MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Eighty-First Session
April 5, 2021

The Committee on Natural Resources was called to order by Chair Howard Watts at 4:02 p.m. on Monday, April 5, 2021, Online. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblyman Howard Watts, Chair
Assemblywoman Lesley E. Cohen, Vice Chair
Assemblywoman Natha C. Anderson
Assemblywoman Annie Black
Assemblywoman Tracy Brown-May
Assemblywoman Maggie Carlton
Assemblyman John Ellison
Assemblywoman Cecelia González
Assemblywoman Alexis Hansen
Assemblywoman Susie Martinez
Assemblywoman Robin L. Titus
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jann Stinnesbeck, Committee Policy Analyst
Allan Amburn, Committee Counsel
Devon Kajatt, Committee Manager
Nancy Davis, Committee Secretary
Trinity Thom, Committee Assistant

OTHERS PRESENT:

Kristin Szabo, Administrator, Division of Natural Heritage, State Department of Conservation and Natural Resources
Adam Sullivan, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources
Micheline Fairbank, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources
John Hadder, Executive Director, Great Basin Resource Watch
Martin Paris, Executive Director, Nevada Cattlemen's Association
Kyle Roerink, Executive Director, Great Basin Water Network
Patrick Donnelly, Nevada State Director, Center for Biological Diversity
Bob Russo, Private Citizen, Gardnerville, Nevada
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation
Nikolai Christenson, Member, Legislative Committee, Toiyabe Chapter, Sierra Club
Chris Clarke, Associate Director, California Desert Program, National Parks Conservation Association
Steve Walker, representing Eureka County; and Carson City
Stephen Hartman, Executive Vice President, Vidler Water Company, Carson City, Nevada
David Rigdon, Private Citizen, Carson City, Nevada
Oz Wichman, General Manager, Nye County Water District
Edwin James, General Manager, Carson Water Subconservancy District
Wade Poulsen, General Manager, Lincoln County Water District
Rupert Steele, Chairman, Confederated Tribes of the Goshute Reservation
Robert Coache, Private Citizen, Las Vegas, Nevada
Andrew M. Belanger, representing Southern Nevada Water Authority
David Dazlich, Director, Government Affairs, Vegas Chamber
Matthew Walker, representing Southern Nevada Home Builders Association
Nicole Rourke, Director, Government and Public Affairs, City of Henderson
Jared Luke, Director, Government Affairs, City of North Las Vegas

Chair Watts:
[Roll was taken. Committee rules and protocol were reviewed.] We will start with our work session, beginning with Assembly Bill 71.

Assembly Bill 71: Revises provisions relating to certain information maintained by the Division of Natural Heritage of the State Department of Conservation and Natural Resources. (BDR 18-313)

Jann Stinnesbeck, Committee Policy Analyst:
As nonpartisan staff, I cannot advocate for or against any measure before the Committee.

Assembly Bill 71 was heard in this Committee on February 24, 2021 [Exhibit C]. This bill makes any information related to the location of a rare plant or animal species or ecological

community confidential. This bill also authorizes, under certain circumstances, the administrator of the Division of Natural Heritage of the State Department of Conservation and Natural Resources to release this confidential information for a reasonable fee.

There were two proposed amendments to the bill. The Division of Natural Heritage proposed an amendment, which makes the following changes:

- Clarifies only site-specific location data is considered confidential. While this information is not subject to disclosure, it does not exempt the information from qualifying as public record;
- Removes the term "legitimate activity" and provides that use of the data has to be related to conservation, environmental review, education, land management, or scientific research or similar purpose;
- Provides that private landowners where sensitive species or ecological communities occur are entitled to such confidential information;
- Removes the reasonable fee provision and instead references existing statute for charging a reasonable fee. This change will remove the two-thirds requirement for this bill; and
- Adds federal candidate species to the definition of rare species.

Clark County proposed an amendment, which makes the following change: It ensures that entities engaged in conservation, environmental review, or scientific research, who rely on data maintained by the Natural Heritage Program, will continue to have reliable access to the data they need to manage natural resources while preserving data confidentiality.

Chair Watts:
Are there any questions?

Assemblywoman Hansen:
One of the amendment changes states, "Clarifies only site-specific location data is considered confidential. While this information is not subject to disclosure, it does not exempt the information from qualifying as public record" [page 1, Exhibit C]. That is confusing to me, and I think I need some clarification.

Kristin Szabo, Administrator, Division of Natural Heritage, State Department of Conservation and Natural Resources:
My understanding is that the information is still listed under *Nevada Revised Statutes* (NRS) 239.010 as an exemption.

Assemblywoman Hansen:
Maybe I am not correct, but this sounds contradictory unless I am reading this wrong. The work that was done in the amendment was to be site-specific. I understand what the Division is trying to do, and the site-specification location will not be disclosed. Is that correct?

Chair Watts:
I will say that one of the purposes of the amendment was to clarify specifically the location data itself is what was being withheld. There was a lot of discussion during the hearing around any documents that relate to the information potentially being withheld. One of the primary purposes of that change is to ensure that redaction would happen of the actual location information and not withhold the entire document.

Allan Amburn, Committee Counsel:
In looking at the proposed amendment, we see that the information is not subject to public disclosure and striking the phrase "is not a public record for the purposes of chapter 239 of NRS" [page 2]. The same amendment is listed in NRS 239.010, so it seems the intent is that exception in NRS 239.010 still applies to this information. If need be, we can provide clarity in section 1, subsection 2 [page 7], by verifying it is not subject to public disclosure since it is not a public record. It may be beneficial to keep that reference that the site-specific information is not a public record under NRS Chapter 239 since the reference in NRS 239.010 is being kept. If that is conflicting with the intent of the amendment, we would defer to that.

Assemblywoman Hansen:
I think that helps. I think the problem is that the work session document is a summary, but if I refer to the direct amendment that is attached [Exhibit C], I understand it.

Chair Watts:
Are there any other questions? Hearing none, I will accept a motion.

> ASSEMBLYWOMAN COHEN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 71.
>
> ASSEMBLYWOMAN GONZÁLEZ SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Hansen:
I am going to be a no at this point. I do appreciate the work that has been done.

Chair Watts:
Is there any other discussion? We will vote.

> THE MOTION PASSED. (ASSEMBLYMEN BLACK, ELLISON, HANSEN, TITUS, AND WHEELER VOTED NO.)

I will assign the floor statement to Assemblywoman González. The next bill in our work session is Assembly Bill 97.

Assembly Bill 97: Revises provisions governing toxic chemicals. (BDR 40-141)

Jann Stinnesbeck, Committee Policy Analyst:
Assembly Bill 97 was heard in this Committee on March 29, 2021 [Exhibit D]. This bill requires the State Environmental Commission in the Division of Environmental Protection (NDEP) of the State Department of Conservation and Natural Resources, in regard to perfluoroalkyl and polyfluoroalkyl substances, to adopt water quality criteria for surface waters, establish effluent limitations for discharges, and establish maximum permissible levels in drinking water. The bill also requires the Commission to adopt regulations:

- Setting forth requirements for a certificate of registration for the use or storage;
- Establishing standards for the capture and disposal; and
- Establishing a schedule of penalties for failure to follow the regulations concerning perfluoroalkyl and polyfluoroalkyl substances.

The bill prohibits the manufacturing, selling, or distribution of Class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances and prohibits its use for firefighting training, for testing firefighting foam fire systems, and for use at certain airports. The bill prohibits, with certain exceptions, the knowing manufacture, sale, offering for sale, distribution for sale, or distribution for use of a children's product, upholstered residential furniture, residential textile, business textile, or mattress containing any flame-retardant organohalogenated chemical in any product component in amounts greater than 1,000 parts per million. The bill prohibits, with certain exceptions, a manufacturer from replacing such a flame-retardant organohalogenated chemical with any other chemical that is known or suspected with a high degree of probability to:

- Harm the normal development of a fetus or child;
- Cause cancer, genetic damage, or reproductive harm;
- Disrupt the endocrine system; or
- Damage the nervous system, immune system, or organs or cause other systemic toxicity.

Lastly the bill makes who willfully and knowingly violates this subject to a maximum penalty of $1,000.

There is one amendment proposed by Assemblyman Howard Watts, which makes the following changes:

- Removes the State Environmental Commission requirement to take action on perfluoroalkyl and polyfluoroalkyl substances;
- Requires NDEP to form a working group to study perfluoroalkyl and polyfluoroalkyl substances;
- Defines perfluoroalkyl and polyfluoroalkyl substances to mean a class of fluorinated organic chemicals that contain at least one fully fluorinated carbon atom designed to be fully functional in Class B firefighting foam;

- Prohibits any person, political subdivision, or governmental agency from discharging Class B firefighting foam that intentionally contains perfluoroalkyl and polyfluoroalkyl substances in certain circumstances. Additionally, provides that a violation of this prohibition is a misdemeanor;
- Requires the notification of such a discharge to NDEP within 24 hours;
- Changes the effective date to January 1, 2022; and
- Removes "international" agencies from section 25 of this bill.

Chair Watts:
Are there any questions?

Assemblyman Wheeler:
The amendment removed the State Environmental Commission requirement to take action. Did that remove the two-thirds vote requirement on the bill?

Chair Watts:
The intent was to remove all the provisions; particularly, there were some sections setting water quality standards which led to the fiscal notes. There is another section in the bill related to regulating entities that store or discharge these materials. That regulatory system is also what would create the two-thirds vote requirement. All of those are proposed for removal in my conceptual amendment.

Are there any other questions? Seeing none, I will accept a motion to amend and do pass.

> ASSEMBLYWOMAN COHEN MADE A MOTION TO AMEND AND DO PASS ASSEMBLY BILL 97.
>
> ASSEMBLYWOMAN MARTINEZ SECONDED THE MOTION.

Is there any discussion?

Assemblyman Wheeler:
I am going to vote no but reserve my right to change my vote on the floor. I appreciate your patience.

Assemblywoman Hansen:
I appreciate the work that has been done. I am going to vote no. The idea of adding a working group to study some of these substances seems like we may be putting the cart before the horse. I reserve my right to change my vote on the floor.

Chair Watts:
I would encourage you to connect with the Division of Environmental Protection about how the work group fits into the already existing federal grant they have received to work on developing an action plan for some of these substances.

Assemblywoman Black:
I agree with what Assemblyman Wheeler said. I am a no for now, but reserve my right to change my vote.

Chair Watts:
Is there any other discussion on the motion? Seeing none, we will vote.

> THE MOTION PASSED. (ASSEMBLYMEN BLACK, ELLISON, HANSEN, TITUS, AND WHEELER VOTED NO.)

I will take the floor statement. That concludes our work session. I will move into our bill hearings, beginning with Assembly Bill 354.

Assembly Bill 354: Authorizes the creation of water banks. (BDR 48-1091)

Adam Sullivan, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:
The Division of Water Resources within the State Department of Conservation and Natural Resources is pleased to have this opportunity to introduce Assembly Bill 354. I would like to start with a discussion of the problem that is meant to be addressed by Assembly Bill 354 and also Assembly Bill 356, which is up next on today's agenda. It is important to help convey why these bills are being brought forward, where they originated, and even though they are not perfect, why we support these bills as positive steps towards solving the larger problem in the long term.

One of the basic tenets of Nevada water law is that a water right holder must beneficially use the water to maintain a water right. If a water right is not used, it can be lost through cancellation, forfeiture, or abandonment.

A water right is also a valuable asset as a private property right, and a water right owner has motivation to maintain that asset in good condition. If an irrigator does not need all of the water that he has a right to use, then he can file extensions to prevent forfeiture or cancellation for non-use. But if an extension is not requested timely, or if statutory criteria are not met, or water is not put to use for a long enough period of time, then the water right is subject to being lost.

What we hear all the time from irrigators is that this is either incentivizing someone to use more water than he needs, he is being punished for not using his entire water right, or he is forced to sell off what he does not use. There is no really satisfying response to that except, "That is how the law is written, and you can continue to file for extensions to avoid cancellation or forfeiture."

The intent behind our office in offering both A.B. 354 and A.B. 356 is to provide some flexibility for irrigators within the existing prior appropriation system to not have to use all of

their water rights and still retain the asset value without having to file extension requests each year.

These issues are not unique to Nevada; other western states with a limited water supply and similar water laws have the same kinds of problems. There are a handful of different innovative ideas that are in place to create some flexibility. Assembly Bill 354 is borrowed from Utah. We introduced this to share the idea that if these programs are working in our neighboring states then it might be something that is worth considering for Nevada.

As a state agency, we are invested in responding to the problems that are brought to us by water right holders, and being open to potential solutions. These bills are not perfect, and there are many locations or circumstances where they would not apply. However, they are reasonable ideas that can help address the problems that are expressed to us; as a state agency we would be able to accommodate the administrative requirements without major changes to our existing procedures.

There are much larger and more difficult water supply problems at stake, such as not having enough water to serve all the existing commitments over time. These bills provide a small step in the direction of being better equipped to deal with long-term issues by providing more dynamic options, or more tools in the toolbox for irrigators and communities to be adaptable over time. I think it is important to stress that these programs do not necessarily solve problems for our office, but are an effort by our agency to acknowledge the challenges—both logistical and financial—with extensions of time, "use it or lose it," and water right ownership. These programs are a good faith effort by our office to find potential solutions and consider different options without being overly prescriptive. The bottom line is, these bills are not for us as an agency, rather it is an effort to be creative and try to improve the way we serve the public.

In recent months, we have discussed these bill concepts with stakeholders and have heard many suggestions, criticisms, and reservations about the content of these bills. The bills as written were just available for review a week ago, and as a Division we did not have an opportunity to incorporate any edits since we shared our draft bill language with our stakeholder community prior to the bills being introduced. We agree with many of the concerns and suggestions that we have heard. With today's testimony, we will include an explanation of several suggested amendments that we think are necessary for these bills to move forward.

Assembly Bill 354 is a bill that would introduce a water banking and leasing program. This bill closely follows a program that was adopted in Utah last year. The concept was vetted over a period of years and eventually had broad support in the irrigation community as well as the conservation community. It passed with unanimous support in the Utah Legislature. It was brought to our attention several times as something that could also work in Nevada. The concept was debated for a number of years prior to being introduced before the Utah Legislature, and we found that the vetting that was done in Utah, which has similar issues, could prevent a lot of duplicate efforts in Nevada.

It is called a "water bank," but I think of this more as an exchange or a collective that could be implemented within a local community. One of the main drivers in Utah was to provide an alternative to "buy-and-dry," which happens when a project comes into an area and there is no unappropriated water available; to get the water they need, they buy up a farm or ranch and then let it go dry. This creates problems for the neighboring community with weeds, rodents, and dust. One of the reasons for the water bank is that it is a way to balance the demand for different kinds of economic development while preventing those negative consequences. This is one example of a problem that this bill could help with. Again, the intent of the bill is to think outside of the box and explore options to provide flexibility for irrigators and irrigation communities. As written, it could be used in surface water systems or groundwater basins, but not both. It would be entirely optional, and there is no obligation for participation by any community or any water right holder. There is a sunset date after ten years. If there is no interest, or if it is not working, the program would expire. Micheline Fairbank will now walk through the components of the bill and the amendment [Exhibit E]. [Written testimony was also provided, Exhibit F.]

Micheline Fairbank, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:
Sections 1 and 2 establish a new section in *Nevada Revised Statutes* (NRS) Chapter 533, creating the Nevada Water Banking Act. Section 3 is intended to set forth the purpose of creating a bank program in Nevada.

We proposed certain amendments that reflect some of the comments and concerns that we have heard from our stakeholders and have made additional revisions in an effort to make the intents and purpose of the program clear [Exhibit E].

Sections 4 through 17 provide definitions for specific terms utilized within the bill. Section 18 sets forth the mandate that the provisions are to be construed in a manner that fulfills the purpose of the legislation.

Section 19 contains critical clarification that I will address in more detail. Specifically, the section is intended to make certain that other agreements regarding the leases for use of water rights are not precluded by the enactment of this law. For example, many municipal water suppliers utilize banked water, which are water rights that are held in trust for the purpose of serving future developments. There are other types of water banking agreements in Nevada, and this legislation is not intended to interfere, impede, or otherwise limit those existing agreements. Additionally, there are other types of agreements in the state that may fall within a banking style that are not intended to be precluded or superseded by this legislation. The language in section 19, subsection 2, makes it clear that this program is entirely voluntary and that the State Engineer cannot require the creation of or the participation in a water bank. Section 19, subsection 3, is in the proposed amendment [page 3, Exhibit E] intended for limited water banks created under this particular statute should be limited and not utilized in a manner to facilitate interbasin transfer of water. Again, this is not intended to interfere with or preclude existing water banking-type agreements that may allow for such provisions, as long as they conform with existing law.

Section 20 establishes the criteria for an entity applying to become a statutory water bank.

Section 21 establishes the required action by the State Engineer upon receiving an application to create a statutory water bank. Additionally, one of the proposals in the amendment for this particular section is to change the requirement for a public meeting to a public hearing [page 6]. We proposed this amendment because we believe a public hearing is a more appropriate forum in which to consider an application for the creation of a statutory water bank.

Section 22 addresses the public process. We have proposed certain amendments to again specify that it must be a public hearing. We are providing a little more specificity with respect to the location of the hearing. Additionally, we proposed changing the provisions that it is limited to "water users" to including "interested persons." We want to ensure this is more broadly accessible for those to provide feedback and comments. We have proposed the deletion of language that would preclude judicial review [page 6].

Section 23 sets forth the requirement for what the State Engineer is required to do with respect to a water bank application following the comment period. Upon further review of the statute, since we have submitted the proposed amendment, we believe that this section also should be amended to specify that it is a public hearing, not just public comment.

Section 24 states that if a water bank application is approved, the water bank's governing body has additional requirements for any information that was contained in the original approved application, and if the information has changed, the body has to submit a revised application to the State Engineer.

Section 25 sets forth the minimum statutory requirements for the operation of a water bank. Additionally, this section includes the provision to allow a water bank to operate as it wishes and not to be bound to priority rights for leasing water from a water bank, unless that upheld water bank is established. Again, the intent behind this particular provision is to allow the water banks both freedom and discretion to administer their water bank in the manner in which they wish. However, that provision does not transcend beyond the existence of a water bank and the priority rights with regard to administration of a basin or a system would still be adhered to and followed. We have also provided a suggested amendment to include section 25, subsection 1, paragraph (e), that would make it abundantly clear that water rights deposited into a water bank do not change ownership and that the ownership of that water is retained by the holder of the right. It is merely that the water bank remains with the ownership of that water right [page 7, Exhibit E].

Section 26 sets forth criteria for the creation of a contract water bank. The primary distinction between a statutory water bank and a contract water bank is that a contract water bank may only be established by a public entity and that it is based upon the existence of a contract for use of the banked water. Additionally, in this section we have proposed language making certain that a contract water bank is limited to a single hydrographic basin or stream system. Finally, we proposed adding the word "outstanding" to this section to

ensure it is clear that all payments are made to depositors or holders of water rights transferred to the water banks [page 8, Exhibit E].

Section 27 sets forth the required action by the State Engineer upon receiving an application for a statutory water bank. Again, we are proposing to make certain that the contract water bank application is subject to a public hearing, and that it is also open to interested persons, not just water users, and to delete the language precluding judicial review.

Section 28 sets forth the requirements of the State Engineer acting upon a contract water bank application.

Section 29, in conjunction with a statutory water bank, is the information in the application regarding the water bank changes from what was included in the original application, a revised application must be filed.

Section 30 incorporates the same criteria for statutory and contract water banks apply. We recommended that the bill be amended to make it clear that the water rights remain in the ownership of the holder of the rights deposited into the bank [page 10]. Again, this section includes provisions to allow for a water bank to operate as it wishes, not to be bound by the priority rights. We have suggested including language making it clear that a water bank cannot operate to effect an inverse condemnation against any water right within the water bank service area, with respect to a contract water bank operated by a public entity.

Section 31 includes provisions that say how water is deposited into the water bank. We suggested the proposed amendment to make this a little clearer [page 11]. Again, this section also includes that sunset provision that Acting State Engineer Sullivan referenced. It also clarifies that the deposited water rights within a water bank are not subject to the "use it or lose it" provision; for example, cancellation, forfeiture, or abandonment. This section also provides clarifying language that the water right ownership remains in the holder of the deposited rights.

Section 32 addresses how water is then withdrawn from the water bank, and it also includes the sunset provision. This section also addresses transfers and interbasin transfers. We suggested the deletion of subsection 3, paragraph (b) [page 12]; upon further review, subsection 3, paragraph (a) should also be deleted.

Section 33 further addresses the use of banked water and limits the uses in a manner that does not conflict with existing rights. We have provided some additional clarification to mirror statutory language in NRS 533.370.

Section 34 includes language regarding certain operational requirements of the water bank. Section 35 specifically states that the right of eminent domain is precluded from being used against banked water rights. The amendment is suggested to make that more broad than narrow. Section 36 includes certain reporting requirements for the water bank to the State Engineer. Section 37 includes consequences for the failure of a water bank to submit the

required reporting. Section 38 requires the State Engineer to make reports to the Director of the Legislative Counsel Bureau and the contents of that reporting. Sections 39 through the remainder of the bill makes conforming changes to existing law.

Chair Watts:
I will open it up to questions from members.

Assemblywoman Titus:
I know that you had some outreach to some stakeholders this last summer. Unfortunately, they did not have the bill, and I have heard from my local jurisdictions that they were not able to delve into this bill as presented. I received some information from Churchill County that they still have concerns regarding this bill. Although I do feel that the amendment presented today may be helpful, nonetheless, there are still concerns. I want to acknowledge for clarity that you cannot transfer this water from one water basin to another. I think that was a huge concern. Thank you for clarifying in the amendment [Exhibit E] that it must be within the same water basin. How many water basins do we have identified in this state?

Adam Sullivan:
There are 256 water basins.

Assemblywoman Titus:
You used the terms "water basins" plus "hydrographic basins." Is there a difference?

Adam Sullivan:
Those terms are generally interchangeable.

Assemblywoman Titus:
I want to make sure that is on the record. The big concern is being able to purchase water. In section 25, this provision looks like it is now removing "use it or lose it" [page 7, Exhibit E]. I have water rights, and this is always a concern. Can you guarantee that if this goes forward, someone will not buy a farm, fallow the fields, bank the water, and then wait for the highest bidder, so this becomes more a commodity as opposed to actually using the water appropriately?

Micheline Fairbank:
I do not think there are any guarantees anywhere in statute for abuse of the process. Under existing law, there are certainly ample opportunities for people to find loopholes and mechanisms in which to exploit their own interests. I cannot make that guarantee. I think that certainly some of those components that are supposed to be incorporated into the water bank process, if there are ways to strengthen the language within the statute to provide better mechanisms to police that type of behavior, we are certainly amenable to finding ways to do that. That is definitely an interest that we all have, to stop that type of speculation. Speculation in water is not a permissive action in Nevada. We would be welcome to alternative language to strengthen that.

Assemblywoman Titus:
One of the things we are concerned about in this day and age is perhaps some hedge funds, perhaps some companies that are actually looking at bringing in water, exporting water, and locking up water to use for future use. At this point in time, are you aware of any potential hedge funds that are looking for and banking water?

Micheline Fairbank:
No.

Assemblywoman Titus:
It seems that the State Engineer may be delegating his authority once the bank is established. I see where anyone can establish this bank, regardless of whether he has any water knowledge. How much oversight will our State Engineer—who should understand water—have over this once the bank is established?

Micheline Fairbank:
The intent of the statute is that the creation of a water bank has to be put forth by at least two individuals who have ownership of those water rights. Section 20, subsection 1, states, "Except as otherwise provided in this section, a person or group of persons who own one or more perfected water rights may submit to the State Engineer an application to create a statutory water bank." That statement limits it so that a water bank cannot be created by someone who just wants to engage in the business of operating a water bank. It has to be an individual or a group of individuals with water rights. As far as abdicating responsibility under the statute, that is not what this bill does. This allows a water bank to be created to serve the individual needs of a particular location. However, the provisions of NRS 533.370, which is the remainder of NRS Chapter 533, still applies to the management and administration of those water rights. When water is transferred from an owner and deposited into the water bank, it still has to undergo the NRS 533.370 analysis. If water is being leased out of the water bank to be used for a particular locality, that transfer is subject to a change application that still has to go through the change application analysis and process. We are not abdicating our responsibility in terms of oversight and management of the water resources. This statute provides the mechanism to create a localized process to allow individual irrigation manner of use owners of water rights to deposit some smaller or larger sums, or all rights that are owned and have that available to be leased out on an annualized basis to serve a different project.

Assemblywoman Titus:
That leasing already happens now, correct? The water owner can lease it now.

Micheline Fairbank:
They can, however, there are challenges. For example, if you have a project that needs 2,000 acre-feet of water, but there are not 2,000 acre-feet of water available to appropriate in the basin, the only alternative would be to buy one or more large properties to acquire those water rights. This provides a mechanism that does not exist in current law for smaller deposits. If that community wanted to support that project, individual irrigators could say,

"I am willing to deposit 100 acre-feet," and another irrigator could say, "I am willing to deposit 200 acre-feet." Those small amounts can aggregate to the total amount needed for that particular project. It does provide flexibility and opportunities. Additionally, the released water rights are sometimes under temporary change applications; that does not absolve the "use it or lose it" provisions. That is another benefit: while that water is being in the bank, it is not subject to the "use it or lost it" provisions.

Assemblywoman Titus:
I have a lot more questions, but there are many more waiting to ask their questions.

Assemblyman Ellison:
I have been looking at this for the last week and a half. The bill undermines Nevada water law and agriculture by creating a new term, "higher and best use." It has always been the best use of the state and what the water is used for. By banking this water, is that for best use?

Adam Sullivan:
I do not disagree with you. That portion of the bill, and that language of "highest and best use" [Assembly Bill 356, section 19, subsection 1, paragraph (h)], we have strongly recommended that it be removed.

Assemblyman Ellison:
How many aquifers are between Winnemucca and Fernley? There is an aquifer that goes into Lovelock.

Adam Sullivan:
The best way to look at that is by the 256 different groundwater basins that we have described before. Each basin is typically defined topographically, with mountain ranges that separate the alluvial bell that forms the aquifers. There are several basins between the Lower Humboldt River region and Fernley.

Assemblyman Ellison:
There is no way that banking this water from a ranch in Humboldt County could be piped to another aquifer in another county to be used, is that correct?

Adam Sullivan:
The amendment that we have included [Exhibit E] has precluded that possibility.

Assemblyman Ellison:
I ask that because this has already happened from Clark County to Coyote Springs. Is that correct?

Adam Sullivan:
Generally speaking, there are a handful of interbasin transfers that are in place in Nevada. This water banking bill, as we see it going forward, would not create a mechanism to facilitate that.

Assemblyman Ellison:
I would really like for the language to say that there is no way water can be piped from one aquifer to the other. Also, if water is banked and then sold, as long as it stayed in the same aquifer for something with the same use, such as a rancher or farmer in Lovelock and he wants to sell some water to someone in the same aquifer, that would still be allowed. He just could not sell outside of that aquifer, is that correct?

Adam Sullivan:
Yes, generally a point of diversion can be moved within one aquifer, but not outside of that aquifer.

Assemblyman Ellison:
I talked with some people in Utah, and they said they have been trying to do this same thing for five years, and they still cannot get the language correct. Oregon is having similar problems as is the San Joaquin Valley in California.

Micheline Fairbank:
This became law through legislation in Utah last year. They are in the process of getting their water banks implemented. It is still in the early stages. I had conversations with members of the Utah State Engineer's office about two-and-a-half weeks ago. They are moving forward with a couple of water banking projects. It takes some time to create the water banks and get all of the legal mechanisms in place, and the application ready and put forth. That is where the state of Utah is at, they are actively moving forward with the process.

Assemblyman Ellison:
It was not that they implemented the law, it was the study they were trying to get to see if it would work. That is clarification that I need to find out from Utah.

Assemblyman Wheeler:
Who holds the State Engineer accountable with the provisions in this bill, should they become law? I am looking specifically at sections 23 and 28. There are no guidelines or criteria for what the State Engineer's office has to do. Where is accountability? Where are the checks and balances if there is a problem? This is confusing to me: how much out of the bank do you give to whom, and how much can you put into the bank? This all seems to be up to the State Engineer.

Micheline Fairbank:
The administration of the water bank is not managed by the State Engineer's office. The statute lays out the statutory requirements, how to create, what will be required moving

forward, and whether to approve an application for a water bank. We have our guidelines set in NRS 533.370, which is the remainder of NRS Chapter 533 with respect to change applications to move water in and out of statutory water banks, which are all subject to judicial review.

Particularly notable is the fact that we are proposing to delete the language that would preclude judicial review of the State Engineer's decision to grant or deny an application to create a water bank. There are ample opportunities for the checks and balances with judicial review. Furthermore, because the statute lays out the criteria for the establishment of a water bank, the State Engineer does not have the particular knowledge of the needs and individual characteristics of the community and what that community needs with respect to the creation of a water bank in the interest that they are trying to serve. Really the idea is that we establish a large statewide framework for the creation, but it is up to those individual communities to develop the specificity as to how the water bank is going to be managed and how they are going to do their business. We do not believe that we should be in the business of micromanaging that.

Assemblyman Wheeler:
The amendment does make me feel a little better since there will be judicial review, but only slightly [Exhibit E].

Assemblywoman Hansen:
I would like to visit the Utah model again. I was on the Legislative Committee on Public Lands, and I recall, just before COVID-19, we had a meeting in Caliente. That was the first I had heard of water banking. While it was very interesting, what strikes me is that this legislation just went into being a year ago in Utah. They do not have much data yet. If I am not mistaken, they have a pilot program. Utah spent 18 months with 50 people representing lots of diverse stakeholders in the process before they brought it forward. It seems to me that this is probably a little premature because I do not think we have done those sorts of things yet. Also, we have not had enough time to see what pans out for Utah. Are there any concerns that we are a little premature in the process?

Micheline Fairbank:
Mr. Sullivan stated in his opening remarks that we are borrowing much of that legwork that Utah has done. They have similar conditions that we have here in Nevada, and we felt that having an optional opportunity for communities to explore this, if it is something that they thought might be useful or beneficial for them, could be helpful. It is not a mandatory program; it is entirely optional. As Mr. Sullivan stated, we are trying to create additional tools and opportunities to allow more flexibility where right now we have very little. With regard to that being a pilot program in Utah, that is how we structured ours also. Utah has a ten-year sunset provision; our statute, as it is being proposed, includes that ten-year sunset provision. Additionally, we have reporting requirements to the Legislative Counsel Bureau before every session to report on what is going on; is it going well, or is it not going well; or is it a banner program and was successful and gives us opportunities to find needs and

refinements. If we fizzle and it did not do what we thought we might be able to accomplish, then it does not have to stay on the books.

Assemblywoman Hansen:
I think it is always good for us to be mindful of what we can learn from other states. We do that a lot in legislation, but particularly in water law. Nevadans are very particular about their state and how they do things, not just in water, but all other things. My constituents, who are all along the Humboldt Basin, might beg to differ. Their situation is very unique compared to those along the Wasatch Front which has lots of tributaries from those massive mountains. There are many different things that need to be addressed. I think having more input from Nevadans in studying this before we implement it would have been my preference, but we are here, we are going to vet it, and we appreciate the steps you have taken.

Assemblywoman Anderson:
This is permissive language. Is there anything to stop a group of individuals from trying to do this without the state's knowledge? Is there any way for someone to come to this state and do this as a practice run?

Micheline Fairbank:
Within our existing statutory structure, there is not a good mechanism to allow a program very much like this to move forward. There are certain challenges with regard to the comingling of water rights into a large community project. That is not to say that it is impossible, but this is a more streamlined process. As I stated before, the provisions of "use it or lose it" would not be suspended in that scenario; that is one of the unique features that comes with this particular program that is not otherwise available in existing law.

Assemblywoman Anderson:
The new language under section 30, subsection 1, paragraph (f), "Shall not require or otherwise utilize a contract water bank . . ." [page 10, Exhibit E]. I do not understand what that means. Will you explain it a little more?

Micheline Fairbank:
I believe you are referencing section 30, subsection 1, paragraph (f) of the amendment, "Shall not require or otherwise utilize a contract water bank to operate as to result in the inverse condemnation of any water right within the service area." A contract water bank can only be created by public entities, and the idea is to explicitly provide for in statute that that public entity-created water bank cannot utilize the water bank to constitute an inverse condemnation act to those privately held water rights that may have been deposited into the water bank.

Assemblywoman Anderson:
Thank you for that clarification. If that were to happen, then all of those private entities would be alerted per the open meeting, or would it be the private entity's responsibility to find out about those public meetings?

Micheline Fairbank:
I think the way it would operate is that if someone were to bring an inverse condemnation action to that public entity, which is under a separate statutory provision, that would automatically be precluded by [unintelligible].

Chair Watts:
Are there any other questions from members? Seeing none, I will move on to testimony. I would ask that callers try to keep their comments focused on the amendment [Exhibit E]. Also, I ask that you focus on the issues of policy and not make assumptions or judgments about any of the motives behind the legislation. I will hear the first caller in support. Hearing no one, I will move to opposition.

John Hadder, Executive Director, Great Basin Resource Watch:
The Great Basin Resource Watch is opposed to A.B. 354 for all the reasons we have heard already. There are a number of things that are of concern to us; even the definition of "service area" is ill-defined. It could extend across basins. We think that a service area would have to be within a hydrographic basin to avoid complications down the road. It sounds like the parameters around the governing body for each water bank are not clearly defined in legislation. It seems too open-ended and too much authority lies with the State Engineer to make those judgments. We think there needs to be more public engagement around that process.

We do not like the issue of a "perfected water right" being defined. The document is interesting because even as of last year the Legislative Counsel Bureau Research Division indicated that "perfected" and "certified" essentially mean the same thing, which pertains to a water right that has been put to beneficial use. I think that blurs what the meaning is, and perhaps its use in other areas of the NRS could be a problem.

Overall, we just do not think we are ready for this kind of legislation; it does not lay out all of the details. The state of Nevada needs to evaluate this policy of water banks in a more general way. We really need something like a full-scale environmental review process on how to move forward on something like this. It is premature, not fleshed out enough, and we are concerned that perfected water rights are defined only from the perspective of irrigation rights and move waters from one type of use to another. Great Basin Resource Watch is opposed to this bill.

Martin Paris, Executive Director, Nevada Cattlemen's Association:
The Nevada Cattlemen's Association is also in opposition.

Kyle Roerink, Executive Director, Great Basin Water Network:
The Great Basin Water Network opposes A.B. 354. We appreciate the amendment that came late this morning; however, it does not mitigate the underlying problems with this bill. This is not a conservation measure. This is not a banking measure. This is a water marketing scheme masquerading as something good. We cannot find one line that ensures water will actually be conserved. We cannot find one measure that would defend rural communities.

We cannot find one provision that protects the environment. Undermining the doctrine of prior appropriation and the anti-speculation doctrine is not good policy. Nor is it the way to get out-of-balance basins under control.

I know Utah keeps coming up as an example. They have no track record there yet. If you want an example of banks, look at California. Let me say, there are a lot of water banking examples that are not pretty. From a managerial perspective, we are very concerned about the content-free nature of the proposal. There are no definitions of what a satisfactory bank is. There is no standard of how a bank will function. Once the water is in the bank, it is out of the control of our state. Even with the amendment, this bill is designed to strip water away from agriculture and the environment. We do not know who really wants this bill, but we know their intentions are not in the public interest, they are only in the interest of profit. Please oppose this bill. [A letter was also provided Exhibit G].

Patrick Donnelly, Nevada State Director, Center for Biological Diversity:
I have submitted a letter, along with several other groups, objecting to this bill [Exhibit H]. Nothing was resolved with the amendment [Exhibit E]. Overall, this bill is a water speculation bill that would decrease our control over our water resources in this state and increase the ability of investors, banks, and scammers to speculate on our water.

From a more technical perspective, a groundwater aquifer is not simply a bucket wherein if you leave an acre-foot of water in it today, it will be there tomorrow for you to pump out. We are in a highly dynamic changing climate, evapotranspiration rates are increasing, the evaporation off the playa is increasing, and in general, groundwater storage is decreasing. There is a false premise that water we tuck away in an aquifer today will be there 10, 20, or 50 years from now. That just may not be reflective of the climate and drought reality we are in. Perhaps there are policy mechanisms to account for that, but this bill was put forward in such a rushed manner and with so little consultation with stakeholders that we could not possibly hope to come to center on those types of issues within the confines of the legislative session. Please oppose this bill.

Bob Russo, Private Citizen, Gardnerville, Nevada:
I oppose A.B. 354. I have concerns that this bill could favor the holding and sale of water to the highest bidder at the expense of water conservation. I fear it will potentially jeopardize the livelihoods of rural Nevada communities by ultimately reducing their water supply. There is a lot of details that I would need more time to understand before I could confidently support this bill. In general, I get the impression from hearing the questions that more time and more understanding are needed before this bill moves forward. I urge you to please vote no.

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:
We are testifying today in opposition to A.B. 354. Early this morning, about a half hour after I submitted our organization's written opposition to A.B. 354, I received the amendment proposed by the Acting State Engineer [Exhibit E]. After reviewing those proposed amendments, I have rescinded my written opposition. I would like to have it noted on the

record that we greatly appreciate the changes which have been offered in the amendment. A number of our concerns have been proposed for alterations, which assist us in thinking differently in our views of the original legislation. These proposed updates are noteworthy and major. After wrestling with whether we should change our opposition in light of the proposed amendment, we came to the conclusion that we should recognize our favorable reaction to the proposed changes, but still raise concern over the process that is unfolded for dealing with extremely complicated changes in water law on the basis that had been conducted. We are not going to say that we are opposed to working through a thorough process ironing out details which remain as questions. We simply are not at a place at this point and time to be able to move forward without a more comprehensive and interactive discussion, line by line, and detail by detail, with all stakeholders involved in the process.

Nikolai Christenson, Member, Legislative Committee, Toiyabe Chapter, Sierra Club:
On behalf of the Sierra Club and our more than 40,000 members and supporters statewide, I am speaking in opposition to A.B. 354. While we understand that the new amendment has improved things, and while we understand the intention to introduce more amendments that will address some of our concerns, we can only evaluate the bill as it stands and as best we can incorporate the amendment that we received this morning [Exhibit E].

As it stands, we do not think this legislation on balance protects the environment. We do not think it conserves water. This is not legislation to defend the public interest. At its core, this is not even legislation to create a water bank. The core of this legislation creates a water market, where the resource will be sold, leased, and commoditized in a way that currently is not allowed in Nevada.

We are the nation's premier conservation organization. We know conservation when we see it. This is not it. We are worried this is going to benefit powerful entities in order to gain more control over our most precious natural resource in the nation's driest state.

This is not a bill that the Sierra Club wants. As far as we can tell, this is not a bill that rural Nevada wants. This appears to be a bill that benefits the big entities that view water as a currency rather than our most important resource. We need to take some time to work with the stakeholders and produce a comprehensive plan that actually works, rather than trying to cram, at the eleventh hour, all the amendments needed to make a very complex piece of legislation work out. We do not think that is advisable. Let us take another shot at this in the next session. For these reasons we ask you to please oppose A.B. 354. [Written testimony was also provided Exhibit I.]

Chris Clarke, Associate Director, California Desert Program, National Parks Conservation Association:
On behalf of National Parks Conservation Association, we oppose A.B. 354. We have spent years working to protect Nevada's water resources while also fighting in places here in California to stop the kind of behavior that A.B. 354 would legitimize. As we have learned in California, water banks are a "feel good" term to describe water markets. We have seen publicly traded companies and hedge funds in California come in and try to acquire water for

one reason and one reason only: profit. The provisions in A.B. 354 that legitimize speculation, remove due process rights, limit access to the courts, and undermine Nevada water law will make it all the easier for companies to export water for profit. If you want to turn Nevada into a California-style giant network of pipelines, A.B. 354 is how you start. Do not take my word for it; remember when Water Asset Management, a New York City hedge fund, presented to the Nevada Senate in 2017 and advocated for a giant network of pipelines connecting the state. This is what water marketing looks like. This is where we are headed with A.B. 354. This is not a bill that will conserve a drop of water, protect our environment, or defend small rural communities. This is a bill to further commoditize water. Please oppose this bill.

Steve Walker, representing Eureka County; and Carson City:
We are in opposition to A.B. 354. My comments will highlight the testimony that has been submitted by Jake Tibbitts, Natural Resources Manager, Department of Natural Resources, Eureka County [Exhibit J]. Those comments were submitted prior to the release of the amended version of the bill, but my comments are specific to that version.

Eureka appreciates the State Engineer's efforts to incorporate change and ideas developed by stakeholder groups and will continue to support those efforts so we can reach common ground.

The Utah water bank legislation took years of stakeholder engagement and many meetings. Additionally, the bill came with a specific appropriation. We believe that similar efforts need to occur in Nevada, and that has not occurred.

The bills being heard today are complicated and will greatly increase the workload within the Division of Water Resources. We do not understand how the State Engineer can take on additional workloads without additional staff or requests for staff. A $350 fee seems very inadequate to accomplish the oversight required by the legislation.

Section 20, subsection 2, paragraph (b), subparagraph (1) of the bill says, "Will not discriminate between depositors, borrowers or the manner of use for any banked water right." We believe this could allow the banks to ignore "first in time, first in rights" statutes.

Sections 24 and 29 appear to allow changes to the provision of a water bank without a public process.

There appears to be no "use it or lose it" provision in sections 25 and 30. There should be identified time limits on how long water can be placed in a bank before being used.

Section 32 supports existing law for intercounty and interbasin water transfers, yet this could facilitate or streamline moving water from rural communities and hurting rural economies.

Section 34 and 36 seem to create a "fox guarding the henhouse" due to self-accounting and self-reporting of illegal water use details in these sections.

The written opposition [Exhibit J] identifies other issues with A.B. 354 that two minutes of testimony cannot completely cover.

Stephen Hartman, Executive Vice President, Vidler Water Company, Carson City, Nevada:
I have submitted a number of comments on previous drafts of A.B. 354. We are opposed to this bill and many of the details, not necessarily from the concept standpoint. We are involved in a water banking agreement currently with Washoe County and Truckee Meadows Water Authority for a project that they designated well over two decades ago as a way to deal with what they saw as their impending growth. We are also involved in a water banking arrangement with Lyon County, which is going through incredible growth at this time. Also, we are involved with the Lincoln County Land Act of 2020, which is the subject of federal land legislation.

One of the problems with the bill is that it does not recognize the existing joint banking agreements between the private sector and the public sector. The three banking agreements I discussed are examples of the public sector, in which you have communities that are growing and did not have the water resources capable for them. Particularly Washoe County and Lincoln County had envisioned that growth. They went through the environmental impact study process, and we ended up with federal legislation relative to both the Washoe County and the Lincoln County projects.

I think we need to restart this engine. The other thing is, if you decide to pass this bill, it cannot be applicable to existing water banks. That is an ex post facto issue that I am sure many of you are aware of. There was a lot of work and money, well in excess of $100 million, in creating abilities for those communities to grow. I appreciate the effort that has been put in by the Division, but this needs more work.

David Rigdon, Private Citizen, Carson City, Nevada:
I am an attorney with the law firm of Taggart & Taggart in Carson City. Our firm hosts six full-time attorneys who practice primarily in the area of water law. We represent a variety of water users, everything from municipalities to farmers to ski resorts and mining companies. I want to join in with the comments that were made by Mr. Hartman with regard to existing water banks that municipalities are currently running. We are very concerned about the potential for conflict between this bill and those existing water banks. We represent the municipalities of several of those that Mr. Hartman mentioned.

I would also like to point out that we keep bringing up the Utah legislation. Mr. Nathan Bracken, who is one of the primary proponents of the Utah legislation, recently was invited to Nevada to be a speaker at this year's Nevada Water Resources Association annual conference to present this idea to Nevada. One of the main things that he emphasized in his speech was the need to take things slow. This is not something you want to rush through a legislative session. He mentioned that prior to even introducing the legislation in Utah, his group spent two years vetting it through a task force made up of over 60 water professionals.

They held over 40 public meetings throughout the state to solicit comments and address concerns before they brought any language to the legislature.

We do appreciate that the State Engineer has attempted to reach out to stakeholders since this bill draft was submitted, but it is nothing like the outreach and consultation effort that Utah engaged in and that we believe we need to have for this particular bill.

At that conference, Mr. Bracken was asked by a participant if we could simply borrow the work that Utah had done. His response was, Absolutely not. The Utah legislation was designed specifically for Utah to address the concerns of Utah stakeholders. He did not know a lot about Nevada water law; he stated that in his speech. He indicated that if we want to pass similar legislation, we should go through a similar stakeholder process. Given that, we would respectfully request that action on this bill be postponed until at least the next legislative session to give stakeholders ample time to fully flesh out the idea of water banks and ensure that existing water banks are protected. This may be a very good idea, but even good ideas need some time to properly germinate and make sure all the kinks are worked out.

Chair Watts:
We have gone over our time allocated to testimony in opposition. I ask that anyone who was not able to testify to submit your remarks in writing. [Also provided but not mentioned are Exhibit K, Exhibit L, Exhibit M, Exhibit N, Exhibit O, Exhibit P, Exhibit Q, Exhibit R, and Exhibit S.]

We will now hear those wishing to testify in neutral to A.B. 354. Hearing no one, are there any closing remarks?

Adam Sullivan:
There seems to be some confusion that comes up commonly that is worth clarifying. This water banking bill is very much different than an aquifer storage and recovery concept. This is not a conservation credit bill; it is not particularly intended to conserve water, especially in the short term. It is also important to draw the distinction between the water bank concept and the municipal service banking program. There is nothing in this bill that would apply to or affect any existing water banks that are meant to provide municipal supply. This bill is intended to provide some flexibility to irrigators in a way that responds to questions and concerns that we regularly get as a state agency. This is a concept that is being tested in Utah, and we think it has merit. It has been suggested that there are good ways to change the language to address some of the concerns, and we would certainly be open to those suggestions. Thank you for the time and discussions we have had with all the members of the Committee.

Chair Watts:
I will close the hearing on Assembly Bill 354 and open the hearing on Assembly Bill 356.

Assembly Bill 356: Makes various changes relating to the conservation of water. (BDR 48-1090)

Adam Sullivan, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:
The Division of Water Resources, State Department of Conservation and Natural Resources is pleased to have this opportunity to introduce Assembly Bill 356. This bill would create a conservation credit program. As discussed in the opening testimony on Assembly Bill 354, this is another bill that enables some flexibility for irrigation water right holders. This bill is similar to a program in place in Oregon and is also under consideration in other western states. One of the common criticisms that we hear is that our current system either incentivizes people to use more water than they need or to sell off the portion they do not use, or they are punished for not using their entire water right. There is no incentive to conserve water.

This bill creates a mechanism where an irrigation water right holder can place unused water rights into a conservation status, where as long as the water is not used, it is not subject to forfeiture. Part of that conserved water could be reactivated at a later date when the need arises, and part of that conserved water right would be relinquished or withdrawn from commitment and could not be used for any manner of use. Conservation is achieved through that relinquished portion and also through the conserved unused water right, where under existing practices the owner would either have to use that water or continue to file annual extensions to prevent forfeiture.

A second part of this bill would create an account that could be used for buying back groundwater rights in overappropriated basins. This is a concept that is commonly suggested to us as an answer or as a solution to overappropriation. After considering this program with different water professionals around the state, after the bill draft request was submitted, the Division acknowledges some concerns with the idea. As a general practice, Division staff are very cautious about engaging in issues regarding the market value of water rights as part of doing our job. Criticisms that we have heard about creating an account like this are that it could accelerate the cost of water rights, create more problems than it solves, and establish value for unperfected water rights. I sympathize with these perspectives, so my position is that this component of the bill should only move forward with great caution. [Written testimony was also provided, Exhibit T.] Ms. Fairbank will now walk you through the bill.

Micheline Fairbank, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:
I will walk through Assembly Bill 356 and the proposed amendment [Exhibit U]. Section 1 sets forth new provisions to *Nevada Revised Statutes* (NRS) Chapter 533. Section 2 sets forth the foundation for some additional definitions. Section 3 includes the definition of "conservation." Conservation is intended to be limited to the reduction of the consumptive use; limited to only irrigation manners of use, availing themselves to the program; and generally identifying what conservation could constitute.

Section 4 defines the term "conserved water." Section 5 is in the proposed amendment [page 2, Exhibit U] and is a new section included by the Division to include the definition of the term "reserve" to mean "an amount of conserved water that is not available for any use."

The use of the term makes it clear that any water that is relinquished or withdrawn under the conservation program and reserved would not be available for reappropriation.

Continuing on in the amendment, section 6 creates the statutory definition of "perfected water right." Section 7 defines what constitutes "program" under the law. Section 8 creates the Program for the Conservation of Water. Additionally, it is important to note that this particular section includes the explicit statement, "The State Engineer shall not require any person to conserve water pursuant to, or otherwise participate in, the Program." Again, this is intended to be entirely voluntary.

Section 9 of the proposed amendment [pages 2-4, Exhibit U] establishes parameters regarding participation in the Program, and the Program would only be available to those with a perfected water right and would not be available to individuals with permitted but not yet perfected or otherwise judicially claimed perfected water right, meaning perfected water rights is one water right that has gone through the process of being certificated or a decreed pre-statutory right. Additionally, we include a proposed amendment in section 9, subsection 1, paragraph (b), that deletes the retroactive application [page 3]. Again, the bill is intended to have some retroactive applicability to individuals who have implemented such conservation practices and want to participate in the program. The bill stated it would be implemented for not more than five years before the date on which the person submits the application; the amendment states it would only be retroactive in participating in the program for five years from the date that the act becomes law. Under section 9, subsection 2, paragraph (a), subparagraph (5), we proposed an additional amendment [page 3, Exhibit U]. The word "allocation" is intended to refer to the total amount of conserved water, and to use different words for the Division between the amount available for future use and the amount reserved is intended to be clarified.

Additionally, the minimum amount of water that would be subject to being reserved would be at least 25 percent and could be increased to more than 25 percent if reserving that minimum amount would not be satisfactory to avoid adverse conditions. We suggest removal of section 9, subsection 2, paragraph (a), subparagraph (6) [page 3] as we see that this could impede participation if a proposed applicant does not yet have that plan. In the new subparagraph (6), there is a reference that a board of directors has to approve a request if the applicant is within an irrigation district. Later in the bill, we suggest provisions to not require irrigation district approval. We recommend that this section be amended accordingly. In section 9, subsection 3 [page 4], we have additional recommended revisions to clarify that the amendments are not intended to impose an unwelcome mandate on those irrigation districts. We are trying to make certain that irrigation districts are provided notice of an intent or desire to participate in the Program to have ample opportunity and notice of that desire; hopefully, there would be an opportunity for communication and feedback from that irrigation district prior to any application being submitted to our office. Section 10 addresses some of the criteria for the application for the Program, and the State Engineer's responsibilities. Section 11 requires notice of publication of any application. Additionally, we have suggested the deletion of certain language that we feel is not necessarily appropriate

for inclusion in this statute. Section 12 is intended to incorporate the protest provisions set forth in NRS 533.365, to applications for conserved water.

Section 13 sets forth the criteria for the State Engineer's review of an application. Again, it is important to note that the State Engineer acknowledges that this program may not work for every water right in every stream system, and that there may be certain existing surface water decrees that would not accommodate this program. Additionally, we suggest some deletion of language regarding mitigation, as we do not feel that is appropriate to be included in this bill.

Section 14 sets forth the provision regarding the approval of a conservation credit application. Additionally, we recommend the deletion of section 14, subsection 3, as there is no extension required for a certificated right unless it is subject to forfeiture.

Section 15 is aimed to specify the specific minimum allocation of reserved conserved water. Additionally, this is amended to allow for that voluntary increase in the amount if it is so desired by the applicant. If someone wishes to increase his contribution, he can do so. We also recommend some additional revisions to statute to articulate that conserved water is intended to go toward the 10 percent reserve set forth in NRS 533.0241, and that it is not intended to be available for reappropriation.

Section 16 has changes to make it clear that if someone were to elect to remove their conserved water from conservation status, and to use it beneficially, it would require a change application to remove that water from conservation status and then it would be subject to "use it or lose it" provisions because it would be a permitted right.

Section 17 is intended to provide flexibility for the use of conserved water taken out of conservation status. We recommend the deletion of the language as the use of the conserved water can already be accomplished with sell, lease, or transfer of the right.

Section 18 allows political subdivisions the ability to acquire conserved water and leave it within the source perpetually. We made recommendations to provide clarification language and to delete language relating to promulgation of regulations. We believe that promulgation of regulations will be important for the implementation of the Program, but we believe that the particular provisions within that subsection are problematic and unnecessary.

Section 19 addresses existing statutory law and policies; however, we recommend deletion of the proposed language and we believe it is highly controversial and does not meet the mission or the purpose of the Program.

Section 20 through section 24 contain conforming changes.

In section 25 we recommend the deletion of certain language because the use of conserved water that is taken out of conservation status would require a change application.

Section 26 through section 29 contain additional conforming changes.

Section 30 contains a proposed amendment to the State Engineer's existing fee structure. We recommend deletion of the fee that was suggested for inclusion [page 21, Exhibit U]. Additionally, we have an additional amendment within the change application fee structure to include the term "or allocation of conserved water"; however, upon further review, we believe that it is not necessary to include any further clarification because it would take an application to change the point of diversion, manner of use, and place of use, to place the water into the conservation credit program. That change of application would be required to remove it from the conservation credit program, and that application is already encompassed within our existing fee structure.

Finally, there are additional conforming changes within the bill until we get to section 32. Sections 32 and 33 address adding the new account to allow for purchasing and retiring of water rights. As stated by Acting State Engineer Sullivan, we have significant reservations about the creation and operation of an account for purchasing and retiring water rights. We agree that there are some who strongly support this proposal and that there are others who strongly oppose it. There are challenges that we see and have attempted to address. We have tried to examine whether those concerns could be taken care of with the proposed amendment language [Exhibit U]. However, we believe that there is more value and merit to an ongoing dialogue as to how to best address overappropriation of water rights. A legislatively approved program for purchasing and retiring water rights has conceptual value, but there needs to be more work in determining how best to accomplish that.

The remainder of the bill contains conforming changes. That concludes our presentation.

Chair Watts:
Are there any questions from members?

Assemblywoman Hansen:
On page 3 of the amendment [Exhibit U], section 9, subsection 2, paragraph (a), subparagraph (5), says, "The proposed allocation must reserve at least 25 percent of any conserved water back to the source." Who has the jurisdiction over that 25 percent, and what does "the source" mean?

Adam Sullivan:
When we are talking about "back to the source," essentially that means that portion of the water right is relinquished or withdrawn; it goes away. The source being the aquifer that it is appropriated from, or the river system that it is appropriated from. The water right just goes away and is not available for use. That portion can go to the 10 percent reserve that has been created in statute, and it will be protected in that manner.

Assemblywoman Hansen:
Section 16 states, "A person is required to submit an application for a permit to change the place of diversion, manner of use or place of use pursuant . . . before placing any conserved water to beneficial use." Is the person a new applicant?

Adam Sullivan:
No, the person is the owner of the water right. If water were put into a conservation status, a portion of that would still be available to the water right owner to be put into beneficial use at a later date with a change application. That is for the original owner of the water right.

Assemblywoman Hansen:
The other section states that 25 percent is relinquished as part of the conservation effort, correct?

Adam Sullivan:
That is correct.

Assemblywoman Anderson:
You mentioned that Oregon has been utilizing this. For how long? Was it tested beforehand? Did they have long-term discussions with stakeholders?

Micheline Fairbank:
Oregon has had their conservation credit program in law for quite some time. I do not know exactly how long. I can provide you a copy of the Oregon statute that has the enrollment date for your reference. It has been implemented for quite some time in Oregon; they are utilizing it for both surface water and groundwater. In conversations with our colleagues at the Oregon Water Resources Department, one of the questions when we were talking about possibly implementing this program in Nevada is what our plan was to protect against reappropriations; that is one of the challenges that they faced in Oregon. One of the things we have in Nevada law is that 10 percent reserve, which is a built-in protection. That is one of the ways we can help to accomplish that with respect to groundwater use that they have struggled with in Oregon.

Assemblywoman Anderson:
Has there been a lengthy discussion with stakeholders so that people can get different ideas how this will help conserve water?

Adam Sullivan:
We initiated stakeholder conversations last fall. I was put into the position of Acting State Engineer in December 2020, and to the extent that we have had time and the ability with the limited remote meeting conditions, we have had as many stakeholder conversations and outreach as we could. We had a lot of feedback, handled a lot of questions, and as I stated in my opening comments, we did hear a lot of concerns or reservations. I hope that with the amendment that we submitted [Exhibit U] and very recently made available to our

stakeholder group as well as the members of this Committee, that we did our best to address those concerns and reservations and focus on what the real intent of this bill is.

Assemblywoman Brown-May:
This is a very robust and complex topic for me. Following up on previous questions, you mentioned that there were criticisms from stakeholders. I am curious to know if there is a list or catalogue of the meetings you have had with stakeholders, and what those comments were to help inform this discussion. Is that available publicly somewhere?

Adam Sullivan:
We have a collection of our notes and our records of the conversations that we have had, but this is something that has not been made publicly available.

Assemblywoman Brown-May:
I would add that typically, in my experience, when we do a large policy conversion to this degree, it has been good practice to catalogue public conversations so we can address the stakeholder issues. I will just leave that for your consideration. If you have a record, I would very much like to see the stakeholder comments, if at all possible.

Assemblyman Ellison:
I am looking through all the letters, and I see there is opposition from almost the same people who testified on the first bill. There was a statement made regarding how many inches of rain does Oregon get annually versus the four inches that Nevada gets. The difference between the two states is night and day.

Adam Sullivan:
This bill is about conservation of the resource, regardless of how much rainfall and how arid the area is. This would apply in extremely arid areas or in semi-arid areas. Parts of Nevada, as you well know, are quite wet. There is a range across the state, and eastern Oregon is drier than a lot of portions of Nevada. Western Oregon, of course, has a very different coastal climate. I think there are a number of different parallels that we can draw on. Again, this bill could apply in a range of circumstances to accomplish conservation which has value everywhere.

Assemblyman Ellison:
We are talking apples and oranges here. There are two different scenarios between how much water Oregon has and how much we have, what can be banked, what can be used, and what can be held. Nevada has a hard enough time trying to deal with what we have. How many aquifers are already closed basins? If we are trying to look at what the other states are doing, we cannot do that as a comparison. I disagree with that.

Chair Watts:
Are there any other questions? Seeing none, I have a few questions. On section 14 of the original bill, and section 15 of the amendment [pages 7-8, Exhibit U], the language has been changed around the reserve. Will you discuss the analysis of the proposed deletion of the

language? What will happen when the total amount of reserved water from conservation in a basin meets or exceeds that 10 percent of perennial yield?

Micheline Fairbank:
If we actually get to a full 10 percent of the perennial yield reserve, it would be a great opportunity to come and revisit the bill and explore whether reappropriation of that surplus would be a good management decision. The likelihood of us getting there in my lifetime or the collective lifetimes of most people here is probably not very good. If that were to happen, that would be a great day to actually have to have that dialogue.

Chair Watts:
Yes, it would; I think that would be an interesting conversation to have. In Section 17 of the proposed amendment, can you give us a little more thought on how you see this playing out when someone makes the application and is allocated conserved water and they are able to reserve it for their own future use under the proposed amendment? Striking out the language, "Use the conserved water on another property owned by the person," I understand that, especially if the property is not adjacent, or the ability to sell, lease, or transfer the right to the use of the conserved water. There are some provisions for that. Will you explain what exact provisions are referenced and how that would work if someone wanted to sell, lease, or transfer the conserved water?

Micheline Fairbank:
The sell, lease, or transfer of the right to the use of conserved water can be utilized in multiple different factors. One is if, hypothetically, the water banking legislation were to become law, that conserved water could be transferred into the water bank and then be available for leasing or use out of that water bank. Alternatively, just as we have the ability to sell, transfer, or convey water rights ownership, that could potentially happen under this provision. It is intended to not restrict the future flexibility of the conserved water when that water is taken out of the conservation status.

Chair Watts:
I know this came up with the other piece of legislation, but I would like some clarity. Is it your understanding that these transfers would follow the provisions under existing law? For example, if the proposed transfer was to another basin, would all of the review processes, judicial review, and due process follow along?

Micheline Fairbank:
Yes. Nothing in the bill operates to restrict judicial review and due process or those different provisions existing in the law.

Chair Watts:
I appreciate that clarification. It was not immediately clear to me in reading that section. Will you explain why you decided to remove the language from the bill in section 12, subsection 1, paragraph (c)? Additionally, why did you decide to remove the provisions in

section 8, subsection 2, paragraph (a), subparagraph (6), of the original bill? Why did you determine those were inappropriate for inclusion?

Adam Sullivan:
Section 12, subsection 1, paragraph (c) referred to whether there was a need for mitigation of the conservation impacts of the application. We felt that was unnecessary and somewhat controversial in that the provisions within paragraphs (a) and (b) are appropriate statements to have under that section.

Chair Watts:
What about the other deleted language was in section 8, subsection 2 (a)(6) of the original bill?

Adam Sullivan:
That was an idea that was related to the application for the conservation of water. In reviewing that, we felt that it might impede participation in the Program, if someone who was interested in conserving water did not necessarily have a long-term plan for what they had for the intended use of the conserved water. We did not feel it was a necessary component to evaluate the application.

Chair Watts:
You wanted to maintain the flexibility for the applicant to be able to choose as they went along, whether they want to use the water in the future or transfer it, et cetera, instead of having to specify that up front on the application. Is that correct?

Adam Sullivan:
That is correct.

Chair Watts:
Are there any other questions? Seeing none, I will hear those wishing to provide testimony in support of A.B. 356. Hearing no one, is there anyone in opposition of A.B. 356?

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:
We are testifying today in opposition to A.B. 356. As we discussed the concepts of this proposal with our farmer and rancher members during our policy development process, there was candidly no one who could imagine any type of application in Nevada. Our members view conservation as fitting into appropriate management of agricultural irrigation, water, and conservation measures, which provide for proper management of water resources and maintain a long-term ability of the water basin to not exceed perennial yield levels. Our members also believe that conservation and irrigation efficiency by an agricultural water right owner is already addressed without government involvement. The cost of economic self-interest of the water right owner does not bring about circumstances where investments would be provided for waste or misuse. We think that A.B. 356 would be a much more acceptable bill if the amendments that we received this morning were added [Exhibit U]. We also recognize that participation would be voluntary. We are not clear whether after more

face-to-face interactions with all stakeholders and the Division of Water Resources if A.B. 356 might evolve into a workable and sensible program.

Oz Wichman, General Manager, Nye County Water District:
When I listened to Mr. Sullivan describe the purpose for these bills, he talked about no incentive to conserve water. I think that the incentive for any serious irrigator to conserve water is his fuel bill, electric bill, well replacements, and pumping equipment. I am pretty disturbed that we are not actually hearing from irrigators today, whether they are for or against. Therefore, I would give the lion's share of credit to Mr. Busselman. I think the Nevada Farm Bureau Federation is probably engaging with more irrigators than any of us. The other thing that Mr. Sullivan alluded to is that both of these bills are taken together. I would direct everyone's attention to the groundwater management plan for Pahrump, whereby we reduced the water rights on the books to actual pumpage and potential pumpage and closed a discussion of a 20,000 acre-feet perennial yield and 100,000 acre-feet of water rights down to potential pumpage of about 26,000 acre-feet, for a reduction of close to 73,000 acre-feet. Yes, I said 73,000 acre-feet. That took seven years of my life, over 100 public meetings, a few lawsuits—one that went to the Supreme Court—testimony before you in the Legislature, and changes in water law to get that groundwater management plan approved. I would encourage us to stop on both of these bills and back up, find a basin to where we can mathematically close the loop on what potential pumpage is going to be, and from there, take these bills and try to apply them in a specific basin. I think that until we do that, we are not having an intelligent and grounded discussion on the application of these bills. Thank you.

Edwin James, General Manager, Carson Water Subconservancy District:
Although this program is voluntary, I do want the Committee to recognize that this would violate the Alpine Decree which administers surface water rights. We want to make it clear to people that this program does not work on the Carson River watershed. The other concern I have is with the purchasing of water rights. Under the original language of the bill, the amount proposed in the bill is missing about three zeros. I think there needs to be more work before you open Pandora's box; once you open it, you cannot shut it. I think you have to really be careful before you start buying water rights that are not being used.

Wade Poulsen, General Manager, Lincoln County Water District:
We oppose A.B. 356. We agree with the comments made by Mr. Busselman. We also agree with Mr. James about the money that is going to be used to buy water rights. We believe that buying paper water rights which are not actually being pumped is not a very good way to spend public funds. We also believe that this bill is being pushed through in a rush. Lincoln County Water District has not been one of the stakeholders on A.B. 356 or A.B. 354. We would like to be included in those discussions in the future. We believe that conservation is an important thing that we need to do as utilities and water users. In fact, we promote water conservation. When the Legislature comes forth and does not give the public ample time to reflect upon and discuss through public hearings, we are against such legislation.

Rupert Steele, Chairman, Confederated Tribes of the Goshute Reservation:
The Confederated Tribes of the Goshute Reservation respectfully request that you vote no on A.B. 356. This bill appears to supplement A.B. 354, as it would also facilitate water exportation. Specifically, section 19, subsection 1, paragraph (h) of the bill would make it the policy of the state "To encourage the highest and best use of water by allowing the sale, lease or transfer of conserved water." That does not sound like conservation; that sounds like a financial transaction and water exportation.

The Tribes find this to be problematic for several reasons. First, a water conservation bill that allows for the sale, lease, or transfer of conserved water really is not water conservation. It is selling water, which, when coupled with A.B. 354, could simply mean a water market where water is being sold to the highest bidder. Second, the term "highest and best use" is undefined, which means it would be left up to the State Engineer to decide. Such terms cannot go undefined in law without significant harm to other parties, including the Tribes and the general public. This brings us to a third point, which is that A.B. 356, section 19, subsection 1, paragraph (h), would actually pave the way for a transfer of tragedy. In other words, coupled with A.B. 354, this bill would allow one party to benefit while an entire region of people would be left high and dry to suffer the harmful aftereffects.

Assembly Bill 356 and Assembly Bill 354 also seem to provide an out or exemption for water marketeers and water exporters as it relates to environmental soundness and the potential detriment to the public interest. While the Tribes would appreciate actual water conservation measures, we cannot support a bill that will exacerbate problems on the environment and on the public interest. For these reasons, the Tribes respectfully ask that you vote no on A.B. 356. [A letter was also provided, Exhibit V.]

Martin Paris, Executive Director, Nevada Cattlemen's Association:
Nevada Cattlemen's Association supports the appropriate management and conservation of all water uses in our state. However, we are opposed to the original version of A.B. 356 as written. Much like the last bill, we have not been given an opportunity to fully comprehend the changes made through the amendment shared earlier [Exhibit U]. We are fully aware that participation is entirely voluntary; however, the proposal being brought forward is too crucial and complicated to lend support to without fully understanding the potential consequences and unintended consequences that could arise. We also have questions regarding the applicability of an Oregon-based template here in Nevada and what incentive an agricultural water right owner would have to place 25 percent of his conserved water back under the jurisdiction of the state. To echo the Farm Bureau, agricultural water right owners already have a strong incentive to implement conservation and other efficiency measures on their operations without a state-managed conservation program, purely due to the cost that irrigation practices take as well as general economic self-interest. With that said, we remain opposed to A.B. 356 and ask that this legislation also undergo a larger vetting process prior to this proposal being pushed through.

Robert Coache, Private Citizen, Las Vegas, Nevada:
I am a former Deputy State Engineer and have over 40 years of experience in water resources. I do not support A.B. 356. While A.B. 356 is claiming to be a conservation bill, it is in fact a conservation for consumption bill. For example, if someone had 400 acres of irrigation with certificated duty of 4 acre-feet, implementing conservation measures so he could get down to the net irrigation water requirement of 3 acre-feet, under this bill that would result in a 19 percent increase in a net consumption of groundwater. Any additional permit issued under this bill for the conserved water beyond the 25 percent allocated back to the source is tantamount to the issuance of a new permit and would appropriate water that is not available for appropriation and is therefore detrimental to the public interest. More importantly, there is no need for a cumbersome, fiscally ladened, and resource-impacting conservation bill when the State Engineer has the statutory tools to account for irrigation conservation while protecting the water resource from the impacts of this bill and subsequent impacts of senior water right holders.

With regard to the proposed purchase program, under no circumstances should state funds ever be used to purchase water rights from private water right holders. This is just a Pandora's box that should never be opened. I would also like to add a comment that is inclusive to A.B. 354 and A.B. 356. After hearing comments today, it appears that both bills have been drafted in part to circumvent the forfeiture statute as a way to save water. I really do not understand—if that is the case, then why not just do away with the forfeiture statute, as was done for surface water more than 20 years ago? It is rarely enforced because of the extensions and other court rulings. Just get rid of it and you would not even have to look at the conservation for consumption part when people irrigate at least every five years just to save their water right.

Nikolai Christenson, Member, Legislative Committee, Toiyabe Chapter, Sierra Club:
On behalf of the Sierra Club and our more than 40,000 members and supporters statewide, I am speaking in opposition to A.B. 356.

While I do not doubt the good intentions by the State Engineer, it appears that this bill is designed to work in tandem with A.B. 354. Let us be clear, that is a credit to neither of them. The bottom line is that we do not see anything in this bill that guarantees or even strongly hints at actual conservation. We cannot see anything that guarantees protection for rural water-dependent communities. We know what conservation looks like in practice, and A.B. 356 is not conservation. What we do see is provisions that allow conserved water to be sold for profit. We see a mechanism to legitimately speculate on water resources. It is not conservation when we allow entities to buy farms and fallow fields in order to export water or sell water to a high bidder. This is commoditization, not conservation of water. Again, we ask, who is this bill for? The conservationists do not want it. It does not sound like the farmers want it. We suspect that there are people outside of this state who may be interested in the commoditization of water, but we do not think this is in Nevada's interest. For all of these reasons, we are asking the Committee to please oppose A.B. 356. [Written testimony was also provided, Exhibit W.]

Kyle Roerink, Executive Director, Great Basin Water Network:
We appreciate the amendment [Exhibit U] put forth today by the State Engineer's office, but we wholeheartedly believe that the legislation still allows for the sale of conserved water; it still legitimizes speculation; it still opens the door for buy-and-dry export scenarios that would be harmful for rural communities and the environment. There are no safeguards to prohibit interbasin transfers of so-called conserved water. It is all unacceptable. Please oppose this bill and thank you for your time. [A letter was also provided, Exhibit X.]

Chris Clarke, Associate Director, California Desert Program, National Parks Conservation Association:
The National Parks Conservation Association opposes A.B. 356. This bill makes the unsuspecting reader feel like it is a sound, well-intentioned proposal. Unfortunately, deep within the bill, there are dangerous provisions that will legitimize speculation and allow for the sale of water in a way that is currently not allowed under Nevada law. Big companies will be able to come into the state, buy farms, fallow the fields, and sit on the water until high bidders come along. This is not conservation; this is water speculation. Additionally, this bill exempts these falsifying conservation schemes from important legal protections afforded to the public and water rights owners under the law. Why would Nevada do this? Who would write a bill like this? I can think of a few entities that would do something like this, and they are not interested in conservation or rural communities, but only interested in profit. Please oppose this bill.

Chair Watts:
I encourage anyone else who was unable to get through to testify in opposition to submit your remarks in writing within the next 48 hours. [Also received but not mentioned are Exhibit N, Exhibit O, Exhibit P, Exhibit Q, Exhibit R, and Exhibit S.] We will move on to testimony in the neutral position.

Andrew M. Belanger, representing Southern Nevada Water Authority:
The Southern Nevada Water Authority (SNWA) is neutral on A.B. 356 in its amended form and supports finding innovative solutions to conserve our precious water resources. Our work on the Colorado River has underscored the need to be flexible and innovative at solving water issues, and we would be happy to work with the Division of Water Resources and others regarding amendments to A.B. 356. A few weeks ago, my colleague mentioned this bill as we were seeking a legislative vehicle to address nonfunctional turf in southern Nevada. For more than two decades we have provided cash incentives to property owners to upgrade their lawns to more water-efficient, desert-adapted landscaping. Many residents have used the program to beautify their yards and save significant money on maintenance and water.

We estimate that there remain 7,600 acres of functional turf in the Las Vegas Valley: in parks, schools, playing fields, and residential backyards. We support these uses and have made sure our codes continue to protect them. Unfortunately, we also estimate that there are 5,000 acres of nonfunctional turf that is purely decorative, found along streets and in traffic circles, in the landscaping of businesses, and at the entryways of housing developments. No

one plays on this grass and no one walks on this grass, except for landscapers who sometimes have to carry equipment across lanes of traffic to mow it. It is purely for show and is a luxury our community can no longer afford. In 2020, the Las Vegas Valley saw water consumption increase by nearly 22,000 acre-feet. This increase is alarming and is a trend that must be reversed, particularly in light of the climate change impacts we expect to see. We are asking the Committee to consider an amendment to A.B. 356, or another piece of legislation, to require the removal of nonfunctional turf within the Las Vegas Valley by December 31, 2026. We would further ask the Legislature to create an advisory committee made up of affected parties to help guide the implementation of this effort in southern Nevada. We ask for your consideration in finding an appropriate vehicle for this important effort. Thank you for your time.

David Dazlich, Director, Government Affairs, Vegas Chamber:
The Vegas Chamber would like to testify today in neutral on this bill; however, we do support the SNWA's nonfunctional turf removal proposal as it will enhance conservation and water use throughout the community. It will ultimately provide a benefit to all community members, including the businesses represented by the Vegas Chamber.

Matthew Walker, representing Southern Nevada Home Builders Association:
The Southern Nevada Home Builders Association has no opinion on A.B. 356 as presented today, but did want to call in support of SNWA's conceptual addition to the bill. Today is not the time to prioritize water usage for purely aesthetic reasons. We really need to prioritize this precious resource where it is going to move the needle for our community and our economy; for those reasons, we appreciate SNWA bringing this important conversation forward and look forward to seeing the language.

Nicole Rourke, Director, Government and Public Affairs, City of Henderson:
We are here today in neutral, but in support of the amended language proposed by SNWA and would like to echo the comments of the callers that were in the neutral position.

Jared Luke, Director, Government Affairs, City of North Las Vegas:
I am calling in neutral to this bill but would like to throw our support behind SNWA's proposed amended language for their nonfunctional turf removal and echo the comments in support of that amendment.

Chair Watts:
I will take the next caller in neutral. Hearing no one, are there any closing remarks?

Adam Sullivan:
Getting back to the content of the bill that we introduced today, my observations are that as a state, we have a number of complex, difficult issues with water supply. The issues are very different depending on where you are in the state. To manage this in the long term, we see the benefit of having different statutory tools available to provide some kind of flexibility and having that supported by statutory guidance. The conservation credit program would not

work everywhere, but it could be one of the tools to help address the long-term issues that we face.

I would like to provide a few brief responses to the questions that came up in the public testimony. One issue was how conserved water is fractioned between an amount that is relinquished and an amount that is available to the owner for later use. There is some confusion that to be clear, that amount that would be available to the owner for later use, the regular Nevada water law would still apply to those—to sell, lease, or purchase that water right. We are not creating a new mechanism for that. Secondly, there was a comment about the net irrigation water requirement and consumptive use. That is a good point to bring up that did not previously get addressed in the testimony. It would be important, if this bill were to go forward, the quantification of conserved water would be on a consumptive use basis. That is reflected in the amendment that we have proposed [Exhibit U]. That concludes my comments.

Chair Watts:
I will close the hearing on Assembly Bill 356. I will note that we heard a lot throughout the conversations today about the need to manage our scarce water resources carefully and to look at innovative ways to promote conservation measures here in the state. I think that is a conversation that will continue within this body, it will continue in the interim, and I look forward to seeing those conversations move forward and hopefully have policy come before us that continues to advance conservation within the state. I will note that while there may be disagreements on the bills that were brought forward today, it seems that there is a large degree of support for continuing to work toward that direction. I appreciate that.

The last item on our agenda is public comment. Is there anyone wishing to provide public comment? Hearing no one, our next meeting will be on Wednesday, April 7, 2021, at 4 p.m. We are adjourned [at 6:46 p.m.].

RESPECTFULLY SUBMITTED:

_____
Nancy Davis
Committee Secretary

APPROVED BY:

_____
Assemblyman Howard Watts, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is the Work Session Document for Assembly Bill 71, submitted and presented by Jann Stinnesbeck, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit D is the Work Session Document for Assembly Bill 97, submitted and presented by Jann Stinnesbeck, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit E is a proposed amendment to Assembly Bill 354, submitted by Adam Sullivan, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources.

Exhibit F is written testimony for Assembly Bill 354, submitted and presented by Adam Sullivan, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources.

Exhibit G is a letter dated April 4, 2021, submitted by Kyle Roerink, Executive Director, Great Basin Water Network, in opposition to Assembly Bill 354.

Exhibit H is a letter submitted by Patrick Donnelly, Nevada State Director, Center for Biological Diversity, et al., in opposition to Assembly Bill 354 and Assembly Bill 356.

Exhibit I is written testimony dated April 5, 2021, submitted by Nikolai Christenson, Member, Legislative Committee, Toiyabe Chapter, Sierra Club, in opposition to Assembly Bill 354.

Exhibit J is written testimony submitted by Jake Tibbitts, Natural Resources Manager, Department of Natural Resources, Eureka County, in opposition to Assembly Bill 354 and Assembly Bill 356.

Exhibit K is written testimony submitted by Wade Poulsen, General Manager, Lincoln County Water District, in opposition to Assembly Bill 354.

Exhibit L is a letter dated April 5, 2021, submitted by Christine Saunders, Policy Director, Progressive Leadership Alliance of Nevada, in opposition to Assembly Bill 354.

Exhibit M is a letter dated April 4, 2021, submitted by Rupert Steele, Chairman, Confederated Tribes of the Goshute Reservation, in opposition to Assembly Bill 354.

Exhibit N is a letter dated April 5, 2021, submitted by Will Adler, representing the Pyramid Lake Paiute Tribe, in opposition to Assembly Bill 354 and Assembly Bill 356.

Exhibit O is a letter dated April 7, 2021, submitted by Jeff Fontaine, Executive Director, Humboldt River Basin Water Authority, in opposition to Assembly Bill 354 and Assembly Bill 356.

Exhibit P is a letter dated April 7, 2021, submitted by Jeff Fontaine, Executive Director, Central Nevada Regional Water Authority, in opposition to Assembly Bill 354 and Assembly Bill 356.

Exhibit Q is a letter dated April 6, 2021, submitted by Chris C. Mahannah, representing Churchill County; and Truckee-Carson Irrigation District, in opposition to Assembly Bill 354 and Assembly Bill 356.

Exhibit R is a letter submitted by Christine Stones, Council Member, Ely Shoshone Tribe, in opposition to Assembly Bill 354 and Assembly Bill 356.

Exhibit S is a letter dated April 3, 2021, submitted by Nikki Bailey-Lundahl, Manager, Government Affairs, Nevada Mining Association, in opposition to Assembly Bill 354 and Assembly Bill 356.

Exhibit T is written testimony for Assembly Bill 356, submitted and presented by Adam Sullivan, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources.

Exhibit U is a proposed amendment to Assembly Bill 356, submitted by Adam Sullivan, Acting State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources.

Exhibit V is a letter dated April 4, 2021, submitted by Rupert Steele, Chairman, Confederated Tribes of the Goshute Reservation, in opposition to Assembly Bill 356.

Exhibit W is written testimony dated April 5, 2021, submitted by Nikolai Christenson, Member, Legislative Committee, Toiyabe Chapter, Sierra Club, in opposition to Assembly Bill 356.

Exhibit X is a letter dated April 4, 2021, submitted by Kyle Roerink, Executive Director, Great Basin Water Network, in opposition to Assembly Bill 356.