

**MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES**

**Eightieth Session
February 28, 2019**

The Senate Committee on Natural Resources was called to order by Chair Melanie Scheible at 4:00 p.m. on Thursday, February 28, 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

STAFF MEMBERS PRESENT:

Alysa Keller, Policy Analyst
Erin Sturdivant, Committee Counsel
Christine Miner, Committee Secretary

OTHERS PRESENT:

Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Richard Perry, Administrator, Division of Minerals, Commission on Mineral Resources; State Environmental Commission
Ray Fierro, Administrator, Division of Industrial Relations, Department of Business and Industry
Kyle Davis, Nevada Conservation League
John Hadder, Director, Great Basin Resource Watch
Ian Bigley, Progressive Leadership Alliance of Nevada
Patrick Donnelly, Center for Biological Diversity
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation
Steve Walker, Eureka County

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Tobi Tyler, Sierra Club, Toiyabe Chapter
Laurel Saito, Water Program Director, The Nature Conservancy
Alex Tanchek, Nevada Cattlemen's Association; Central Nevada Regional Water
Authority; Humboldt River Basin Water Authority
Kyle Roerink, Great Basin Water Network
Will Adler, Pyramid Lake Paiute Tribe
Tim Wilson, Acting State Engineer and Administrator, Division of Water
Resources, State Department of Conservation and Natural Resources
Chaunsey Chau-Duong, Southern Nevada Water Authority
Warren Hardy, Virgin Valley Water District; Moapa Valley Water District
Brian McAnallen, City of North Las Vegas
Joe Guild, Southern Nevada Water Authority

CHAIR SCHEIBLE:

I will open the hearing on Senate Bill (S.B.) 53.

SENATE BILL 53: Revises provisions governing the review of certain mining regulations. (BDR 46-218)

GREG LOVATO (Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources):

I will read from my written testimony ([Exhibit C](#)) to introduce and support S.B. 53.

SENATOR GOICOECHEA:

If the Mining Oversight and Accountability Commission (MOAC) fails to review a permanent regulation within 30 days, would the regulations still go to the Legislative Commission or the Subcommittee to Review Regulations for approval?

MR. LOVATO:

Yes, *Nevada Revised Statutes* (NRS) 233B references review by the Legislative Commission or the Subcommittee to Review Regulations as described in S.B. 53, section 1, subsection 1, paragraph (d).

SENATOR HARRIS:

Why not fully staff MOAC?

MR. LOVATO:

Senate Bill 493 of the 76th Session created MOAC. It is designed as an oversight body over mining. Its purpose is to take a broad look at mining, which is an important part of the State economy and affects many parts of the State. It provides oversight of compliance with Nevada law relating to the activities of each State agency, board, bureau, commission, department or division with respect to the taxation, operation, safety and environmental regulations of mines and mining. After the 2011 Session, meetings progressed on schedule in 2012 and 2013. Thereafter, it appeared the concerning issues had been corrected and the ongoing need to meet was deemed unnecessary. Two members of MOAC are appointed by the Governor, and other members are appointed by the Governor from lists submitted by the Legislature.

The Department proposed in Assembly Bill No. 33 of the 79th Session to abolish MOAC. The section to abolish MOAC was amended out of the bill. Senate Bill 53 is a modest proposal to allow action if MOAC does not meet in a timely manner.

SENATOR HARRIS:

Do you recommend abolishing MOAC? Do you think this bill is a feasible remedy, or is this a better way to deal with the issue?

MR. LOVATO:

Following the direction of the Legislature from the 79th Session to continue MOAC, S.B. 53 is the best alternative. There is oversight for the Division of Environmental Protection, which is the State Environmental Commission. The Division is not opposed to additional oversight. As MOAC was not holding regular meetings, it seemed unnecessary and abolishment was attempted. If the Legislature wants to continue with oversight by MOAC, the Division is willing to discuss it.

SENATOR HANSEN:

Has MOAC been reviewed by the Sunset Subcommittee of the Legislative Commission?

MR. LOVATO:

I do not know if it has been reviewed by the Sunset Subcommittee.

SENATOR HANSEN:

In four years, MOAC has not met, and mining is experiencing oversight by other groups. The existence of MOAC is questionable. It is my recommendation to have the Sunset Subcommittee review MOAC as it falls under its purview.

RICHARD PERRY (Administrator, Division of Minerals, Commission on Mineral Resources; State Environmental Commission):

I will read from my written testimony ([Exhibit D](#)) in support of S.B. 53.

CHAIR SCHEIBLE:

I have a letter of testimony in the neutral position, ([Exhibit E](#)), submitted by Melissa Clary, the remaining appointee to MOAC.

RAY FIERRO (Administrator, Division of Industrial Relations, Department of Business and Industry):

The Division of Industrial Relations is neutral on S.B. 53. The last meeting of MOAC was in 2015 and there is one remaining member on its Board. The review of MOAC was not listed on the 2017 Sunset Subcommittee agenda.

KYLE DAVIS:

I am testifying as a former member and chair of MOAC. The Commission has not met since 2015 because there have not been enough members to form a quorum, even if all members were to attend a hearing. When the Commission had enough members, there were regular quarterly meetings. State agencies need regulations approved and are frustrated because appointments have not been made to MOAC. If MOAC is staffed and becomes functional, the 30-day requirement in S.B. 53 might be difficult because it meets quarterly.

JOHN HADDER (Director, Great Basin Resource Watch):

The Great Basin Resource Watch (GBRW) is a nonprofit organization founded in 1995 to monitor extractive mining industries in Nevada. I have submitted written testimony ([Exhibit F](#)).

The time period requirement in S.B. 53 should be longer. The previous Nevada administration should have appointed members to MOAC.

Most mining operations exist in remote rural locations. The Mining Oversight and Accountability Commission is needed and serves as a meaningful public forum in an industry that is not looked at as closely as some might think.

One reality of mining operations is the need to treat polluted water forever at mine sites. Newmont's Phoenix mining operation will treat 600 gallons per minute for hundreds of years. The proposed Mount Hope project may also be a perpetuity site existing at the nexus between two agricultural areas, Kobeh and Diamond Valleys. The project is near a wilderness area. There are many natural springs and water resources that would be affected by mining operations.

What is the policy of Nevada on dealing with mines with plans for perpetual care? Nevada does not have the authority to deny any mining plan proposing perpetual management. More communities are dealing with this issue. This issue and other issues would be excellent exploration opportunities for MOAC in an open public forum when important policies are under consideration.

Mining operations pump an enormous amount of groundwater affecting other users' water rights. The water rights applied for by mining companies are considered temporary use by the State Engineer. Yet, the mines are pumping for at least one to two generations and sometimes longer.

The Mining Oversight and Accountability Commission serves as a way to discuss policy before regulations are developed. This allows policy to be well-developed before it gets to the State Environmental Commission for a regulation change.

Great Basin Resource Watch is neutral on S.B. 53, and urges the staffing of MOAC with individuals who care about mining issues, and will move on important policy considerations affecting the State.

IAN BIGLEY (Progressive Leadership Alliance of Nevada):

The Progressive Leadership Alliance of Nevada (PLAN) is neutral on S.B. 53. It is vital to have a fully functional MOAC to serve its important function of reviewing regulations in a timely manner. The regulations have long-term and irreversible impacts. When regulations have gaps, such as the lack of beneficial use criteria for watering pit lakes, it leads to lengthy and costly litigation. There could be 300-600 billion gallons of water wasted in pit lakes in the future due to this gap.

This bill is a misguided solution to a real problem. Should MOAC be functional, regulations could be reviewed at quarterly meetings or as needed, and S.B. 53 would be unnecessary.

PATRICK DONNELLY (Center for Biological Diversity):

The Center for Biological Diversity echoes the testimony of GBRW and PLAN. When regulators are seeking to abolish oversight, it raises the question of why. The Center is neutral on S.B. 53 and encourages the revitalization of MOAC.

MR. LOVATO:

Senate Bill 53 proposes a simple change to an ongoing problem. Regulations were proposed in 2015 to increase the financial assurance requirement for long-term treatment of mine impacted water. Due to the difficulty of getting a quorum, MOAC met twice. It is important to move in a timely manner when adjusting regulations.

CHAIR SCHEIBLE:

We will close the hearing on S.B. 53 and open the hearing on S.B. 140.

SENATE BILL 140: Revises provisions relating to the appropriation of water in certain basins. (BDR 48-541)

SENATOR PETE GOICOECHEA (Senatorial District No. 19):

Water in Nevada is a finite resource. Senate Bill 140 proposes to reserve 10 percent of the water available for appropriation in certain basins. Half of the water basins in Nevada are over-appropriated and will not be impacted by this bill. The intention is to avoid over-appropriation of available water in basins by placing a marker for retention.

The proposed amendment ([Exhibit G](#)) clarifies the water referenced in S.B. 140 as only groundwater. Management of surface and groundwater together would be difficult. The original effective date of the bill was July 1, 2019. This has been changed to "upon passage and approval" of the act. This is necessary to avoid a run of applications on basins that are not completely appropriated.

In many cases, there may be a very small amount of water left in a basin, as little as 200 acre feet. There are approximately 59 basins that are over-appropriated by at least 200 percent, and this is unacceptable.

The reserved water may be appropriated under a temporary permit in the case of a declaration of drought by the Governor or an emergency. If a small municipality has a basin with a 10 percent reserve, it could apply for a temporary permit in an emergency if its water supply failed or became

inadequate. Temporary means short-term. A permit of 40 years is not considered temporary.

The State Engineer shall consider any application submitted after March 1, and will be included in the calculation for reserved water.

CHAIR SCHEIBLE:

If a basin holds 100 gallons of water and 50 of those gallons are appropriated and an application is in for 25 gallons today, does the State Engineer have to reserve 5 gallons, or 2.5 gallons of that basin before reviewing the application?

SENATOR GOICOECHEA:

If there are 100 acre feet in the basin, 50 of which have been appropriated, an application for 25 acre feet would allow 25 acre feet to be permitted. A 10 percent reserve of that equals 2.5 acre feet.

DOUG BUSSELMAN (Executive Vice President, Nevada Farm Bureau Federation):

The Nevada Farm Bureau Federation supports S.B. 140. It is important to have buffer protection to prevent the over-appropriation of the remaining groundwater basins.

MR. DAVIS (Nevada Conservation League):

The Nevada Conservation League supports S.B. 140. This bill allows Nevada the opportunity to manage basins with available water appropriation. It aids in protecting important environmental functions.

STEVE WALKER (Eureka County):

Eureka County supports S.B. 140 with the proposed amendment [Exhibit G](#). There are basins containing less than 100 acre feet. It may be beneficial to consider another measurement other than the arbitrary number of 10 percent.

SENATOR GOICOECHEA:

The 10 percent number is for a sensible and simplistic reserve. The State will consider data to change it if data becomes available.

MR. DONNELLY:

The Center for Biological Diversity supports S.B. 140. It refers to the bill as the "drought cushion" bill. The cushion makes sense considering drought and climate change are decreasing the recharge of our basins. Ten percent is not a

scientifically derived number, but it is a start to begin the process to find a more scientifically determined standard. Let us not create more problems by over-allocating basins.

TOBI TYLER (Sierra Club, Toiyabe Chapter):

The Sierra Club, Toiyabe Chapter supports S.B. 140. I will read from my written testimony ([Exhibit H](#)).

MR. BIGLEY:

The PLAN supports S.B. 140 and the comments made by the Sierra Club and Center for Biological Diversity. It is possible for Nevada to further protect our water resources.

LAUREL SAITO (Water Program Director, The Nature Conservancy):

The Nature Conservancy supports S.B. 140 and the proposed amendment, [Exhibit G](#). I will read from a letter of testimony, ([Exhibit I](#)), signed by Juan Palma, Nevada State Director of The Nature Conservancy.

SENATOR GOICOECHEA:

Fee-paid applications constitute a property right. Any applications filed prior to March 1, 2019 are considered in the duty of the basin if they are approved. If any of the applications are denied, the water becomes subject to the 10 percent provision in S.B. 140.

MS. SAITO:

The pending applications for basins not fully appropriated, even with the 10 percent reserve, are valid. There are only a handful of basins that might have applications to fulfill the perennial yield, and the State Engineer can determine the yield. Those basins could be exempted from this bill if the water is low. It merits further discussion.

CHAIR SHEIBLE:

There is no disagreement or lack of clarity on the intent of S.B. 140. The State Engineer will be able to clarify.

ALEX TANCHEK (Nevada Cattlemen's Association; Central Nevada Regional Water Authority; Humboldt River Basin Water Authority):

The Nevada Cattlemen's Association, Central Nevada Regional Water Authority and Humboldt River Basin Water Authority support S.B. 140.

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KYLE ROERINK (Great Basin Water Network):
The Great Basin Water Network supports S.B. 140.

MR. HADDER:
Great Basin Resource Watch encourages greater conservation and supports S.B. 140.

WILL ADLER (Pyramid Lake Paiute Tribe):
The Pyramid Lake Paiute Tribe supports S.B. 140.

TIM WILSON (Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources):
The Division of Water Resources takes a neutral position on S.B. 140. I will read from my written testimony, ([Exhibit J](#)). Are we going to consider all of the committed resources, or only permitted water rights? If so, what will be the impact of domestic wells? If we reach the 10 percent within the perennial yield, and issue permits, can we still issue domestic well rights to that basin?

CHAIR SCHEIBLE:
If all of the outstanding applications or those under appeal are granted, how many basins will be completely appropriated?

MR. WILSON:
The numbers I am providing are gross approximations. A more detailed analysis is required for precise numbers. The State has 125 of 256 basins above the perennial yield. There are 126 basins below the perennial yield. Granting all of the pending applications will reduce the number of basins below the perennial yield to 100. Within these basins, totaling the remaining perennial yield minus 10 percent, equals approximately 30,000 acre feet. In denying all pending applications, there are approximately 500,000 acre feet available in the State. Ten percent of that amount equals 50,000 acre feet. There are 30,000 to 50,000 acre feet of water available for the 10 percent reserve.

SENATOR HARRIS:
How does a basin get over-appropriated?

MR. WILSON:
There are multiple reasons, and it has been examined many times. In some cases, more water was thought to be in basins than the reality. In other cases,

a program called Desert Land Entry (DLE) allowed participants water rights and when placed on public land the participant could claim ownership of the land. It had a high failure rate in most areas. Many DLEs were issued in areas where there were higher than expected success rates, and those basins became over-appropriated. There are over-commitments for domestic wells and concentrated domestic wells.

SENATOR HARRIS:

Do the reasons still exist today and are we continually over-appropriating, or have the issues been mitigated?

MR. WILSON:

The Division has been very aggressive at issuing orders restricting new appropriations of water in basins that are over-appropriated. It has the authority to designate a basin if it comes near full appropriation or needs active management. The Division makes rules and regulations as necessary to manage these basins. It can issue orders restricting new appropriations. The first major use to be stopped is usually irrigation. All applications for irrigation will be denied and, in some cases, not considered.

No applications are accepted in some basins. Very small appropriations are allowed in many basins of two acre feet, which is equivalent to a domestic well. If someone wants to put a commercial business on a property instead of a house, the Division could permit a commercial right for the same equivalent acre feet.

SENATOR HANSEN:

Who determines the scientific calculations made on the perennial yield of a basin?

MR. WILSON:

Many of the reports the Division relies on are reconnaissance reports in cooperation with the United States Geological Survey. This federal agency is a good source in determining many of the perennial yields. The Division might consider a report from a private consultant, and analyzes those to determine acceptance. Many come from an administrative hearing process, when an applicant seeking water appropriation claims additional water is available.

SENATOR HANSEN:

I was hoping there was a federal agency involved, because when a water authority wants to appropriate water, it is often challenged in court. There are gray areas. Who is the arbiter determining the amount of water in a basin so the 10 percent calculation will not be perpetually involved in a lawsuit?

MR. WILSON:

The Division makes the determination. It has estimates of perennial yield in all of the basins. It chooses the source for the calculation, which can change. New science can make those determinations. At some point, the Division looks to receive funds and resources for better perennial yield numbers.

SENATOR HANSEN:

Are there a series of different aquifers in groundwater basins? Is a basin one aquifer? Or, is a basin composed of different aquifers with different potential yields?

MR. WILSON:

It can be complex. There is no single source of underground water. Aquifers can vary within a basin and much science goes into determining perennial yield. Setting perennial yield for basins on a wide scale basis is useful for management purposes. The Division looks at sub-basins and barriers and specific aquifers to ensure there are no strains on those.

SENATOR GOICOECHEA:

To answer questions of the Division, 10 percent is an arbitrary number. The intent is to establish a buffer or reserve until better data are available. It takes a drought declaration for the temporary emergency scenario. It would be foolish to over-invest on a temporary permit. This bill is only addressing groundwater, not domestic wells.

CHAUNSEY CHAU-DUONG (Southern Nevada Water Authority):

The Southern Nevada Water Authority is neutral on S.B. 140. It agrees with the 10 percent provision rather than an undefined number. It needs clarification to NRS 533.370, section 3, paragraph (d) of S.B. 140 requiring the State Engineer to reserve a certain amount of water in the basin for future growth and development. Does that reserve count toward the aggregate of the 10 percent requirement, pursuant to section 1 of the bill? For example, if the State Engineer determined the need to reserve 8 percent of water for future growth and

development in a basin, does the Engineer need to reserve an additional 2 percent of water, or an additional 10 percent? This would total 18 percent.

Will the State Engineer define terms to implement the bill? The terms "appropriate water" and "temporary" might need clarification. How will the calculations be done by the Engineer?

CHAIR SCHEIBLE:

Would Committee Counsel please offer some clarification on section 1 and section 3, subsection 3?

ERIN STURDIVANT (Committee Counsel):

Section 1 requires the State Engineer to reserve 10 percent of the remaining groundwater in a basin, and it is not related to section 3, subsection 3, paragraph (d), which is what the State Engineer would consider for an interbasin transfer of water. If the State Engineer thinks that a certain percentage of water is necessary for long-term use, it would not relate to the water reserved under section 1.

WARREN HARDY (Virgin Valley Water District; Moapa Valley Water District):

The Virgin Valley Water District and Moapa Valley Water District are neutral on S.B. 140. The important provisions in S.B. 140 will encourage Nevada to be responsible with its water resources. The Virgin Valley Water District shares its primary basin with Arizona. There is no effective water law in that section of Arizona. This should be considered in determining the 10 percent provision of that basin. There is water not regulated by Arizona.

BRIAN MCANALLEN (City of North Las Vegas):

The City of North Las Vegas is neutral on S.B. 140. It wants to discuss the insertion to section 3, paragraph 2, of the language "the State Engineer may review and grant approval of a permit for a subdivision, or other submission if a showing of adequate and sustainable supply of water to meet the anticipated life of the subdivision, other construction or development to be made to the State Engineer's satisfaction."

CHAIR SCHEIBLE:

Have you submitted a proposed amendment?

MR. MCANALLEN:

The City of North Las Vegas has not yet submitted a proposed amendment.

JOE GUILD (Southern Nevada Water Authority):

The Southern Nevada Water Authority is neutral on S.B. 140, and seeks clarification on the retroactivity provision. Section 5, page 6, line 11 is not a retroactive situation. The proposed amendment, [Exhibit G](#), does not solve the retroactivity issue. To solve it, the Water Authority proposes to add "do not" to section 5, line 11 of the bill after the word "act" and before the word "apply". It needs clarity.

MS. STURDIVANT:

Section 5 of the proposed amendment, [Exhibit G](#), revises this section to provide that the amendatory provisions of the act will only apply to any application for a permit that is filed on March 1 or after. Any applications for a permit currently pending in the office of the State Engineer are not subject to the terms of the bill. Applications between March 1 and the effective date of this bill will be applied retroactively.

MR. GUILD:

The clause "but not approved" is not mentioned. If there is an unapproved application pending prior to March 1, does this requirement apply in that situation?

MS. STURDIVANT:

The bill does not apply to any application that has been filed prior to March 1. It does apply to unapproved applications filed between March 1 and the effective date of the bill.

SENATOR GOICOECHEA:

The simpler the bill is kept, the better. It is unnecessary to put in many definitions. The true intent of the bill is only to establish a reserve to assist the State Engineer and offer protection of our resources. It is about today's calculated perennial yield of a basin.

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CHAIR SCHEIBLE:

Having no further business, we will adjourn this meeting at 5:15 p.m.

RESPECTFULLY SUBMITTED:

Christine Miner,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / of pages		Witness / Entity	Description
	A	1		Agenda
	B	4		Attendance Roster
S.B. 53	C	4	Greg Lovato / Division of Environmental Protection / State Department of Conservation and Natural Resources	Written Testimony
S.B. 53	D	3	Richard Perry / Division of Minerals, Commission on Mineral Resources / State Environmental Commission	Written Testimony
S.B. 53	E	1	Melissa Clary / Mining Oversight and Accountability Commission	Letter in Neutral Position
S.B. 53	F	3	John Hadder / Great Basin Resource Watch	Written Testimony
S.B. 140	G	6	Senator Pete Goicoechea	Proposed Amendment
S.B. 140	H	1	Tobi Tyler / Sierra Club, Toiyabe Chapter	Written Testimony
S.B. 140	I	2	Laurel Saito / The Nature Conservancy	Written Testimony
S.B. 140	J	3	Tim Wilson / Division of Water Resources / State Department of Conservation and Natural Resources	Written Testimony