MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES

Eightieth Session
May 9, 2019

The Senate Committee on Natural Resources was called to order by Chair Melanie Scheible at 4:00 p.m. on Thursday, May 9, 2019, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Chris Brooks, Vice Chair
Senator Dallas Harris
Senator Pete Goicoechea
Senator Ira Hansen

GUEST LEGISLATORS PRESENT:

Assemblywoman Lesley E. Cohen, Assembly District No. 29
Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1

STAFF MEMBERS PRESENT:

Alysa Keller, Committee Policy Analyst
Erin Sturdivant, Committee Counsel
Steve Woodbury, Committee Secretary

OTHERS PRESENT:

Bradley 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
Andy Belanger, Southern Nevada Water Authority; Las Vegas Valley Water District

Chelsea Capurro, Cleveland Ranch; Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints
Christine Saunders, Progressive Leadership Alliance of Nevada
Danny Thompson, International Union of Operating Engineers Local Union 12
Will Adler, Pyramid Lake Paiute Tribe
Doug Busselman, Nevada Farm Bureau Federation
David Dazlich, Las Vegas Metro Chamber of Commerce
John Hadder, Great Basin Resource Watch
Steve Hartman, Vidler Water Company
Kyle Roerink, Great Basin Water Network
Patrick Donnelly, Nevada State Director, Center for Biological Diversity
Kyle Davis, Nevada Conservation League
Jeff Fontaine, Central Nevada Regional Water Authority; Humboldt River Basin Water Authority
Laurel Saito, The Nature Conservancy
David Roberts, Albemarle Corporation
Gordon DePaoli, Truckee Meadows Water Authority
Janet Carter, Sierra Club
Sherri Grotheer, Protectors of Tule Springs
Marla McDade Williams, Reno-Sparks Indian Colony
Don Schaefer, Protectors of Tule Springs
Shaaron Netherton, Friends of Nevada Wilderness
Daniel Pierrott, Nevada Big Horns Unlimited
Mitch Roach, United Veterans Legislative Council
Warren Hardy, Virgin Valley Water District; Moapa Valley Water District; Nevada League of Cities and Municipalities; Associated Builders and Contractors of Nevada
Mark Fiorentino, Desert Utilities Inc.
Micheline Fairbank, Deputy Administrator, Division of Water Resources, Department of Conservation and Natural Resources

CHAIR SCHEIBLE:
I will open the work session on Assembly Bill (A.B.) 95.

ASSEMBLY BILL 95 (1st Reprint): Revises provisions relating to water. (BDR 48-504)

ALYSA KELLER (Committee Policy Analyst):
I will read from the work session document for A.B. 95 (Exhibit C).

SENATOR GOICOECHEA:
I support the sponsor's desire in this bill, but am concerned that passing this legislation could affect a pending case in the Nevada Supreme Court.

SENATOR HANSEN:
I agree with Senator Goicoechea. Additionally, I cannot support any bill that would allow for the metering of domestic wells.

CHAIR SCHEIBLE:
I will accept a motion on A.B. 95.

SENATOR HARRIS MOVED TO DO PASS A.B. 95.

SENATOR BROOKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GOICEOCHEA AND HANSEN VOTED NO.)

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CHAIR SCHEIBLE:
I will open the work session on A.B. 163.

ASSEMBLY BILL 163 (1st Reprint): Revises provisions governing water conservation. (BDR 48-798)

MS. KELLER:
I will read from the work session document for A.B. 163, Exhibit C.

SENATOR GOICOECHEA:
I have concerns about the language that was changed from 500 hookups to 3,300 persons. It might be challenging to establish the number of people, and it would not be feasible to conduct a census every time a report is made.

ERIN STURDIVANT (Committee Counsel):
The *Nevada Revised Statutes* (NRS) uses various terms when referring to suppliers of water, whether they are serving a population, users or connections. If the Committee has a particular preference, we can make that change.

SENATOR HANSEN:
I support water conservation, and the idea of this bill is not bad, but the scope of activity prescribed in the bill should be left to local governments. Dealing with codes is more complicated than what this Committee can accomplish in a few hours. Typically, mechanical engineers and other experts develop codes, and municipalities adopt codes based on those recommendations. For the State to mandate a single standard removes the ability for local governments to make their own determinations and adopt the codes that most closely align with their needs.

SENATOR BROOKS:
It is not unprecedented to have Statewide codes. We have a similar model with energy efficiency. There are local municipal codes, but there are national standards, such as Energy Star, that can be applied on a Statewide basis.

CHAIR SCHEIBLE:
I will accept a motion on A.B. 163.

SENATOR BROOKS MOVED TO AMEND AND DO PASS A.B. 163.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HANSEN VOTED NO.)

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CHAIR SCHEIBLE:
I will open the work session on A.B. 404.

ASSEMBLY BILL 404 (1st Reprint): Authorizes the Board of Wildlife Commissioners to establish a program authorizing certain persons to transfer, defer or return certain lawfully obtained tags if certain extenuating circumstances exist. (BDR 45-1029)

MS. KELLER:
I will read from the work session document for A.B. 404, Exhibit C.

CHAIR SCHEIBLE:
I will accept a motion on A.B. 404.

SENATOR GOICOECHEA MOVED TO AMEND AND DO PASS AS AMENDED A.B. 404.

SENATOR BROOKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHEIBLE:
I will open the work session on Assembly Joint Resolution (A.J.R.) 8.

ASSEMBLY JOINT RESOLUTION 8: Expresses the opposition of the Nevada Legislature to the elimination of the Nevada State Office of the Bureau of Land Management. (BDR R-506)

MS. KELLER:
I will read from the work session document for A.J.R. 8, Exhibit C.

CHAIR SCHEIBLE:
I will accept a motion on A.J.R. 8.

SENATOR BROOKS MOVED TO DO PASS A.J.R. 8.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHEIBLE:
I will open the hearing on A.B. 30.

ASSEMBLY BILL 30 (2nd Reprint): Revises provisions governing water. (BDR 48-214)

BRADLEY CROWELL (Director, State Department of Conservation and Natural Resources):
I am presenting A.B. 30 from my written testimony (Exhibit D).

TIM WILSON (Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources):
I am presenting A.B. 30 from my written testimony (Exhibit E) and from a conceptual amendment the Department of Conservation and Natural Resources (DCNR) has provided (Exhibit F).

SENATOR HARRIS:
In your testimony you said that the hearing on the mitigation, management and monitoring (3M) plan would be held in conjunction with the hearing on the application. Is that correct?

MR. WILSON:
Yes, that is what is envisioned. It is possible that there could end up being two separate hearings, but ideally once it is recognized that a 3M plan is necessary, we would republish the application. Any protestants could come forward at that time, and they and the applicant would move forward in the administrative hearing process. This is currently the practice for protested applications.

SENATOR HARRIS:
How do you determine that a 3M plan is necessary without first having a hearing to determine if there is a conflict?

MR. WILSON:
Mitigation, management and monitoring plans have a limited use. These plans are for very large water development projects, such as those involving the entire perennial yield of a basin. It will be fairly obvious which projects need a 3M plan. However, it is possible that it would not be immediately obvious that a particular project will require a 3M plan. The need for a 3M plan could be identified during the Division of Water Resources (DWR) analysis of the application. In this case, if potential conflicts were identified in the initial application, a 3M plan would be ordered and the application republished. A second hearing would then be required.

SENATOR HARRIS:
Section 1, subsection 2 of the bill states: " ... before rejecting an application because the proposed use or change set forth in the application may conflict with existing rights ... ." Do you currently deny applications because they may conflict with existing rights, or do you have to make a finding that there is a conflict before rejecting?

MR. WILSON:
We do have to make a finding of conflict in order to deny an application for water. That is one of the criteria we are statutorily bound to consider.

SENATOR HARRIS:
Why then does the bill include the language "before rejecting" and "because the application may conflict"? You do not in fact ever reject an application because there may be a conflict. You only reject once you find a conflict. I would suggest that there would have to be a finding that there is a conflict before the determination can be made that the applicant has to satisfy the requirements set forth in section 1, subsection 2, paragraphs (a), (b) and (c). At that point, the applicant could bring forward a 3M plan.

I am concerned about a change in the standard. How would the State Engineer ever reject an application because it may have a conflict? Applications can only be rejected because they do in fact have a conflict. It seems this would only operate once a conflict has been found; otherwise, the application would be approved. I am not sure how the DWR would ensure that this process would all happen at once unless the applicant brings the 3M plan from the beginning. In that scenario, I could understand how there would be only one hearing. I am not certain if everyone does that. From the outset, if an applicant brings a 3M plan with the application, then the State Engineer would not need to worry about using his or her discretion to order one.

MR. WILSON:
One thing that may be causing some confusion is how the bill was reordered. The intention of the bill is that applicants do the work upfront, including the items outlined in section 1, subsection 2, paragraphs (a), (b) and (c). Applicants must try to identify and avoid any conflicts. Applicants would be responsible to do any necessary water studies or groundwater modeling to make that determination upfront, before filing the application. Even if applicants think they have submitted a complete application, section 1, subsection 1 allows the State

Engineer to order a 3M plan in the case that he or she determines that the application is incomplete or lacking.

MR. CROWELL:
The question Senator Harris posed makes sense. The bill language may be awkward, but the construction is intended to put the burden on the applicant rather than the State Engineer. That is done for a variety of reasons, including wanting to avoid inserting the State Engineer upfront in the process of resolving conflicts or disputes. The DWR wants the applicant to do that work and then have the State Engineer evaluate the applicant's analysis and data before deciding the next step.

SENATOR HARRIS:
It seems that the goal would be for the applicant to complete the requirements in section 1, subsection 2, paragraphs (a), (b) and (c) prior to submitting the application. The way the bill is written, an applicant may have to do those things prior to the State Engineer rejecting the application, but that comes after submission. It should come after there is a finding that there is a conflict. That is the only time the State Engineer may reject an application. If the intent is to allow people to resolve a conflict, currently the bill is structured so that the conflict is resolved after the State Engineer might reject an application due to a conflict. However, that information will not come until the State Engineer makes that determination, or almost makes that determination but allows the applicant to do a 3M plan.

The question is not just where the language fits in the bill, it is where it fits in the timeline of the process. It seems like we are asking applicants to guess. If they think they might have a conflict they have to satisfy certain requirements prior to submitting an application, before the finding of a conflict. Is the goal to make the applicant do this work prior to filing the application, then have a hearing on everything? Or is the goal to determine that there might be a conflict, and if so, require a 3M plan to potentially resolve the conflict and then make a determination that the conflict no longer exists?

MR. CROWELL:
I think I understand what you are driving at, and it may require some reorganization to achieve the same intent. However, the very first threshold for applicants is to know that the amount of water they are applying for is actually available within a particular basin. If that is the case, they can move forward

and identify if there are any potential conflicts with the use of that available water. Having made those determinations, applicants can proceed with the next steps.

SENATOR HARRIS:
I think that is how it is supposed to work, but applicants are not going to determine conflicts, the State Engineer is. Applicants can guess. It may be protested, but just because there is a protest does not mean there is a conflict and that the application will not inevitably be granted anyway. Is that correct? I do not see where the step of determining the conflict is, and that is important. I agree that it should come right after determining that there is sufficient water. Then, if it is determined that there are conflicts, the DWR has the option to require a 3M plan so applicants can demonstrate how they will mitigate those conflicts. The DWR would then hold public hearings to review the 3M plan and confirm that conflicts have been resolved. What you mentioned is how the process should go; I am not sure that is what is reflected in the bill.

MR. WILSON:
Yes, the intent is to shift the burden upfront to applicants, so they are doing the work necessary to make a determination of which water rights they may conflict with. Based on their determination, applicants need to come to the DWR with a 3M plan upfront or other evidence that they have accounted for and resolved any potential conflicts. The State Engineer will conduct the final analysis to determine if a 3M plan is needed for their project. It is during the administrative hearing process when complete applications have been submitted and all protestants have provided input that everyone comes to the table and the State Engineer makes the determination if there is an unresolved conflict with existing water rights. If that is the case, a different statutory requirement, NRS 533.370, subsection 2, states that the State Engineer shall deny the application.

SENATOR HARRIS:
I see what you are saying. Could the language state that prior to filing an application, the applicant must work diligently to identify any potential conflicts, complete the requirements set forth in section 1, subsection 2, paragraphs (a), (b) and (c) if there is a potential conflict and submit a 3M plan if there is a finding that there might be a conflict? Why not require all of these things prior to submitting an application if the intent is to shift the burden to the

applicant to do the research upfront? If they do not comply, the State Engineer could order that they do. This could be a one-page bill.

MR. CROWELL:
We agree on the procedure and intent, and the language could perhaps use some clarification in that regard. It has been a spirited process getting to this point. There may be ways to clarify and make the language of the bill flow better. We will take that under advisement and work with the stakeholders to figure it out.

SENATOR GOICOECHEA:
Currently, when people want to appropriate water, they come forward and file an application. The State Engineer reviews the application and either approves or rejects it based on his or her determination regarding unresolved conflicts. If the State Engineer determines there are conflicts, the bill allows the applicant to go back and resolve those conflicts or develop a 3M plan. It that correct?

MR. WILSON:
Yes, that could be one scenario.

SENATOR GOICOECHEA:
That is how the process should work. The application occurs first, then if the State Engineer thinks there is an unresolved conflict, he or she can order a 3M plan. Otherwise, the application would have to be denied because of a lack of available water. I agree with my colleague; the application would have to be heard before the State Engineer could say yes or no. I can see the potential for litigation if some applications are approved and others denied because of potential conflicts. I agree with Senator Harris. The application occurs first, then a hearing and determination if there is a conflict, then the applicant can be directed to move forward with the development of a 3M plan if an unresolved conflict is identified.

MR. CROWELL:
That is largely correct, but some clarification needs to be added. The actions outlined in section 1, subsection 2, paragraphs (a), (b) and (c) of the bill are designed to address known conflicts based on the application. The applicant can go through those steps to resolve conflicts. The 3M plan is based more on potential future conflicts and having a plan in place to address them.

SENATOR GOICOECHEA:
If there is a known conflict, the application should be rejected.

MR. CROWELL:
Yes, but if there is a known conflict and the applicant is able to mitigate the conflict, such as by changing the point of diversion, then the application could go forward without a full-fledged 3M plan. If there are other aspects to the application that could create conflicts down the road, a 3M plan would be required to guide the process.

CHAIR SCHEIBLE:
This bill could be read in two different ways. On one hand, it sounds like if I am making an application for water, I am expected to address the items outlined in section 1, subsection 2, paragraphs (a), (b) and (c): point of diversion, scale back and water efficiency. I am expected to do this and resolve any potential conflicts before making the application. After coming to the State Engineer, if he or she determines my application is lacking or conflicts are unresolved, I can be directed to go back and do a 3M plan to better avoid the conflict. That is one way of looking at it. I would not waste my time doing a 3M plan unless I am told it is necessary.

Another way to read this bill is if people want to appropriate water where there is likely a potential conflict, they can address the items outlined in section 1, subsection 2, paragraphs (a), (b) and (c), then the State Engineer will pick and choose who has the opportunity to submit a 3M plan. If addressing the items in paragraphs (a), (b) and (c) that have not resolved the conflict, the State Engineer can reject applications outright or give applicants the opportunity to do a 3M plan.

Which of these two interpretations is correct? Will everyone have the opportunity to do a 3M plan or only those the State Engineer determines will have a reasonable likelihood of successfully avoiding a conflict through a 3M plan?

MR. WILSON:
I want to make it clear we have an entire Hydrology Section that analyzes applications that come to the DWR. We have a way to determine if an application is going to conflict with existing water rights. If that occurs, we

default to NRS 533.370, subsection 2 and shall reject the application. There is no discretion allowed in that statute, which reads, "... shall reject ... ."

Unfortunately, hydrology is not always simple, and in most cases the conflict is either disputable or unknown. That is the power of the 3M plan. The first two phases of the plan is monitoring and management. These provide the opportunity to collect data and know if there are going to be any impacts propagating out to any existing water rights. The mitigation part of the plan is to hold the applicant responsible. This third step is the failsafe. Maybe we did not think there was going to be a conflict, but with ongoing monitoring if a conflict arises we know there will be a mitigation plan in place to ensure water rights holders will be made whole. This process puts the responsibility on the applicant.

The power of the 3M process is to ensure that applicants are taking the necessary steps upfront to avoid conflicts. If conflicts are unknown at the time of application, it puts the applicant on the spot for any future mitigation that could be caused by their project. It is important to define this process in statute and include language to provide sideboards to ensure the process is not misused.

There could be many different scenarios in which a 3M plan could become necessary for a project. If the work is properly done upfront, and no conflicts are identified, an application can be submitted without a 3M plan. If The DWR staff conduct an analysis of an application and identify potential conflicts, a 3M plan will be ordered. There are many possible scenarios that would determine if a 3M plan would need to be submitted with the original application. The 3M plan provides the opportunity for applications with potential conflicts to move forward that otherwise might have been denied outright.

SENATOR HARRIS:
Can you expound on the process for determining that there may be a conflict?

MR. WILSON:
It is not always easy to determine if a project might conflict with someone's water rights. Ten hydrologists could come up with ten different answers. The science is not necessarily black and white, and there are often unknowns. However, there are many tools that are used. In larger projects, we see groundwater models being submitted. Sometimes protestants submit their own

groundwater models. Sometimes the results of various models will differ from each other. The DWR analyzes the competing models to see how they were constructed, what estimates were used and what assumptions were made. We use our best engineering judgement to make the close calls.

SENATOR HARRIS:
At the end of that process, you make a determination if there is a conflict, correct? Is there a third option where you determine that maybe there is a conflict?

MR. CROWELL:
It is not always definitive, particularly when projected out into the future, even the near-term future. Our intention when evaluating a potential future conflict is to err on the side of caution, rather than hoping nothing happens and dismissing it. At the same time, we do not want to reject applications if projects can be legitimately managed for current and future potential conflicts. With drought, weather conditions, the hydrology of perennial basin replenishment and other uncertainties, there will always be some subjectivity. We want that subjectivity to be based on the expertise of the DWR.

SENATOR HARRIS:
At the conclusion of the analysis, if the State Engineer determines that it is unknown if there will be a conflict, will a 3M plan be required?

MR. CROWELL:
If it is reasonably foreseeable that there will be a conflict, the DWR will want to have a plan in place to deal with it.

SENATOR HARRIS:
Can you give me a scenario in which it is reasonably likely that a project will have a future conflict for which there was not a 3M plan submitted with the original application?

MR. WILSON:
We have only required a formal 3M plan for two projects.

SENATOR HARRIS:
In those cases, were 3M plans submitted with the original application, or were they required subsequently?

MR. WILSON:
The 3M plans were submitted after initial application.

SENATOR HARRIS:
Were they ordered by the State Engineer?

MR. WILSON:
I believe so, although they may not have been done as a result of a formal order. More likely they were the result of the DWR working with the applicants to come up with solutions to allow the projects to move forward.

MR. CROWELL:
There is ambiguity in current statute with respect to the use of 3M plans. Part of the intent of A.B. 30 is to bring clarity to the instances in which a 3M plan is applicable. Hopefully, this will help make those plans withstand protests.

SENATOR HANSEN:
From my understanding, the 3M plan is an excellent idea. Under current Nevada law, the State Engineer either approves the application for water or rejects it if there is any potential conflict. Under the provisions of this bill, if there is an application, such as the Mount Hope Mine trying to open, and there is a debate on whether there is available water, the State Engineer could reject the application outright or offer the development of a 3M plan to address and resolve conflict issues in a reasonable way.

You stated there are only two cases in which 3M plans have been required. The initial impression with this bill is that virtually every project will be required to conduct a 3M plan, but actually they are very rare and only used in circumstances where there is the likelihood for potential conflict.

I have reviewed a map the DCNR provided me, and although there are basins in the State that are over-appropriated, the vast majority are not. We do not want applicants to be routinely denied because there may be a conflict. I understand the intent of the bill, which is to avoid rejecting applications outright if there is a potential conflict. I think the bill is reasonable.

I understand the 3M plan came into play with the Mount Hope Mine. As I understand it, applications in over-appropriated basins will continue to be rejected outright, since there is no available water. Is that correct?

MR. WILSON:
That is correct. Water availability is the first hurdle; if there is not available water, the application will be denied.

SENATOR HANSEN:
If someone wanted to open a mine and use 11,000 acre-feet of water, transferring water from a well, and an application to do so was denied by the State Engineer, the applicant could pursue a 3M plan and possibly move forward with the project. Is that correct?

MR. WILSON:
In that scenario, if we have determined that the amount of water in the basin is fully appropriated or over appropriated, and applications contended there is available water based on their studies, we would consider their argument. Sometimes those studies are conducted by third parties, including the United States Geological Survey. If there is scientific evidence to support the claim, we can change our decision. The DWR does adjust perennial yields up and down when new science or data become available.

The 3M plan assumes that a determination of water availability has already been made. An application for available, unappropriated water would be denied if it conflicts with existing rights. Under a 3M plan, steps can be taken to avoid conflicts altogether. If we are reasonably assured there will not be conflicts going forward, and if a plan to monitor the project is in place with the applicant on the hook to mitigate any unforeseen conflicts, then the project can go forward.

SENATOR HANSEN:
In a basin with available water, is the issue whether a new project's use of water is going to impact the water of an existing user? If in the application review process it is determined that a new well is going to negatively impact an existing well, the application would be denied, correct?

MR. WILSON:
Basically that is correct. Section 1, subsection 2 of A.B. 30 would have the applicant go to the owner of the existing well and seek to work out an agreement with them to mitigate any potential conflict. If an agreement is reached, for the purposes of the application process the conflict would be considered resolved.

MR. CROWELL:
In Senator Hansen's original example of a project that is determined not to be viable and is rejected, but the applicant brings forward his or her own science for a 3M plan, it is critically important to have a public hearing and transparent process to analyze the data and ensure the evaluation is done according to the best available science.

SENATOR GOICOECHEA:
I am very familiar with the General Moly project and Mount Hope Mine. In that scenario, the project put in a mitigation plan that ended up in the Nevada Supreme Court. The computer modeling indicated it was going to dry up the surface flows at Roberts Creek. That is an example of a conflict. Ultimately, these kinds of conflicts end up in court. The process should work to allow these conflicts to be litigated in court.

SENATOR HANSEN:
I would like to develop a procedure to help avoid going to court when possible. A project like Mount Hope with 11,000 acre-feet of water is very different than someone drilling a well with 50 acre-feet of water in a basin near another well owner who might be impacted. We have potentially thousands of applications every year, and I would hope the vast majority of them are not litigated.

MR. CROWELL:
Senator Goicoechea is correct that these things are typically going to end up in court. This bill will help give guidance to the court to make decisions that reflect legislative intent under the law. Currently, there are conflicting statutes "shall reject" and "can do mitigation". Litigants and the courts can pick and choose which statutes they want to consider when suing or ruling. This bill will integrate those concepts and help the courts make sound decisions.

SENATOR GOICOECHEA:
That is why it is so critical that we determine when the hearing process starts. The application should be submitted and a hearing take place before any potential 3M plan is required. Otherwise, the State is open to liability. If the State Engineer says there is not a conflict or there may be a conflict, and a 3M plan is developed, there will be litigation. Senior water rights holders will sue. It is critical that we get this right and clearly define when the application is made, when a conflict is determined and when that hearing occurs.

ANDY BELANGER (Southern Nevada Water Authority; Las Vegas Valley Water District):
We support the concept of 3M plans, but we do have concerns with the current bill. We have submitted a proposed amendment (Exhibit G). We view this proposed amendment strictly as a fallback position that would provide inherent statutory authority for the State Engineer to resolve issues through 3M plans. It would also require that regulations be adopted to define that process.

We recognize there may be other things we do this Session related to 3M plans, and we are committed to working with the DCNR and other interested parties to find a fair and balanced approach on 3M issues.

We would like every reference that states "to avoid conflict" to state "avoids conflict or reasonably mitigates adverse effects". Those are two statutory standards, and we want to make sure a mitigation plan actually has the ability to mitigate the issues and address adverse effects.

We support clearing up the language as it relates to "conflict" versus "may conflict". The standard is that an application for water rights be rejected if there is a conflict.

The language of the bill in section 1, subsection 2 states, "If there is water available for appropriation in the proposed source of supply in the amount of water set forth in an application". This is a different standard than what is found in NRS 533.370, subsection 2 which states, "... where there is no unappropriated water in the proposed source of supply ...". Whatever standard we use should be consistent. We should not have a standard of water available in the amount that the application was for versus where there is no water available in the proposed source of supply. Those seem to be two different standards.

We support the idea of doing a preliminary hearing where the State Engineer would identify how much water is available for appropriation and the conflicts that need to be resolved. A 3M plan might make sense at that point. The provisions in statute relating to reconfiguring points of diversion, and doing water conservation and efficiency projects might be good things to do as secondary steps once conflicts have been identified.

There are three specific mitigation statutes that need to be conformed with any bill related to 3M plans. One is NRS 533.364, which requires an inventory of interbasin transfers. After those inventories are complete, that would be a good time to conduct the preliminary hearing to determine the availability of appropriate water and identify conflicts. There is a provision in NRS 533.3705 which allows for the staged development of water. The 2007 Legislature addressed that topic, and it was determined that sometimes additional information is needed. Smaller amounts of water can be initially approved. After more evidence is provided, more water can be approved. That is a provision of mitigation that should be tied to A.B. 30.

Additionally, NRS 533.353 addresses county participation in 3M plans, and that may be an appropriate place to include 3M plan requirements.

We understand these are complex issues and that it takes a lot of work to bring these types of bills forward. We support the DCNR's efforts, and we recommend that if there is a workgroup put together to address these issues that we be included. We are willing to provide the resources necessary to fully participate in that effort.

CHELSEA CAPURRO (Cleveland Ranch; Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints):
We are in opposition to A.B. 30 because it waters down existing law. NRS 533.370, subsection 2 mandates that the State Engineer reject applications that conflict with existing water rights and domestic wells. The State Engineer has to reject if it conflicts, not if it may conflict. This bill puts this safeguard at risk by opening the door for further appropriation, even where conflicts are known.

The bill gives the State Engineer the power to approve a conflicting application with the implicit promise to fix any problems in the future. We should not lose this bright-line protection when it comes to limited water resources. We have provided the DCNR with proposed amendment language that clarifies that this is not for future or unknown conflicts. It is for known conflicts. Applications with known conflicts must be rejected.

We agree that 3M plans are a great tool for the State Engineer should there be something down the road that they do not know about at the time of application. If there is a known conflict from day one, and an application is not

denied, that is a problem. Unless I misheard the testimony, Mr. Wilson stated that the DWR does not want to outright reject applications for current conflicts. The intent of this bill is somewhat unclear.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):
We are in opposition to A.B. 30, as 3M plans should only be used to avoid potential conflicts. Allowing them to eliminate conflicts after the fact could pave the way for destructive projects like the Groundwater Development Project (Las Vegas Pipeline project), which we have opposed for the past three decades. While it appears there may be room for parties to reach clarification and consensus on this bill, we must oppose it as written.

DANNY THOMPSON (International Union of Operating Engineers Local Union 12):
We support the proposed amendment provided by the Southern Nevada Water Authority (SNWA) that makes it much clearer that the State Engineer has the right to implement 3M plans. The proposed amendment would also give the State Engineer authority to establish regulations, which would allow participation from all stakeholders.

WILL ADLER (Pyramid Lake Paiute Tribe):
The Pyramid Lake Paiute Tribe opposes A.B. 30 as written, especially if the proposed amendment provided by the SNWA is included in the bill.

The Tribe contends that all water ends up in conflict anyhow. The idea that a 3M plan can mitigate conflict and avoid a lawsuit is unrealistic. The Tribe would like to be involved in all water discussions going forward. It is possible that agreeable language could be worked out, and the Tribe would like to be involved in that effort.

DOUG BUSSELMAN (Nevada Farm Bureau Federation):
We are neutral on this bill but have concerns. The comments provided by Senator Harris were excellent. We are in favor of the proposed limitations on how mitigation would be used. Mitigation should only be used when there is available water and that water matches the application. Over time as we have worked on mitigation, a philosophy has been promoted that anything and everything can be mitigated. In pursuing this philosophy, existing water rights owners get run over. This bill does put some reasonable and responsible sideboards in place with which we agree.

One concern we have with the bill is in section 1, subsection 3, paragraph (b) which states "Did not avoid any potential conflict", the State Engineer may require the applicant to submit a 3M plan. If there is a conflict, a 3M plan might not be able to produce a solution that the existing water rights holder will find acceptable. We do support holding a public hearing in which all parties can participate.

In the many discussions that have occurred on this topic, many people with significant expertise have drawn attention to the fact that in Nevada water law, there is conflict, but there is also interference with existing water rights. Sometimes the difference between the two is smoothed over by calling everything conflict. Situations where there is a conflict may be corrected with a mitigation program. If there is interference, then someone's water rights are being tread upon, and those plans should be rejected.

In our initial review of the proposed conceptual amendment there are some improvements that need to be captured and worked on further, and we would like the opportunity to participate in further discussions as well. It is a work in progress, and we would like to help find acceptable language.

SENATOR HANSEN:
The problem I see is that you do not like mitigation, but we have heard that everything is going to be litigated. Our job as legislators is to try to minimize litigation.

There seems to be no middle ground in this discussion. We place responsibility on the State Engineer, but when he comes here seeking middle ground to avoid litigation, it does not seem to matter what we do. The message I am hearing is that since it is all going to be litigated anyway, we may as well just walk away from it. As legislators, we need to find a way to put something in statute that is reasonable and everyone can agree on that keeps us from constantly being in court. If we walk away from our responsibility as legislators, the courts will determine what water law should be, how each basin is allocated, who the senior and junior water rights holders are and when a conflict exists. Rather than work it out through the State Engineer's Office, let us all just sue each other. That is what I am hearing.

MR. BUSSELMAN:
I think there are differences between mitigation and litigation. I do not know that mitigation can avoid litigation. More often than not, litigation results when people believe their water rights have been negatively affected. In order to defend their property rights, they need to litigate.

We have always taken the position that the role of mitigation is to deal with accidental conflicts. In that particular sphere, there are times when there are going to be impacts that may be able to be addressed through a solid mitigation program.

However, we do not agree with the idea of making it automatic across the board, and that is one of the reasons we oppose the SNWA proposed amendment. There needs to be a very restricted application of mitigation to keep it within the realm of accidental conflicts, rather than deliberate conflicts that people know are going to happen. If the conflict is known, it should be avoided by a rejection of the application. That is what the law states, and that is what we support. It is not a case of trying to use mitigation to avoid litigation; what we are trying to do is address conflicts that are impacting existing water rights.

SENATOR HANSEN:
I agree. It seems like there is no harmony among the various parties, and that the courts will continue to decide. Ironically, some Nevada Supreme Court decisions are kicked back, in part because there is a lack of clear statutory authority regarding the State Engineer's authority. In other words, the Court wants us to do our job by developing good policies and reasonable solutions, and codify those in NRS.

DAVID DAZLICH (Las Vegas Metro Chamber of Commerce):
The Chamber is opposed to this bill as written, but it supports the SNWA proposed amendment. This provides a simpler and more realistic avenue to 3M plans without making substantial changes to current law. Going forward, we think the SNWA should be more involved in discussions related to formulating legislation related to 3M plans.

JOHN HADDER (Great Basin Resource Watch):
We monitor mining and extraction extensively in the State and are opposed to this bill as written. We also oppose the SNWA proposed amendment. We are concerned about the precedents that might be set.

It is possible that litigation would increase if this measure goes forward. Water rights applicants might not work with the community as promptly as they ought to, knowing that their applications could be rejected outright. If they know they can pursue a 3M plan to deal with conflicts, they might bypass other steps.

This is particularly important in cases like Mount Hope, which is one we have worked on. In this case, the protagonist worked with the community to try to find ways to resolve the conflict.

Regarding how the courts would interpret this proposed legislation, section 1, subsection 3 of the bill states, "If the State Engineer finds that the applicant has demonstrated that the reasonable efforts made pursuant to subsection 2: ... ." What does "reasonable efforts" mean, and what will it mean to the courts? Will it be okay if the applicant has made a reasonable effort and there is still a conflict? Can the application go forward with a 3M plan? This could open the door for projects going forward where conflicts are known, but reasonable efforts have been made.

STEVE HARTMAN (Vidler Water Company):
I concur with the concerns raised by Senator Harris. Monitoring, management and mitigation plans can be a great tool. It is difficult for people doing water resource development to convey the complexity of the hydrological and geophysical work that goes into the analysis of water in remote basins throughout Nevada. This is why in other hearings I have brought up the need for data. We need data more than any other single factor.

The prelude to a good 3M plan is data-driven analysis. That is the information that goes with an application to the DWR for evaluation. Thousands of cells are filled with data leading to a decision.

There has been a lot of discussion today about conflict. From a legal perspective, any time a new application comes in and there is an existing, senior water rights holder, there is going to be a conflict. More appropriately, the issues we are talking about are impairments. Will a new well going in at one end

of a basin impact an existing well on the other side of the basin? Impairment is the issue. They are in conflict because they are in the same basin.

The State Engineer's Office does an excellent job accumulating and assembling the data. Many meetings are held with experts in the science involved to analyze the models. It is a difficult process. Perhaps during the Interim when meetings are held to discuss public lands and resource issues, the hydrogeology, analysis and all the expertise involved in the work the DWR does could be considered in depth. It is challenging for this Committee to be comfortable making good policy decisions on this process when it has a limited understanding of the real-world application.

Monitoring, management and mitigation plans are viable, but they are usually used to change the impairment. They work when there is an impairment and someone is willing to move his or her well to eliminate that impairment.

Some of the things addressed in the bill are like putting the horse before the cart, but other times it is putting the cart before the horse. It all depends on how much work has been done ahead of time in the application.

This is a difficult issue. Water and money are the two biggest issues this Session. More money should go to the DWR to help it get the data and resources needed to do the work it has to do.

KYLE ROERINK (Great Basin Water Network):
One example for Senator Hansen of when a 3M plan was used was for the Las Vegas Pipeline project, the 300-mile, $15.5 billion project from the SNWA. The Great Basin Water Network has been trying to come to the table to find a solution where we can see the process as a means of avoiding conflicts, rather than approving permits for water then using 3Ms to eliminate conflicts with thresholds, triggers and so forth after the permits have already been approved. We are currently litigating these issues.

I am reading from my testimony (Exhibit H) in the neutral position.

PATRICK DONNELLY (Nevada State Director, Center for Biological Diversity):
We are neutral on the bill as amended and appreciate the opportunity to work with the DCNR and other stakeholders to work on this issue. We were opposed

to the bill when first introduced in the Assembly. There are still some needed adjustments on conforming language to get us to the support position.

The reason this issue is critical, and why we are in court right now, is because of impacts that cannot be mitigated. We have been talking about mitigation as though it can solve all problems. It can solve some problems but not others. Taking 74,000 acre-feet of water out of Spring Valley in eastern Nevada cannot be mitigated. The springs will dry up, the wetlands will dry up, the cattle ranches will dry up and that will be the end of the natural world and human environment in that valley. There is no mitigation that can solve that.

Current law and the proposed SNWA amendment would implement 3M with no sideboards. In particular, as currently interpreted, it may allow for the elimination of conflicts through 3M. This implies that one could eliminate unmitigatable conflicts through other means, such as trucking in water to refill someone's cattle trough, piping in water to refill a spring or buying up some wetlands 300 miles away and calling that mitigation. None of those things would eliminate the conflicts, but they might eliminate the conflict as defined in current statute or by the SNWA proposed amendment.

Instead, what you see before you in the amended bill are provisions for the avoidance of conflicts. This means that conflicts can be avoided using a 3M plan. However, unmitigatable conflicts, like drying up entire wetlands, simply are unallowable because they cannot be avoided. This is a critical distinction as we discuss mitigation to avoid litigation, because the amended bill will put sideboards on 3M plans. That will reduce litigation by reducing the times when objectionable 3M plans can be implemented. It will make it easier for judges to make decisions, because there will be a much clearer legislative intent. The State's position on how it wants to see water allocated and conflicts resolved will be clearly defined in statute.

This issue has been in front of this Committee and the Committee on Assembly Natural Resources, Agriculture, and Mining many sessions in a row. We are at a point where this may be able to be resolved. If so, we can take this off the table and deal with other aspects of Nevada water law needing to be refined. If consensus can be reached among the vast majority of stakeholders, this would be the time to act on 3M and move forward on other pressing water issues.

KYLE DAVIS (Nevada Conservation League):
We are neutral on this bill as amended. We were opposed to the original bill, because it contemplated mitigation in places where we thought it was inappropriate. Mr. Donnelly provided some good examples illustrating our concerns. When we talk about important environmental resources, there are cases where things cannot be mitigated. Even if two water rights holders could reach an agreement, the public interest could be harmed.

The most important word in the bill before you today is "avoid". The bill contemplates 3M plans, but it also requires that if 3M plans are implemented in these types of situations, the potential conflicts are avoided. We think that is very important. Even if mitigation can be agreed to by two parties, the public interest and environment could be harmed. We are pleased that the bill as amended requires that those conflicts be avoided.

To be clear, for the record, we do not support the addition of mitigation by the SNWA as suggested in its testimony. We do not support the proposed amendment SNWA has put forward. This would put more ambiguity in place and does specifically contemplate areas where mitigation would be for environmental resources, which is not appropriate.

JEFF FONTAINE (Central Nevada Regional Water Authority; Humboldt River Basin Water Authority):
The Central Nevada Regional Water Authority and Humboldt River Basin Water Authority appreciate the DCNR putting forward this bill and allowing them to participate in the process. We were in opposition to the bill as introduced in the Assembly, but with the inclusion of the term "avoid" in the current amended version we have moved to the neutral position. We have reviewed the three proposed amendments. Most of the provisions in the DCNR conceptual amendment are acceptable, with the exception of the language in section 2, subsection 3, which would exempt a decision of the State Engineer from judicial review.

We do not support the proposed amendment offered by the SNWA but would support the amendment offered by the Cleveland Ranch. A solution is possible, and we would be interested in continuing to work with the other stakeholders to find it.

LAUREL SAITO (The Nature Conservancy):
I am reading from my written testimony in the neutral position on A.B. 30 (Exhibit I). The written testimony submitted by Jake Tibbits, Eureka County Department of Natural Resources (Exhibit J) raises salient points. We oppose the SNWA proposed amendment. At first glance, we do not have concerns with the DCNR conceptual amendment. We hope to continue working with all stakeholders to find a solution.

DAVID ROBERTS (Albemarle Corporation):
In today's world, lithium may be more important than gold, because it is used in batteries for electric cars, cell phones and so forth. There is only one lithium mine in all of North America, and it is here in Nevada. Albemarle owns that mine.

Lithium is in the water. It is not like a hard rock, but is in the water in Clayton Valley Basin. That basin has 20,000 acre-feet of water available for appropriation, and it is all appropriated. Albemarle owns all 20,000 acre-feet. We are ramping up production to use that entire amount.

We were initially concerned that this bill might adversely affect senior water rights. We appreciate the DCNR's willingness to meet to discuss our concerns about the impact this bill might have on senior water rights holders. The proposed revision to section 1, subsection 1 allows that if there is water available for appropriation in the proposed source a 3M plan can be considered. It further states, "If water is not available for appropriation … the State Engineer shall deny the application." That language makes clear that where a basin is fully appropriated, senior water rights holders need not be concerned about additional applications being approved. We support this change and want to participate in any further stakeholder workgroups going forward to protect our water rights and the only source of lithium in the United States.

GORDON DEPAOLI (Truckee Meadows Water Authority):
The Authority understands and supports the need to address the issues that were raised by the Nevada Supreme Court decision in the Eureka County case concerning when it is appropriate for the State Engineer to use a 3M plan. We think the law needs to be clear on that question. We understand that depending on when it is determined that there will be a 3M plan, there may be a need for additional public notice. We understand that a 3M plan needs to be considered in an evidentiary hearing involving the applicant, protestants and interested

parties and that all have a full opportunity to participate by presenting testimony and cross-examining witnesses. We agree that any decision on a 3M plan and application needs to take place at the same time and be reviewed in the same judicial review proceeding.

We are concerned that A.B. 30 as written will continue to cause unnecessary problems for the State Engineer and those who propose 3M plans. Senator Harris was correct in her assessment of section 1, subsections 2 and 3. There are some issues concerning reasonable efforts there that could be subject to litigation.

Section 1, subsection 4 needs to be clarified as to when the public hearing is to take place in the context of the application process; who can participate in it and how?

There seems to be a catch-22 in section 1, subsection 5 which seems to state that one would have to take all actions under a 3M plan including mitigation before one could use any water. We would like to continue working with the DCNR and other stakeholders.

JANET CARTER (Sierra Club):
The Sierra Club agrees with the testimony provided by other conservation organizations. We were opposed to this bill when it was first introduced in the Assembly but are now neutral. We appreciate the good-faith efforts of many stakeholders. There are still sections of the bill that are not acceptable to us. We want to continue working with stakeholders to provide input and ensure that the bedrock of Nevada's water law is not eroded.

MR. CROWELL:
Doing nothing is not an option. We do not have a tenable process in statute. It is incumbent on us as policymakers to find a better path forward that will at least attempt to reduce litigation, which is DCNR's goal.

I understand the concerns of some who oppose the bill. I encourage those who came up with opposition and concerns, but did not offer recommendations for improvement, to please think about that and come discuss possible solutions with us. Opposition without recommendations does not help us get where we need to go.

To the individual who testified on behalf of Vidler Water, I agree we need more data. Everything we do is data-driven, and we need the most recent data. We do not have the resources we need to gather the data we would like or need. We do the best we can with what we have.

Going forward, we hope to work with stakeholders to sort this out before the work session. I understand the point made by Senator Harris and the Committee that there is some agreement on intent, but that the bill needs to be clarified as to implementation. I hope we can achieve that. We will continue to work with stakeholders who are willing to work in good faith engagement with constructive ideas and recommendations.

SENATOR GOICOECHEA:
Jake Tibbits, Eureka County Department of Natural Resources, was unable to be here in person but submitted written comments, referred to in previous testimony that should be included in the record Exhibit J.

CHAIR SCHEIBLE:
I will close the hearing on A.B. 30 and open the hearing on A.B. 152.

ASSEMBLY BILL 152 (1st Reprint): Revises provisions relating to cultural resources and certain grave sites. (BDR 33-868)

ASSEMBLYWOMAN DANIELE MONROE-MORENO (Assembly District No. 1):
Assembly Bill 152 revises provisions relating to our cultural resources, in particular the Ice Age Fossils State Park. This bill would make the penalties for disturbing, destroying or selling paleontological and cultural resources in this park consistent with those of the surrounding Tule Springs Fossil Beds National Monument, both of which are within walking distance from my backyard.

For those of you who have not had the opportunity to experience the wonders of this jewel in our community, I will share with you a little foundation of why this park and its historical contents are important for this and future generations.

Ice Age Fossils State Park is one of Nevada's newest State parks, designated in 2018. Bordering the City of North Las Vegas just off of North Decatur Boulevard, the Park's 315 acres remain rich with fossils and shells from the ice age. The Park is also home to the 1962-1963 "Big Dig" which was, at its time,

the largest scientific expedition that included researchers from five renowned institutions. With the hard work and dedication of Protectors of Tule Springs volunteers and State Park officials, the Park's visitor center is set to open this fall.

Fossils found on this land display a huge assemblage of animals dating between 7,000 to 300,000 years ago when Columbian mammoths, camels, saber-tooth cats and giant sloths walked in the Las Vegas Valley. Numerous archeological sites exist on this land, many containing ancient Indian artifacts.

This new Park is literally a few yards from housing developments, schools and shopping centers. This close proximity makes it more likely that fossil hunters could be a problem. The selling of mammoth tusks, teeth and other animal skulls has become a lucrative black market activity.

The new State Park is adjacent on three sides to the National Park Service managed Tule Springs Fossil Beds National Monument. The 2009 Paleontological Resources Preservation Act created penalties for disturbing, destroying or selling paleontological and cultural resources on federal land. These penalties can result in felony convictions, fines up to $5,000 and the cost of restoration.

Due to the minimal consequences for fossil site destruction and theft at the State level, currently a misdemeanor and $1,000 fine, the State Park is in greater danger of fossil theft and destruction.

Existing Nevada law makes it a crime for a person to knowingly and willfully remove, mutilate, deface, excavate, injure or destroy a historic or prehistoric site or resource on State land, or to receive, traffic in or sell cultural property appropriated from State land without a valid permit. This bill would increase the penalties associated with crimes committed on the State Park to be more in line with the penalties associated with the surrounding National Monument.

Section 1, subsection 1, paragraph (a) of this bill will increase the penalty for these offenses from a misdemeanor to a gross misdemeanor on the first offense. Section 1, subsection 1, paragraph (b) stipulates that a second offense, currently a gross misdemeanor, would result in a category E felony, punishable according to NRS 193.130. A third or subsequent offense would result in a category C felony, per section 1, subsection 1, paragraph (c).

Section 1.5, subsection 1, paragraph (c) makes conforming changes and adds the language stipulating that " ... the court shall order a person found guilty of any violation of this subsection to pay restitution for the cost of restoration, stabilization and interpretation of the site or cultural property, as applicable."

SHERRI GROTHEER (Protectors of Tule Springs):
The Protectors of Tule Springs began as a grassroots effort in 2006 to preserve a small part of the fossil beds in North Las Vegas. The effort grew, expanded and became a real movement. The impetus behind our efforts from 2006 to 2014 to preserve the land was always about the opportunity for education, science and for our children to get a hands-on look at the wonders in our backyard. In 2014, the 20,000 acre National Monument was declared. In his 2018 State of the State address, Governor Sandoval announced his intention to declare the new Ice Age Fossils State Park. The State is moving forward with that opportunity. When the visitor center opens in the fall, we will be able to bring student groups to the site for the first time, introduce them to the fossils and engage them with the science that is in their backyard.

With great opportunity comes great risk and great responsibility. That is why the Protectors of Tule Springs stepped up to the plate and signed an agreement to become the official friends group and partner with the Division of State Parks to provide volunteer services and protect the resources, given the budget insufficiency to provide staff to do so and the increased need with the naming of a new State park.

Our biggest concern was the disparity between federal and State laws. That disparity was inviting professional poachers to come in and rape the State assets rather than face felony provisions a few feet away. While only making a first offense a gross misdemeanor, we are in support of the amended bill.

The past cannot be replaced. Once our history and the context of these fossil resources are lost, their value is gone. The requirement that offenders pay the cost to remediate or ameliorate the damage they cause is an important factor.

We have started a volunteer program to assist the Division of State Parks. This "I am a Protector" program engages everyone who lives on the perimeter of the park to keep an eye out. Through this bill, we are asking this Committee to help us do that work and protect the assets on State lands.

MARLA MCDADE WILLIAMS (Reno-Sparks Indian Colony):
As introduced, this bill addressed destroying historic or prehistoric resources, such as fossils, and proposed strengthening penalties for those actions. Because protection of cairns and native gravesites is also included in this chapter, vandalizing or destroying those items would have had a lesser penalty. We appreciate being able to work with the bill sponsor to develop amended language that equalizes the penalties. We had language in the 2017 Legislature to require a permit on private land if there was a proposal to excavate a native gravesite. The legislation at that time did not change the penalty provisions. Protection of historic and prehistoric resources is important for tribes. We want to be partners with the DCNR, which has the statutory responsibility over these provisions.

DON SCHAEFER (Protectors of Tule Springs):
I agree with the prior speakers and am reading from my written testimony (Exhibit K). The importance of trying to equalize the penalties between the national and State fossil bed is important. We find people going to these sites with dirt bikes and other motorized vehicles without regard. There is going to be a mammoth at the opening of the park that is made of collected trash. It will be 17 feet tall. It is amazing the amount of trash that is left at this site by careless people. Currently, the penalty imposed in the fossil bed area is very minor. If they were on federal land, the penalties would be much greater. The benefit of this bill is not just for us today, but for generations to follow.

MR. ADLER:
The Pyramid Lake Paiute Tribe supports A.B. 152.

MR. DAVIS:
The Nevada Conservation League supports A.B. 152.

SHAARON NETHERTON (Friends of Nevada Wilderness):
We support A.B. 152.

ASSEMBLYWOMAN MONROE-MORENO:
I invite the Committee to visit the Ice Age Fossils State Park grand opening. Once the glass is in place and exhibits are finished, it will be amazing.

CHAIR SCHEIBLE:
I will close the hearing on A.B. 152 and open the hearing on A.J.R. 2.

ASSEMBLY JOINT RESOLUTION 2 (1st Reprint): Urges Congress to reject any expansion in the use of land or exercise of jurisdiction by the United States Air Force in the Desert National Wildlife Refuge. (BDR R-697)

ASSEMBLYWOMAN LESLEY E. COHEN (Assembly District No. 29):
My primary concern I want to address with this resolution is the refusal of the United States Air Force to speak to Nevadans who have been trying to have a dialogue about the property the Air Force is trying to expand.

MR. DONNELLY:
The Center for Biological Diversity appreciates the efforts of the sponsor of this resolution, and we support A.J.R. 2. This measure is similar to Senate Joint Resolution (S.J.R.) 3, which was heard previously in this Committee and which had the support of hundreds of people who testified in person or otherwise expressed their support.

SENATE JOINT RESOLUTION 3: Urges Congress to oppose the expansion of the United States Air Force in the Desert National Wildlife Refuge in Nevada. (BDR R-745)

The resolution supports the continued protection of the Desert National Wildlife Refuge (DNWR), the largest wildlife refuge in the lower 48 states. The DNWR is home to desert bighorn sheep, Native American cultural sites and outstanding opportunities for sporting and wilderness recreation. The Air Force has proposed taking over a significant portion of the refuge to expand the Nevada Testing and Training Range. Nevadans have overwhelmingly responded in support of the continued protection of the DNWR. The only substantial difference between A.J.R. 2 and S.J.R. 3 is the inclusion of a clause in A.J.R. 2 recognizing that the Moapa Band of Paiute Indians has passed a resolution in support of the DNWR and opposition to the expansion.

MS. SAUNDERS:
The Progressive Leadership Alliance of Nevada supports A.J.R. 2.

MS. NETHERTON:
The Friends of Nevada Wilderness supports A.J.R. 2.

MR. DAVIS:
The Nevada Conservation League supports A.J.R. 2.

DANIEL PIERROTT (Nevada Big Horns Unlimited):
Nevada Big Horns Unlimited supports A.J.R. 2.

MS. CARTER:
The Sierra Club has submitted written comments (Exhibit L) and supports A.J.R. 2.

MITCH ROACH (United Veterans Legislative Council):
The military needs every training ground it can get. Having said that, I represent nearly 500,000 veterans and family members in the State, and I cannot get a consensus on what to do with this resolution. For that reason, we are neutral on A.J.R. 2 and will leave it in the Committee's capable hands.

CHAIR SCHEIBLE:
I will close the hearing on A.J.R. 2 and open the hearing on A.B. 62.

ASSEMBLY BILL 62 (2nd Reprint): Revises provisions related to water. (BDR 48-215)

MR. CROWELL:
I will read from my written testimony presenting A.B. 62, Exhibit D.

MR. WILSON:
I will read from my written testimony presenting A.B. 62 (Exhibit M). I will also read from the DCNR conceptual amendment (Exhibit N).

SENATOR HARRIS:
Some of the concerns I had with this bill have been addressed by the DCNR conceptual amendment. At some point in the future, I would like to address the five-year completion of instruction hard cap further.

SENATOR GOICOECHEA:
I am fine with the 10-year timeframe on agricultural wells, but I would suggest to be equitable on the exemption provided to municipalities with $50,000 in construction spending be extended to agriculture as well.

MR. WILSON:
We will work with our legal team and look into that language.

SENATOR GOICOECHEA:
If someone has a well drilled and are at 9 years at a cost of $75,000, it would seem a short extension might be warranted.

MR. CROWELL:
We will take that under advisement and work with Mr. Busselman and other agricultural stakeholders to find something that works.

MR. BELANGER:
We have concerns with this bill, primarily as it impacts municipal water providers. Our concern is that 15 years to file proof of completion is too short of a timeframe for complex projects and for water systems that maintain water resource plans looking out 50 years. It does not make sense to have to reorder our projects to comply with an arbitrary standard, when there is a demonstrated need for the project that has been proven through a hearing and for which financial ability to construct the project has been demonstrated. Our concern is that it forces the hand on the ordering and prioritizing of projects within our resource portfolio. For some of these projects it might make sense to push them out in the future to find simpler, more water-efficient or more innovative approaches.

One example is the groundwater project. We filed applications in 1989. We did not go to hearing until 2006, because our 1999 and 2000 resource plans did not contemplate using those applications within the 50-year planning horizon. Then the drought hit, and we received 25 percent of the normal inflows on the Colorado River. The need for that project moved up considerably. We would have needed that project within ten years. That is when we went to hearing on those applications, which were approved by the State Engineer and subsequently reversed by court action. Those applications are still subject to litigation.

The need for that project was acute during the early 2000s, as was demonstrated. Since then, we have done a number of things with infrastructure and conservation that have pushed the need for that project to the outer limit of our planning horizon. This bill would accelerate the need to develop projects that may be complicated, complex and may need a little more time. It would force us to reorder priorities so that we would not be using the cheapest, most effective way to meet water needs in southern Nevada.

We have offered a number of suggestions to the DCNR, including one that was referenced earlier in testimony that we do not now support. It was suggested prematurely a few hours prior to a deadline, and we did not have organizational support for that. I understand there are some hard feelings.

We will work with the DCNR to find language we can live with, including a provision that would allow for complex water agencies with multiple water resource portfolio options to have multiple 15-year extensions.

SENATOR HARRIS:
You mentioned that you filed the application in the late 1980s but did not go to hearing until 2006, because that was when the need became immediate. Why did you not file the application in 2006? Why do you need the ability to file an application for a project that might occur 20, 30 or 50 years in the future?

MR. BELANGER:
There is some additional history that I did not mention. When those applications were filed in 1989, the estimate of when southern Nevada would run out of Colorado River water was 1995. Through conservation, we were able to stretch our supply for a number of additional years.

As responsible water managers, we have an obligation to ensure we have resources in place for the future. This bill states applicants have 15 years after the application, with the possibility of a 5-year extension. In some cases this might work. In other cases, it forces the hand of when something is built. To meet the needs of a community of over 2 million people, we are looking at water from many different sources. If we can find a way to meet the community's demand without having to build a particular project, then we are going to do that. We have done that. This bill makes that harder.

SENATOR HARRIS:
If you have a way to push off a project through conservation or other efforts, you will do that. Why not then give back the water rights you are not going to use? If you found a new way, and the project is no longer needed, or if you think the project can be pushed back 20 years, why not give the water rights back and reapply if and when needed?

MR. BELANGER:
If we could control nature and climate change, we might be able to do that. There are scenarios in our resource plan that indicate if the drought persists at the same level it is currently persisting or if it gets worse, and if our population doubles, the need for that project might move up 20 years earlier. That is the point of water resource planning, to make sure needed resources are in place to be prepared for the scenarios that may take place.

SENATOR HARRIS:
Did you put in the application so you can build the project in 20 years?

MR. BELANGER:
That is the way applications throughout the State have been done. All who have rights have applied for them, then they do a hearing. There are some other considerations. State law states that the State Engineer has to act on applications within one year. That does not happen. There are a number of water law components that allow for applications to be held in abeyance until they are needed.

SENATOR HANSEN:
We are being critical to entities that are doing what we have directed them to do. I have a copy of a water resource plan from 1992, when I first ran for Assembly District No. 32. In it there is a reference to a requirement for water purveyors to acquire water rights, hold them and plan for a 40-year water plan. This is what the SNWA has done, and it is being criticized for it. We tell the water purveyors to plan for the future, including the acquisition of water for the growth in Clark County for example, and the purveyors do this. Are we then going to come back and say that water purveyors have to use that water beneficially within a 15-year window, or the State is going to punish them for planning the 40-year window we ordered them to do?

Having said that, I understand the issues related to senior water rights holders and the problem of tying up tens of thousands of acre feet of water that could be put to beneficial use. Is there some middle ground where your water could be leased until you have need for it in the future?

MR. BELANGER:
The projects I am speaking of are not yet permitted, but are in process. Once permits are granted, there is some potential flexibility.

SENATOR HANSEN:
We are going to have growth in Clark County, Reno and Sparks. We have limited water. We order water purveyors to plan for the future. They do that, and we come back and criticize their efforts. It is frustrating.

The same thing happens with the State Engineer. We do not give the DWR the proper statutes it needs. The DWR makes decisions and gets sued because of the vagaries of the law. We then criticize them, but we do not come up with new solutions and specific guidance in NRS they can use in decision making or in a court of law. We try to please everybody, but end up pleasing no one.

MR. THOMPSON:
By example, in Clark County, 90 percent of the water comes from Lake Mead. I have been involved with water issues for decades. At one time, we had one straw in the Lake. If there was an incident or disaster, water could not be pumped over the mountain into Las Vegas. I do not recall how long-term the plan was, but the original plan only had one way to get water out of the Lake. It was the largest public works job in the history of the State. In order to implement the plan, we first had to have an election to pass a quarter-cent sales tax increase in Clark County to pay for it.

Potentially, we would have been in a situation where none of the toilets on the Strip would have flushed, and the State would have been bankrupt. The plan that was put into place involved the labor and business communities and money was raised over a two-year period. The project included drilling through the River Mountains and putting another straw in the Lake. In the meantime, the Lake level dropped, and the pumps had to be lowered again.

The project continues until today with the construction of a low-lake-level pumping station with a drain installed at a deeper spot in the Lake. This project has been going on for at least 30 years. Las Vegas will be able to take its allotment out of Lake Mead, even at dead pool status when the Lake drops to the point at which Hoover Dam will no longer work. Las Vegas will be able to take its water because, rather than a straw in the Lake, there is a drain.

The tunneling job was dangerous. The men in the tunneling machine were under 600 feet of water. If there had been an incident, the workers would not have survived. There was one person killed on the job who was hit by a piece of

aggregate. The machine that was used was the same one that was used on the Chunnel Tunnel between England and France.

To put an arbitrary number on a project is not wise. If the 15-year number had been imposed on the project I mentioned, I do not know what would have happened. We are opposed to putting an arbitrary time frame on these kinds of projects. Senator Hansen is correct. We have asked water purveyors to do long-term resource planning, and that is what they have done.

SENATOR HARRIS:
Was at least $50,000 spent in each of those 15-year periods? If so, the project would have been able to get as many extensions as needed in that scenario. Given that, the reason for your opposition is unclear.

MR. THOMPSON:
I do know how much money was spent, but it was a lot. It does not make any sense to include an arbitrary number. That is what the State Engineer is for. For example, the Nevada Legislature meets every two years. If something has to be changed, people have to wait two years. We had to wait an election cycle to raise the money needed for the project, and we may not have received the money without the tax increase.

SENATOR HARRIS:
I also support annual Legislative Sessions.

WARREN HARDY (Virgin Valley Water District; Moapa Valley Water District; Nevada League of Cities and Municipalities; Associated Builders and Contractors of Nevada):
I agree with many of the comments that have been shared and appreciate DCNR's willingness to discuss this bill. In 2003, as a member of this body, I learned the reason for the phrase, "whiskey is for drinking, and water is for fighting over." The issue at that point in time was water speculation. That is the issue we are talking about.

I fully support what the State Engineer is trying to do with respect to water speculation and making water, something we need to survive, an instrument of commerce. I did not have much support from my own party at the time, because we are supposed to be capitalists and free enterprise advocates.

I look at water differently. I cannot survive without water. You cannot survive without water. My kids cannot survive without water. We put the responsibility of providing that water, as Senator Hansen pointed out, in the hands of our water purveyors. I fully support considering categories and limitations, but we should not forget who we rely on to fill pipes with the water we drink; the water purveyors.

I support the concept of this bill, but am concerned about the 15-year time frame. The problem with pursuing extensions is that for planning purposes it is 15 years. There is no guarantee that extensions will be forthcoming. For transparency and planning purposes, in communicating with the public and development community, those who are building our homes and the infrastructure in our State, it is a 15-year hard stop.

If applicants are fortunate enough to get an extension, that is great, but there are no guarantees. A better approach would be to allow a longer or unlimited period of time on which a plan can be built, then go before the appropriate body and demonstrate that the plan is still accurate.

Water districts do not speculate on water, but they do potentially hoard water. Those are two very different things. We will support any effort that stops making water an instrument of commerce in Nevada. However, it is important to allow individual water districts that have been charged with putting water in our pipes the ability to do that. To prevent any potential hoarding, water purveyors would need to go in and prove to the State Engineer that they are not hoarding and that a reasonable plan is in place and being pursued. I would like to be involved in continued discussions on this issue.

SENATOR HANSEN:
What is the definition of a water speculator? Is Vidler Water Company a water speculator? I have farms in my district that use water for agriculture now with the intent to possibly sell that water in the future. What definition would the State Engineer use? I do not like speculation either, especially with something where there is a limited quantity. Coming up with a definition and terminology that the State Engineer can use would be a good direction.

MR. HARDY:
That is an excellent threshold question. A water speculator is someone who purchases water with the sole intent of allowing it to rise in value then sell it for

a profit. Individuals who acquire water for a farm or a family are entitled to water as a property right. However, they do not own water. Water belongs to the people of this State to be used where it is needed. People own water rights, the rights to use water. They do not own the water. A person who puts water to beneficial use, such as a farmer, then retires and wants to sell the water rights is different than a water speculator who purchases the water rights with no other purpose than allowing it to increase in value and sell it for profit.

SENATOR HARRIS:
You mentioned that for planning purposes, and without having a guaranteed extension, the 15-year period is a hard 15 years. Currently, the limit for a permit is five years and you are not guaranteed an extension. Are you suggesting that currently for transparency purposes, localities are only looking at a 5-year horizon without any guarantee of extension?

MR. HARDY:
What brings this up now is that we are attempting to get it under control. We have ignored and looked the other way on water law for a long time. This bill is an attempt to get this under control, and I support the attempt. If we are going to put something in statute—and you are correct that it is not currently there and limitations apply across the board—we have to match the statute with the obligation that we have given water purveyors to account for water and make sure it is available for future generations.

MARK FIORENTINO (Desert Utilities Inc.):
Desert Utilities Inc. is a small, private water utility located in Pahrump. We are regulated by the Public Utilities Commission of Nevada (PUCN). We have obligations to provide water to existing customers and to certain future users who have dedicated water to us. We support the notion that we have to do something to balance the interests here, the obligation to provide water to current and future customers versus the ability to speculate or sit on water and not use it. We want to continue to be a part of the discussion and work with all of the stakeholders.

We agree with previous testimony that 15 years for a municipal water purveyor like us is arbitrary and can result in unintended consequences. In our circumstances in Pahrump, which may be somewhat unique, these unintended consequences could be conflicts with water conservation and sensible water use efforts. We are grateful for the amendment that makes it clear that the

15-year period runs from any current extension of time. If the bill was passed without the DCNR proposed amendment, a number of permits that we have would be immediately invalidated.

Pahrump Valley struggles with the economic cycle worse than other parts of the State. We are plus or minus 12 to 15 years removed from the first bad economic cycle. Pahrump is just barely recovering. If imposed today, a 15-year timeframe with no other ability to extend beyond it regardless of the circumstances would negatively impact some of our permits.

It does not make sense that we should be forced to invest money, time and capital to develop wells and other structures for the mere purpose of perfecting water rights. It makes better sense to work with these statutes to create criteria such as a water resource plan. Nye County has a water resource plan. Desert Utilities Inc. spent years contributing and helping adopt it. It also has a separate groundwater management plan.

There are ways to address this problem to prohibit unnecessary speculation on water without unnecessarily impacting our ability to do our jobs. In our case, the cost to develop wells, with the arbitrary 15-year period, would likely force us to develop those wells and shift the cost from future users of that water to current ratepayers. We cannot do that off-hand. We would need to go to the PUCN and get approval. That is the position that this bill would put us in.

Currently, if a developer is ready to develop a subdivision, and they are inside our territory, they come to us with the number of lots they have, how much water they need and a request for us to develop a well. The developer helps pay for the cost of the well, since they are the ones using the water.

We understand the problem being addressed, and we want to help fix the problem, but a hard, set cap is a problem. The way I read the bill, an extension beyond the 15-year cap would only be a possibility if a project had one of the limited circumstances where a permit was pending that could not get approved.

SENATOR HARRIS:
Are you looking at the conceptual amendment or the reprint of the original bill?

MR. FIORENTINO:
I am not sure. I am looking at the one that was on the table for today's meeting.

MR. DEPAOLI:
I am reading from my written testimony in opposition to A.B. 62 (Exhibit O). I am not aware of where in Nevada people are sitting on permits and not doing anything with water for long periods of time. If there are such cases, why could extensions for those permits not be denied under existing law and recent Nevada Supreme Court decisions?

SENATOR HANSEN:
How many acre-feet of water does the Truck Meadows Water Authority (TMWA) currently have that is banked, not technically being used beneficially but available for future needs?

MR. DEPAOLI:
Like other water purveyors, TMWA has multiple sources of water. The primary source is surface water from the Truckee River, based primarily on former agricultural irrigation rights from the Truckee Meadows that have been changed to municipal use. The TMWA also draws from groundwater during high-use times of the year or during periods of drought. From time to time it will need to develop additional groundwater. With its acquisition of the Washoe County water system, there are many areas in the region that rely on groundwater. New projects could come up against the proposed hard limits on proofs of completion of work.

SENATOR HANSEN:
You are an expert on water law. Is the use of water being put into a reinjection well to recharge an aquifer a beneficial use?

MR. DEPAOLI:
Yes, water going in or coming out is a beneficial use.

SENATOR HANSEN:
Sometimes basins are depleted then recharged in good years when water is abundant.

MR. DAZLICH:
The Las Vegas Metro Chamber of Commerce is in opposition to this bill. The arbitrary deadlines imposed will tie the hands of municipalities. The deadlines ignore the potential for changing economic factors, which are the biggest factors the Chamber considers when looking at growth and future planning. The deadlines will result in wasteful spending. It is not good tax policy or good water policy. This has the potential of opening up growing communities to frivolous lawsuits. The State Engineer already has the authority to grant or deny extensions. It is hard to understand what is driving the need for this bill.

MR. HARTMAN:
One of the elements of all master plans in every jurisdiction is a water plan. Many years ago Washoe County made a determination to try to diversify its water supply because it was so reliant on the Truckee River. There were concerns about being limited solely to a surface source. The County and a ranch north of Truckee Meadows entered into an undertaking to import water from that ranch to diversify the supply, conjunctively manage the resources and never be solely at the mercy of one.

That project did not fare very well. The County lost approximately $2 million; the landowner lost more than that. There were problems with getting a needed right-of-way which conflicted with an Alturas gas line that had been in place for many years. A United States Secretary of the Interior decision thwarted the project. We were contacted by Washoe County and the rancher to try to help them be able to bring in this water source and help the County diversify its supply. That is how Vidler Water Company got involved in that project. We have been involved in multiple projects across the State. Large communities and small towns alike develop water plans, and we have responded to requests for proposals and have been successful in helping many communities.

When this bill was first introduced, I spoke in favor. I did so because the bill listed the things one typically runs into when trying to appropriate large amounts of water in Nevada. These kinds of projects usually deal with federally managed areas either controlled by the U.S. Bureau of Land Management or the United States Forest Service. There are also tribal interests and large land holdings scattered throughout the State.

When a water purveyor goes to bring in a supply of water, such as in Lincoln County's three water projects, the issues identified in the bill will have to be

dealt with. It is not an easy issue, but I think Mr. DePaoli's testimony was accurate on the legal aspects. There is a pending court case that will settle a lot of these questions. The decision issued by Judge Hardesty is very specific about extensions. Over the years, the State Engineer has done a good job ferreting out what is contrary to public policy and what is real. The DWR frequently gets shortchanged about what they do. It has a significant workload dealing with extensions. Something needs to be done to relieve that. The DWR is dealing with it, and we are all dealing with it.

I do not think this particular bill is the answer. It is great to list all of the considerations related to extensions, similar to a force majeure clause in the legal world to deal with unknowns. The problem is the set deadline. Force majeure is a much more forgiving principle that will last however long is needed. I hope an appropriate solution can be found to address these issues.

SENATOR HANSEN:
I recall the Vidler Water Company's involvement with the Honey Lake project. This bill is talking about water speculation. Vidler develops water projects. You did not address water speculation, but from your experience in other states—we are not the only dry state in the Union—what do we need to do to move forward? I have been to meetings where the previous State Engineer, Jason King, was criticized because he was doing what we had tasked him with doing.

From your perspective, what would you add to or remove from this bill? You come in opposition to this bill, but I did not hear any suggestions or proposed amendments to give the State Engineer reasonable powers to deal with these situations where people purchase water rights and sit on them, ignoring the beneficial use concept.

MR. HARTMAN:
Sometimes the plans to use water are extended. As you have noticed, there are not a lot of people lining up to be the State Engineer. It is not a fun or forgiving job. The DWR does a good job ferreting out which projects are legitimate. The DWR does not receive credit for all the work it does.

Water rights applicants also do a lot of work. I am not certain that we need hard and fast edges on this process. It is important to know the various issues related to the process, and we will know more with the results of the pending court cases. This will bring clarity. One recent ruling clarified that not only does

the issue of diligence and good faith apply in the extension of the application, but for the extension itself. That is a pronouncement that we have not had previously, and it is a big step forward. It is hard to find a State Engineer who is also a hydrogeologist. Nevada is fortunate to have one who is. The DWR needs more resources.

MR. ROERINK:
It is not often that the 1989 applications as they relate to the Las Vegas Pipeline project come up in a hearing in which it is not me bringing it up. That project is an example of how an entity can hold on to water rights for 30 years. That project is tied up in court. The Nevada Supreme Court decided that the State Engineer failed in his responsibility to provide due process.

The Great Basin Water Network is in the neutral position on A.B. 62, in part because of the conceptual amendment. Section 2, subsection 3, paragraphs (a) and (b) of the bill are avenues to hold water hostage. There is, however, merit to the bill, including putting a hard cap on projects.

Section 2, subsection 3, paragraph (a) gives an entity an easy avenue for an applicant with approved water rights to get potentially unlimited extensions to the time limit for constructing the necessary works or putting the water to the intended beneficial use, if there is any kind of State, federal or local or tribal government approval or consent that the applicant has not yet obtained or maybe cannot obtain. Such a provision would allow an entity to indefinitely defer any action to actually construct a project or put the water to use, as was the basis for an approved application. Our fear is that this could occur if the State Engineer was to ever grant permits for the Las Vegas pipeline.

According to section 2, subsection 3, paragraph (b), if an entity is pushing an untenable, unfeasible and potentially illegal project, and that project is tied up in court, that project will keep its rights indefinitely. If we want to put constraints on extensions or suspensions, we are creating loopholes to get around the ceilings being proposed. We would like an exact and impermeable standard.

There have been discussions about large infrastructure projects. I do not think the third straw from Lake Mead took 15 years to build.

MR. DONNELLY:
The Center for Biological Diversity is neutral on this bill. We support the bill's intent. There should be time limits on water rights to prevent speculation.

We have been talking about hoarding and speculating. The definition of speculation is obtaining something and holding on to it until the economic conditions are ripe to make money from it. The SNWA would not be making a profit from the Las Vegas pipeline, but the Las Vegas Metro Chamber of Commerce was here today because someone is going to monetize that water.

What Mr. Belanger, Mr. Thompson and Mr. Hardy are asking us to do is prioritize the desires of urban people over the livelihoods of rural people and the environments in those rural areas. They are asking us to allow urban water suppliers to go into rural Nevada, hoard water and hold on to it indefinitely until economic conditions are ripe so that entities can make money off of that water and take it away. Meanwhile, rural communities are held in suspended animation. The economy of White Pine County has been held in suspended animation for 30 years because all of their water has been grabbed up by the SNWA and held while the permits are being sorted out in court. This has caused great hardship on those communities and their economy.

One could see this playing out across the State if urban water providers are allowed to hold on to water rights in perpetuity until they choose to develop them. We support the concept of having time limits on these things, so that at a certain time, if unused, water rights are relinquished. Others could then have the opportunity to put the water to beneficial use, or the water can stay within its basin or county of origin so the environment is protected.

Section 2, subsections 3 and 4 allow for essentially unlimited suspensions of the time frame. It is easy to envision a scenario in which a provider such as the SNWA, which has been unable to obtain federal permits—the Las Vegas Pipeline project does not meet the federal government's National Environmental Policy Act standards—were to get their water rights and hold on to them until there was a future Secretary of the Interior and President who looked favorably on their project and gave them permits. This could be 50 years from now. Indefinite extensions would allow for this kind of troubling scenario. This is why we are not in support of the bill.

MR. DAVIS:
The Nevada Conservation League is in the neutral position on this bill. We have concerns with the way the bill is currently written and have not yet had the opportunity to review the DCNR conceptual amendment. We share many of the concerns Mr. Donnelly shared. We support the intent of the bill and agree that extensions should not go on forever. Water purveyors are not immune from the possibility of water speculation, or at least holding up water that belongs to the State and could potentially be used for another beneficial purpose. This Committee heard testimony on a similar practice occurring that is related to another bill earlier this Session. I recognize that is not the intent, nor does it happen with the vast majority of Nevada water purveyors. We would like to continue to be a part of the discussions to find a solution to address DCNR concerns.

SENATOR HANSEN:
Everyone likes to beat up the SNWA, but the reality is that there are lots of water purveyors in the State that probably have water rights they have been holding on to with the expectation of growth. The TMWA does, Elko probably does, Pahrump does and others probably do. It seems to me extensions are reasonable. I do not consider these efforts of water purveyors to be water speculation. They are hoarding water with the intent to meet the needs of future growth in their communities. Would it not be reasonable to have a carve-out in this that would allow for true water purveyors to have extensions longer than 15 years? If growth in White Pine County is desired, would it not be reasonable for the water purveyor there to hold on to water to meet the needs of future growth there?

MR. DONNELLY:
A principle that we unequivocally support is keeping water in its basin or area of origin. If White Pine County was holding water rights 300 miles away in an impoverished community and wanted to import that water to White Pine County, we would object to that as well. We are dealing with extreme inequities of power and economy where the average income of the people in White Pine County is a fraction of what it is in Clark County.

SENATOR HANSEN:
I understand, but there are many water purveyors holding on to water that will be used in the same basin. This law would make it very difficult for them to keep those water rights in expectation of growth. Would you support a

carve-out in the bill that would allow water purveyors to keep their water rights beyond the 15-year window?

MR. DONNELLY:
This is a great example of the SNWA project muddying the waters when trying to develop rational water law. Several times this Session we have discussed sensible water policy, but when applied to an extreme and different application of water law, such as the Las Vegas pipeline project, it muddies our ability to rationally discuss the issues.

SENATOR HANSEN:
Setting that project aside for the moment, would you be agreeable to a carve-out for Lovelock, Winnemucca, White Pine County or Pahrump?

MR. DONNELLY:
Yes, there is more of a discussion to be had at that point.

MR. ADLER:
The Pyramid Lake Paiute Tribe is neutral on the bill as written and has concerns with the DCNR conceptual amendment.

MR. HADDER:
The Great Basin Resource Watch was opposed to this bill when signing in for this hearing, but it is now neutral on the bill. We support the concept of the bill and having some restrictions, but we are concerned by the same issues addressed by Mr. Donnelly and Mr. Roerink.

MR. BUSSELMAN:
The Nevada Farm Bureau Federation had planned on speaking in opposition to this bill, but it is now neutral. We think the DCNR conceptual amendment has merit and is far superior to the 2nd Reprint that was brought to the Committee.

Our policy of opposition was based on the fact that the Federation's policy is that all water users should be treated equally. We appreciate the offer to have the opportunity to discuss how much money is being invested by agricultural irrigators to meet the test of where they are applying themselves to completion. We look forward to being a part of continued discussions.

MR. FONTAINE:
The Central Nevada Regional Water Authority and the Humboldt River Basin Water Authority support the intent of the bill and are neutral on the DCNR conceptual amendment discussed today. There is a need for refinement on section 2 of the bill with regard to the various sideboards in place for granting one or more extensions. We look forward to working with all of the stakeholders to do that.

MR. CROWELL:
This is a tough issue, as you have heard. We are working with a variety of stakeholders and trying to find a reasonable balance. Many stakeholders have worked in good faith; others have not. That has presented difficulties and challenges.

Senator Hansen made a good point regarding the conflicts in the current law where water providers are told to plan for 40 years and acquire rights, but other conflicting laws evoke the terms "use it or lose it" and "beneficial use." The DCNR is stuck in the middle until the Legislature or some other body says that the fundamental anti-speculation tenets do not apply to municipal users. That can be done, but there will be opposition from other users. I do not know how to balance that, but we are trying to strike that balance.

We worked with stakeholders on various iterations of limits of time and limits of extensions and could not find anything acceptable. We went the other way and considered no limit on the number of extensions or time, but raising the bar on how one qualifies for an extension. Nobody could agree on how the bar is raised as time goes forward. If someone is not able to show that there is a legitimate reason to hold on to water, preferably through the process of a public hearing, it is hard to argue why the water is needed.

Speculation versus responsible water planning is a difficult line to walk. We do not want to take away anyone's water rights, but we are also trying not to unfairly penalize other users who have applied for water and are ready and able to use it, but cannot obtain a permit. There is not enough water to play those games.

There have been references to other states and how they manage their water resources. New Mexico often claims to be the driest state in the Nation. I am not enough of a hydrologist to say who is right, but New Mexico has a 3 plus

10 approach; 3 years at the approval of an application and one possible 10-year extension for 13 years total. They are making it work.

We do need something that works better for Nevada and clears up the confusion. There was testimony that was very accurate about the State Engineer's ability to ferret out extensions that are probably speculative and that should not be granted. Unfortunately, when those applications are denied, they are almost always overturned by the courts, and the water rights are given back. We cannot win, and the courts do not have enough legislative or statutory guidance about how to balance these things in their review of whether to allow an extension of time.

I am reluctant to continue, but feel compelled to correct the record in one regard. This bill passed in the Assembly on Tuesday, April 23. The SNWA came to us a week earlier with five proposals on paper to address these issues. We sat down with SNWA representatives and came to an agreement on melding two of the proposals together. We met again later in the week to work out the details and worked out an amendment that was put on the Senate Floor. The SNWA never came back to say it did not ultimately support it, and that is unfortunate. That makes these conversations more challenging. I do not want to have conversations and constructive dialogue unless they are in good faith. We cannot get to a solution without the largest water provider in the State. I hope we can get things back on track and have a more honest dialogue going forward.

SENATOR GOICOECHEA:
I need one clarification on the bill, specifically on section 2, subsection 2, paragraph (a), subparagraphs (1) and (2). If a project qualifies for an extension based on $50,000 of spending on the project, including right-of-way purchases, that would allow it to move forward for a series of extensions if it continued to progress and the investment continued in the project. Is that correct? It appears that if a project was continuing to be developed and spending enough money, it could continue to qualify for 15-year extensions.

MR. WILSON:
Under the current conceptual amendment offered by DCNR, the 5-, 10- and 15-year deadlines are hard. There is no going beyond those.

SENATOR GOICOECHEA:
The way I read the bill, at the end of 15 years if at least $50,000 has been spent on construction or right-of-way for a project, it could qualify for another extension.

MICHELINE FAIRBANK (Deputy Administrator, Division of Water Resources, Department of Conservation and Natural Resources):
The portion of the bill you cited is the criteria for an application for an extension. The bill and conceptual amendment that passed in the Assembly allows for the criteria for an extension of time, whether 1 year or 15 years. However, a single or cumulative extension cannot exceed 15 years total.

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CHAIR SCHEIBLE:
I will close the hearing on A.B. 62. Seeing no public comment, I will adjourn this meeting at 7:45 p.m.

RESPECTFULLY SUBMITTED:

Steve Woodbury,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	2		Agenda
	B	5		Attendance Roster
A.B. 95 A.B. 163 A.B. 404 A.J.R. 8	C	17	Alysa Keller	Work Session Document
A.B. 30 A.B. 62	D	4	Bradley Crowell / Department of Conservation and Natural Resources	Written Testimony
A.B. 30	E	4	Tim Wilson / Division of Water Resources	Written Testimony
A.B. 30	F	12	Tim Wilson / Division of Water Resources	Conceptual Amendment
A.B. 30	G	1	Andy Belanger / Southern Nevada Water Authority; Las Vegas Valley Water District	Conceptual Amendment
A.B. 30	H	3	Kyle Roerink / Great Basin Water Network	Written Testimony
A.B. 30	I	2	Laurel Saito / The Nature Conservancy	Written Testimony
A.B. 30	J	1	Jake Tibbits / Eureka County Department of Natural Resources	Written Testimony
A.B. 152	K	1	Don Schaefer / Protectors of Tule Springs	Written Testimony
A.J.R. 2	L	1	Janet Carter / Sierra Club	Written Testimony
A.B. 62	M	6	Tim Wilson / Division of Water Resources	Written Testimony

A.B. 62	N	4	Bradley Crowell / Department of Conservation and Natural Resources	Conceptual Amendment
A.B. 62	O	5	Gordon DePaoli / Truckee Meadows Water Authority	Written Testimony