife Refuge in Nevada. (BDR R-745)

Senator Melanie Scheible, Senate District No. 9:

I am here to talk about Senate Joint Resolution 3 (1st Reprint), which is a resolution to U.S. Congress to protect the Desert National Wildlife Refuge. I understand that you have already heard Assembly Joint Resolution 2 (1st Reprint), which is very similar to S.J.R. 3 (R1). I do not want to bore you or waste your time repeating all of the reasons that this rangeland is incredibly important habitat to animals and plant life in Nevada.

You have probably heard a couple of different bills related to a couple of different proposals. This one relates to the Desert National Wildlife Refuge, which is in southern Nevada, close to Nellis Air Force Base. The proposal from the Air Force would be to expand their bombing testing range to include part of the refuge. That is what we are trying to prevent. It is an incredibly scenic part of our state that is virtually untouched wilderness, which is almost unheard of in the United States today. I think this resolution is an important mechanism for us to express to Congress where the state that is home to this land stands.

I do want to talk a little bit about S.J.R. 3 (R1) as it relates to A.J.R. 2 (R1) because they are very similar. The wording is different throughout each bill. There is a section that is unique to S.J.R. 3 (R1) and a section that is unique to A.J.R. 2 (R1); both of which are incredibly important and should be combined into whatever bill we finally pass. In S.J.R. 3 (R1), the final "whereas" addresses the effects on the town of Beatty of this proposed encroachment. Beatty is a very small Nevada town that relies largely on tourism, and it has been expanding to include ecotourism in its portfolio of revenue sources and also as a point of pride. Beatty has a lot of natural wilderness in and around the town that the residents are trying to preserve and increase the number of visitors to come out and visit the desert tortoise, see the mountain ranges, and to enjoy hiking, camping, hunting, and fishing in those areas. I think that is an incredibly compelling reason that we should include in our resolution to Congress for why they should not allow the testing range to be expanded. Assembly Joint Resolution 2 (1st Reprint) has a unique provision in that it references the Moapa Band of Paiutes' Resolution. I would like to propose a truly conceptual amendment, not even written down, to take the language from A.J.R. 2 (R1) recognizing the Moapa Band of Paiutes' Resolution and including that in S.J.R. 3 (R1).

Chair Swank:

Are there any questions? Seeing none, I will hear anyone here in support of S.J.R. 3 (R1).

Christi Cabrera, representing Nevada Conservation League:

We are in support of S.J.R. 3 (R1). This resolution makes it clear that the State of Nevada opposes the alternative currently on the table for a potential expansion and encourages the process that protects wildlife habitat, cultural resources, and public access. We urge your support.

Laura Richards, Member, Executive Committee, Toiyabe Chapter, Sierra Club:

On behalf of more than 30,000 members and supporters of the Sierra Club in Nevada, thank you for considering S.J.R. 3 (R1). Today, more than half of the 1.6 million-acre refuge set aside by Congress in 1936 to protect the habitat of desert bighorn sheep and other American wildlife species sits within the 2.9 million-acre warfare training range, and is already permanently closed to the public.

Approximately 300,000 acres of the proposed land withdrawal includes most all of the Sheep Range, the heart of the Desert National Wildlife Refuge, and the single largest remaining piece of intact wild land in Nevada. These lands are among the best remaining undisturbed examples of a diverse Mojave Desert ecosystem that we have.

What makes this request so critical is that simultaneously in northern Nevada, the Navy's Fallon Range and Training Complex plans to withdraw 750,000 acres that include public lands within Fallon and the Stillwater National Wildlife Refuge. Together, these proposed combined withdrawal of public lands is more than 2 million acres in our state.

Please protect the Desert National Wildlife Refuge from the Nevada Test and Training Range military land withdrawal and pass S.J.R. 3 (R1). [A written letter was also provided ([Exhibit G](#)).]

Kurt Kuznicki, Private Citizen, Reno, Nevada:

I am in support of S.J.R. 3 (R1). I am also in support of A.J.R. 2 (R1). Whatever you combine, I am good with.

Daniel Alvey, Private Citizen, Reno, Nevada:

This area is amazing; I love going out there. It has one of the only sand dune areas in Nevada that has no vehicle access. It is amazing to go out to the sand dunes where only the wind is moving them around.

Jose Witt, Southern Nevada Director, Friends of Nevada Wilderness:

I would like to thank the Committee as well as Senator Scheible for taking this issue on. We are very supportive of keeping the refuge open to the public. I also agree with everything that is in A.J.R. 2 (R1).

Chair Swank:

Is there anyone else in support? [There was no one.] Is there anyone in opposition? [There was no one.] Is there anyone in neutral? [There was no one.] Are there any closing remarks? Seeing none, I will close the hearing on S.J.R. 3 (R1) [a written letter was provided but not discussed ([Exhibit H](#))]. I will open the meeting for public comment. Seeing no one, we are adjourned [at 5:08 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 proposed amendment to [Senate Bill 140 \(1st Reprint\)](#) presented by Chaunsey Chau-Duong, Public Affairs, Southern Nevada Water Authority.

[Exhibit D](#) is a letter dated April 30, 2019, to Chair Heidi Swank, signed by Juan Palma, Nevada State Director, The Nature Conservancy, in support of [Senate Bill 140 \(1st Reprint\)](#).

[Exhibit E](#) is a letter dated April 30, 2019, to Assembly Committee on Natural Resources, Agriculture, and Mining, signed by Cassandra Rivas, Chair, Legislative Committee, Toiyabe Chapter, Sierra Club, in support of [Senate Bill 140 \(1st Reprint\)](#).

[Exhibit F](#) is a letter dated April 30, 2019, to Chair Heidi Swank and Assembly Committee on Natural Resources, Agriculture, and Mining members, signed by Steve Walker, representing Eureka County, in support of [Senate Bill 140 \(1st Reprint\)](#).

[Exhibit G](#) is a letter dated April 30, 2019, to Assembly Committee on Natural Resources, Agriculture, and Mining, signed by Laura Richards, Member, Executive Committee, Toiyabe Chapter, Sierra Club, in support of [Senate Joint Resolution 3 \(1st Reprint\)](#).

[Exhibit H](#) is a letter to Chair Heidi Swank and members of the Assembly Committee on Natural Resources, Agriculture, and Mining, signed by Tiffany East, Member, Nevada Board of Wildlife Commissioners, Department of Wildlife, in support of [Senate Joint Resolution 3 \(1st Reprint\)](#).