

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

**Eightieth Session
March 19, 2019**

The Senate Committee on Natural Resources was called to order by Chair Melanie Scheible at 4:00 p.m. on Tuesday, March 19, 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, Committee Policy Analyst
Christine Miner, Committee Secretary

OTHERS PRESENT:

Wade Poulsen, Lincoln County Water District
Tim Wilson, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources
Laurel Saito, Nevada Water Program Director, The Nature Conservancy
Patrick Donnelly, Center for Biological Diversity
Neena Laxalt, Humboldt River Basin Water Authority
Warren Hardy, Moapa Valley Water District

CHAIR SCHEIBLE:

We will open the hearing on Senate Bill (S.B.) 236.

SENATE BILL 236: Revises provisions relating to a change in the place of diversion of water. (BDR 48-635)

SENATOR PETE GOICOECHEA (Senatorial District No. 19):

I will present S.B. 236. The intent of the bill is to allow a property owner to change the point of diversion of water to within 300 feet, if it crosses a quarter-quarter line, without filing a change application. There is an aerial photo illustrating this concept in ([Exhibit C](#) contains copyrighted material. Original is available upon request of the Research Library.) The yellow line encircling the property in the photo indicates a 300-foot distance from the property water source. The red line running vertically through the yellow circle is the quarter-quarter property line, which is the line of a 40-acre subdivision. The red crosshatched lines within the yellow circle indicate the portion on adjacent land. An owner wants to move a water source or well across the property line to land under the same ownership.

Existing law allows a change of point of diversion of water to within 300 feet from the location of the existing point of diversion. Senate Bill 236 proposes to allow the owner to relocate the point of diversion across a property line as long as the property is of the same ownership. The place, manner and use of the well being diverted must remain the same. The owner will not be able to accrue more water or put the water to use in a different manner. It will remain the original point of diversion. This is so the owner cannot move it 300 feet this year and another 300 feet the following year. The original point of diversion is the one of record.

Section 1, subsection 1, paragraph (a) of S.B. 236 does not accurately describe the intent of the bill. It will be difficult to have an amendment drafted at this time. The property owner must own both parcels of property. The bill does not change the place and manner of use or the point of diversion. It does allow the owner to drill within the 300-foot cone as depicted on [Exhibit C](#).

Section 2 of the bill repeats the language of section 1, and a rewrite of the bill is warranted. There are only 40 lines and it should be simple to amend it to achieve the intent.

SENATOR BROOKS:

If the well was moved to the next parcel, what would happen if that parcel was sold by the owner? Would the owner have to move the point of diversion back to its original place?

SENATOR GOICOECHEA:

The owner of the property would not want to sell the parcel of property after a well was drilled, considering the initial investment. To sell it would be to sell the well and the water rights. The first parcel would be without water. It would vacate the permit.

SENATOR HANSEN:

If the owner redrills a well, is the owner still required to go through the permitting process?

SENATOR GOICOECHEA:

Under existing regulation, drilling is allowed within 300 feet of the existing point of diversion without applying for an additional permit. This is costly and the owner runs the risk of protest. Senate Bill 236 proposes to allow the owner to cross a property line if it is owned by the same owner. There are many ranches built around a well for its own domestic water supply. A need arises to redrill the well. The bill will allow the property owner to drill on the adjacent property, as long it is within 300 feet and is of the same ownership. A municipality might own property around its pump facility and storage tanks, and wishes to move outside the existing footprint. The intent of the bill is to allow this without requiring an additional permit.

CHAIR SCHEIBLE:

Under current law, if the owner wants to move within the yellow circle as shown on [Exhibit C](#), but this does not cross a property line, would the owner be required to file an application to change the point of diversion?

SENATOR GOICOECHEA:

Yes, if an owner crossed the property line under existing regulation, an application would be required.

CHAIR SCHEIBLE:

If the owner is not crossing the property line, would the owner need an application?

SENATOR GOICOECHEA:

If the owner does not cross a property line, a change application is not required as long as the 300-foot provision is adhered to.

WADE POULSEN (Lincoln County Water District):
The Lincoln County Water District supports the intent of S.B. 236.

TIM WILSON (Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources):
The Division of Water Resources is neutral on S.B. 236. The language in the bill refers to "place" of diversion, which is synonymous with "point" of diversion, and I will use the more modern term "point" of diversion.

The Division recognizes the concepts set forth in S.B. 236 as similar to the provisions contained within the Division's own administrative regulations on water well and related drilling as set forth in *Nevada Administrative Code* (NAC) 534.300. This code provides that a replacement well must not be drilled more than 300 feet from the location of the existing point of diversion described in the permit, waiver or certificate. It may not be moved outside of the 40-acre subdivision described in the permit, waiver or certificate.

Senate Bill 236 offers comparable language, but does not restrict moving the point of diversion outside of the 40-acre subdivision described in the water right permitted certificate. The Division supports the concept of S.B. 236, but requests clarification that the bill only apply to a change in the point of diversion of an existing groundwater right, not a surface water right. The Division recommends clarifying that the movement of the point of diversion within the allowed 300 feet, remains on property under the same ownership and is appurtenant to the original point of diversion.

The Division requests language to clarify that the original place of diversion is the original point of diversion as identified in the water right permit or certificate. This clarification will ensure that the point of diversion cannot migrate beyond 300 feet from the original point of diversion described and approved within the original appropriation and supporting map.

LAUREL SAITO (Nevada Water Program Director, The Nature Conservancy):
The Nature Conservancy is neutral on S.B. 236. I will read from written testimony ([Exhibit D](#)).

PATRICK DONNELLY (Center for Biological Diversity):
The Center for Biological Diversity is neutral on S.B. 236. It wants the author of the bill to consider some additional language. The purpose of a change

application is for the State Engineer to consider the proposal to gauge if the proposed change would conflict with senior water right holders, public interest, the environment, and other related things. If a well is moved 300 feet closer to a spring, a creek, a river, a marsh or a senior water rights holder, it could impact them.

Additional language in the proposed bill could ensure that if the change within 300 feet is closer to a surface water source, then it would be exempt from the bill and require a change application. This would prevent unanticipated consequences.

NEENA LAXALT (Humboldt River Basin Water Authority):

The Humboldt River Basin Water Authority is concerned about the diversion possibly ending close to other water sources. When Senator Goicoechea explained that the original point of diversion will not be altered, the Water Authority is neutral on S.B. 236.

WARREN HARDY (Moapa Valley Water District):

Moapa Valley Water District supports S.B. 236. The bill addresses a very specific issue in the District. [Exhibit C](#) illustrates its concern. The yellow circle is the 300-foot marker. District engineers identified the portion of the 300 feet, indicated by the red crosshatched area, as the ideal place to drill the new well. Under current statute, this is prohibited because the proposed new well lies across a quarter-quarter property line. The intent of the proposed bill is to allow drilling on an owner's adjacent parcel. The Division of Water Resources made good points that should be addressed. It is not the intent to allow continuous movement, but to address situations as illustrated in [Exhibit C](#).

SENATOR GOICOECHEA:

In most cases, 300 feet is typically only half the depth of a well. If the diversion of a water source was to be placed close to a marsh area, the State Engineer or the driller would consider this because the sanitary seal on the casing would need to be a cement seal. This would add considerable expense to a project. Some wells are 1,000 feet deep. The ability to change the point of diversion of water is only allowed once in the bill.

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CHAIR SCHEIBLE:

Having no further business, we will adjourn this meeting at 4:17 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	3		Attendance Roster
S.B. 236	C	1	Senator Pete Goicoechea	Aerial Photo
S.B. 236	D	2	Laurel Saito / The Nature Conservancy	Written Testimony