

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

**Eighty-first Session
March 11, 2021**

The Senate Committee on Natural Resources was called to order by Chair Fabian Donate at 3:42 p.m. on Thursday, March 11, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Fabian Donate, Chair
Senator Melanie Scheible, Vice Chair
Senator Chris Brooks
Senator Pete Goicoechea
Senator Ira Hansen

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Policy Analyst
Christine Miner, Committee Secretary

OTHERS PRESENT:

Jeff Fontaine, Executive Director, Central Nevada Regional Water Authority
Adam Sullivan, Acting State Engineer, Division of Water Resources, State
Department of Conservation and Natural Resources
Steve Walker, Eureka County
Wade Poulsen, General Manager, Lincoln County Water District
Doug Busselman, Executive Vice President, Nevada Farm Bureau
Kyle Roerink, Executive Director, Great Basin Water Network
Chaunsey Chau-Duong, Southern Nevada Water Authority
David Dazlich, Vegas Chamber
Warren Hardy, Virgin Valley Water District; Moapa Valley Water District

CHAIR DONATE:

We will open the hearing on Senate Bill (S.B.) 149.

SENATE BILL 149: Revises provisions relating to groundwater boards. (BDR 48-462)

SENATOR PETE GOICOECHEA (Senatorial District No. 19):

The intent of Senate Bill 149 was proposed to the Legislative Committee on Public Lands as a bill draft request (BDR) on September 22, 2020. A presentation was made by the Central Nevada Regional Water Authority (CNRWA) regarding its activities and requesting the bill we will discuss today. The bill was submitted and recommended by the Legislative Committee on Public Lands. It authorizes a board of county commissioners to establish a groundwater board for an area designated as a groundwater basin by the Office of the State Engineer. The bill authorizes a board of county commissioners to dissolve a groundwater board if determined it is no longer needed. Implementing a groundwater board will provide local knowledge and expertise to the State Engineer in the decision-making process. The BDR recommendation was unanimously approved by the Legislative Committee on Public Lands.

JEFF FONTAINE (Executive Director, Central Nevada Regional Water Authority):

The CNRWA is a nine-member county unit of local governments whose mission is to protect water resources in member counties. This allows these counties an economic future and maintenance of their valued quality of life and natural environments.

Under existing law, the State Engineer may establish a groundwater board on the recommendation of a board of county commissioners. If the State Engineer establishes a groundwater board, the State Engineer is required to confer with the board and receive its written advice and recommendations before approving any permits to drill a well, applications to appropriate groundwater or change existing rights. The State Engineer must also confer with the board before adopting regulations or entering an order on a groundwater basin, or portion of a groundwater basin designated in need of administration.

Existing law also states it is the intention of the Legislature that the State Engineer and a groundwater board be in agreement whenever possible, but, if there is any disagreement between the State Engineer and a board, the views of the State Engineer prevail.

Senate Bill 149 amends *Nevada Revised Statutes* 534 authorizing a board of county commissioners to independently create a groundwater board and select its members. The bill is intended to ensure counties have input on how the designated basins are used for the advantage of the communities.

Groundwater boards were first authorized in statute in 1961 which mandated a groundwater board be established for the Las Vegas Valley groundwater basin, which worked well for many years and facilitated dialogue between local stakeholders and the Office of the State Engineer. It resulted in positive outcomes for the Las Vegas Valley groundwater basin.

The law was amended in 1973 giving the State Engineer discretion to establish and dissolve groundwater boards. No new groundwater boards have been established since then. I am aware of only one county which had recommended the State Engineer establish a groundwater board.

Preserving and managing Nevada's limited water resources requires thorough understanding of the changing conditions and uses of our groundwater basins. It is best accomplished by coordination and collaboration between the State Engineer and local groundwater boards with local knowledge and perspective. This coordination and collaboration needs to be strengthened. The State is experiencing drought conditions, and the State Engineer has proposed designating additional groundwater basins for additional administration. The Division of Water Resources has existing limited capacity, and its 2021-2023 biennial budget includes maintaining staff vacancies and supplanting general fund revenues with assessments from water right holders in designated groundwater basins they manage. It is important to strengthen that relationship and allow counties to have groundwater boards.

I will outline the changes for S.B. 149 proposed in the amendment by CNRWA ([Exhibit B](#)). The proposed amendment, [Exhibit B](#), will delete section 1 which authorizes counties to designate a regional water authority as its groundwater board.

The proposed amendment, section 1, subsection 3 adds a vice chairman to a groundwater board. Section 2, subsection 6 reduces the scope of proposed actions for which a groundwater board would provide recommendations. This eliminates the possibility of delaying routine and emergency actions such as approving a Notice of Intent to Drill to replace a well. The proposed amendment [Exhibit B](#) also limits the time for a groundwater board to provide recommendations to 30 days which generally aligns with the State Engineer's public notification requirements.

An original provision remaining in the bill states it is the intention of the Legislature that the State Engineer and a board be in agreement whenever possible, but if there is any disagreement between the State Engineer and a board, the views of the State Engineer prevail.

Senate Bill 149 gives boards of county commissioners and the constituents they represent a voice on the management of water resources relied on for their economic futures, quality of life and natural environment. It worked well for the Las Vegas Valley groundwater basin and could work well for other groundwater basins in Nevada.

SENATOR GOICOECHEA:

Section 1, subsection 8 of the proposed amendment [Exhibit B](#) directs the Office of the State Engineer or any other state agency to make technical information or other data available. Is there is a cost incurred for this or would the cost be absorbed by the county that created a groundwater board?

MR. FONTAINE:

That is not inherent or explained in the bill. That is existing language in statute and it will continue to be the case.

SENATOR GOICOECHEA:

Will all costs associated with a groundwater board be absorbed by its county?

MR. FONTAINE:

Yes.

SENATOR GOICOECHEA:

This means there will be no fiscal note attached to S.B. 149 or the proposed amendment, [Exhibit B](#).

SENATOR SCHEIBLE:

Does the State Engineer have existing authority to create a groundwater board?

MR. FONTAINE:

The State Engineer has the authority to create a groundwater board. The CNRWA is asking for authority to be given to boards of county commissioners to create groundwater boards without the approval of the State Engineer.

Senate Committee on Natural Resources
March 11, 2021
Page 5

SENATOR SCHEIBLE:

How many groundwater boards are there in Nevada?

Mr. FONTAINE:

The initial board created in 1961 is the only one that exists.

SENATOR SCHEIBLE:

Are there county commissions intending to create groundwater boards?

MR. FONTAINE:

The bill is a recommendation from CNRWA representing nine member counties. Several counties have expressed interest in creating groundwater boards. This allows a county the ability and authority to create a groundwater board.

SENATOR GOICOECHEA:

At least one county petitioned the State Engineer in the 1990s. Diamond Valley of Eureka County wanted a groundwater board.

SENATOR HANSEN:

The State Engineer has not exercised the opportunity for creating groundwater boards in decades. Water is a big issue, and this is why the counties want to have the authority to make groundwater suggestions. Whether the counties take advantage of this authority, existing law requires them to go through the State Engineer.

SENATOR BROOKS:

Are there qualifications for a person to be appointed to a county groundwater board?

MR. FONTAINE:

The only reference in the bill and proposed amendment is for a board of county commissioners to appoint members. There are no specific qualifications stated in statute.

SENATOR BROOKS:

Is it correct that a board of county commissioners would select a groundwater board to consult with the State Engineer before making decisions on a basin in the respective county? Do members of the groundwater board have to have any

requirements or levels of expertise in water or the county? It seems this may politicize the process by taking science out and putting politics in.

MR. FONTAINE:

In statute, there are no specific requirements for appointment to a groundwater board, but the Governor would make appointments based upon recommendations. It is hoped a county creating a groundwater board would appoint those with the knowledge and understanding of water law. If there is an interest in adding qualifications to the bill, it can be done.

SENATOR GOICOECHEA:

County commissioners could choose to be members of a groundwater board. The intent is to get interactions between the State Engineer and counties. It can become political if counties are not careful in board selection.

CHAIR DONATE:

What problem does the bill seek to address, and what triggered the bill? What problem did you encounter with the Governor-appointed members of a groundwater board that this bill needs to change?

MR. FONTAINE:

The process in existence is inefficient and uncertain and does not encourage a county to recommend a groundwater board since the only experience of this request was not granted. The bill seeks to give counties the ability to create their own boards. In the existing process, a county board needs first to pass a resolution, then make the request to the State Engineer who may or may not honor the request. If the request is approved, the county board must go through the process of nominating appointees, and then the Governor could dissolve it at any time. It is a timely and unworkable process.

CHAIR DONATE:

Can you describe a situation with inefficiencies taking place which the bill will help solve?

MR. FONTAINE:

The inefficiency is the process itself. There is no guarantee the State Engineer will agree to creating a groundwater board.

SENATOR HANSEN:

I represent some exceptionally small rural counties. Esmeralda County has only 1,000 people; Lander County only 2,000 people. It is highly likely the county commission of a smaller county would act as its own groundwater board. The problem is groundwater boards do not exist; the process in law has not been utilized. The counties want some say. The State Engineer would consult with a groundwater board. There is no veto power over the State Engineer. This bill will allow some grassroots level of involvement by the counties in the decisions made by the State Engineer.

ADAM SULLIVAN (Acting State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources):

I agree with the general intent of this bill for additional coordination and collaboration between the counties and the Office of the State Engineer. This is the first time I have heard an explanation or discussion by the proponents. The Office of the State Engineer has not been approached with the recommendations to implement the statutes to meet this intent. I concur that only once was a groundwater board implemented, and it was in Las Vegas in the 1960s and 1970s. It was a specific circumstance and a cooperative effort between the State Engineer and Clark County. I cannot speak of the specifics of the proposal in Eureka County in the 1990s when a groundwater board was proposed. I concur it is the only time a county has approached the Office of the State Engineer with a proposal to create a groundwater board.

It appears S.B. 149 would create new requirements on the Division of Water Resources for additional noticing and preparation of written reports if a disagreement arose between the State Engineer and a groundwater board. It may create significant impacts on the Office of the State Engineer regarding additional staff time and resources to accomplish the requirements.

SENATOR GOICOECHEA:

When we opened the hearing, I questioned whether the counties would be responsible for the costs incurred in creating a groundwater board. It is a concern on how much the State Engineer would have to participate, and I tried to establish for the record that it would be the responsibility of a county to cover the costs. I was hoping that covered the fiscal side and did not incur a fiscal note.

The Eureka Board of County Commissioners petitioned the State Engineer and the Governor in the 1990s when there were problems being experienced in Diamond Valley. It was denied and failed to progress.

I support the process outlined in the bill. The Office of the State Engineer is already required to publish notifications to the public and boards of county commissioners. Cooperation and interaction might be beneficial.

SENATOR BROOKS:

It is not the intention of the bill for the State Engineer to incur costs, but I do not see that stated in the bill. The bill states a groundwater board may request information from the State, and the State needs to provide information. The proposed amendment removes section 1, is that the piece that will remove the requirement of the State to have more resources?

MR. FONTAINE:

Section 1 does not apply to this question. It authorized each county to designate a regional water authority as its groundwater board. An individual can request water-related information from the Office of the State Engineer. I doubt the provisions in the bill change that, and it is not the intention to overwhelm the State Engineer with requests.

SENATOR GOICOECHEA:

Section 1, subsection 8 of the proposed amendment [Exhibit B](#) states that the State Engineer or other such other agencies "shall, within the resources available to them, furnish such assistance as may be requested." To resolve issues, both sides need to collaborate; it needs to be a two-way street. My concern is how we keep it from getting political.

CHAIR DONATE:

How does this bill mitigate the legal conflict if a groundwater board recommends one thing on how to manage the basin complex and the State Engineer disagrees? How do you manage that conflict?

MR. FONTAINE:

That is part of a working relationship between a groundwater board and the State Engineer. Groundwater boards only provide recommendations. In statute, the State Engineer cannot take action until receiving written recommendations. Senate Bill 149 and the proposed amendment, [Exhibit B](#), provide 30 days for a

groundwater board to prepare a recommendation, which is the same for a member of the public. If there is a disagreement, existing statutory provisions remain. The views of the State Engineer prevail and have the authority over whether to consider the recommendations. A groundwater board is an advisory body.

SENATOR GOICOECHEA:

Tremendous amount of litigation exists between counties and the Office of the State Engineer. The resolution of that, in itself, can save the State millions of dollars. When a county does not agree with the decisions of the State Engineer, it ends up in court. We would be better served to consult with each other prior to landing in court.

STEVE WALKER (Eureka County):

Eureka County supports S.B. 149 and the proposed amendment, [Exhibit B](#). Eureka County has been involved in efforts to bring this bill forward. It is a good step toward meaningful involvement of local communities most directly affected by water-related decisions. The result will allow less protests and local contention on water right applications due to local stakeholders being more actively involved in an advisory role on matters within designated basins in counties.

WADE POULSEN (General Manager, Lincoln County Water District):

Lincoln County Water District supports S.B. 149 and the proposed amendment, [Exhibit B](#). The District agrees with and supports the creation of local groundwater boards that understand local concerns for groundwater use to advise the State Engineer. The District agrees with the creation and dissolution of groundwater boards by local county commissions. This bill will help small rural counties to have voices and working relationships with the Office of the State Engineer as decisions, orders and regulations of groundwater are discussed and acted upon in groundwater basins in their counties. The bill can help lead the way to resolving mistrust and lack of communication that can potentially exist between the State Engineer and small rural areas and residents in vast, unpopulated groundwater basins.

Lincoln County Water District would suggest adding additional language. Section 1, subsection 4 of the proposed amendment, [Exhibit B](#), states "the groundwater board shall maintain its headquarters at the county seat of the county." Lincoln County Water District suggests the wording "... or at the

headquarters of the county water district or authority inside the county." Lincoln County has given Lincoln County Water District the authority to act in its name concerning its water issues. The headquarters are in a different location than the County seat and more centrally located. The groundwater board could use the facilities of Lincoln County Water District for its convenience. Travel expenses would be less by meeting at the Water District headquarters and would create a continuity of records and meetings as future membership on the board changes.

I heard this morning that basin revenue assessment fees could potentially be used to fill the General Fund. This is a good example of how groundwater boards could be utilized to help the State Engineer in the use and accounting of these basin assessments. This will help the county commissions and groundwater boards to understand how and where the basin assessment dollars are being spent.

DOUG BUSSELMAN (Executive Vice President, Nevada Farm Bureau):
The Nevada Farm Bureau supports S.B. 149 and the proposed amendment, [Exhibit B](#). I have submitted written testimony ([Exhibit C](#)) with input on designated basins.

The importance of putting appointed local groundwater boards in place is essential for establishing the type of accountability and transparency that should be provided for those being charged basin fees. There could be improvements in understanding how assessment fees are connected with the type of work being carried out in designated basins. This interaction with local groundwater boards might help to clarify the criteria used in making decisions for designations.

Local input from groundwater boards will go a long way in addressing water resource management from the grassroots up rather than the State level down.

KYLE ROERINK (Executive Director, Great Basin Water Network):
The Great Basin Water Network works with rural governments, tribes, conservationists, farmers, ranchers and others to keep water local. The Network supports S.B. 149 and the proposed amendment, [Exhibit B](#). The underlying spirit centers on what the Great Basin Water Network has advocated for in water policy—more local input and consultation.

It can potentially be a politically dividing statement, but considered through the lens of existing law, it is clear Nevada statute wants an inclusive participatory process. Senate Bill 149 will ensure there are no roadblocks to participation for communities wanting to be stakeholders. When speaking of a designated basin, it means a basin is having problems or likely to in the future. The Office of the State Engineer can levy assessments, tax water use and put policies in place for water users in a designated basin. It signals a need for collaboration. The bill will guarantee more diverse participation when needed most.

More appropriations, change applications and a bevy of those management tools in a designated basin can have major economic or environmental impacts. Diamond Valley in Eureka County is a great example of why this is important. Decisions affecting groundwater in a county can have grave consequences as Diamond Valley exemplifies. Aside from filing protests or submitting public comment at hearings, the current means of participation do not offer enough avenues for local governments to be meaningful participants prior to litigation.

Nobody knows its community better than a county commission. The spirit of S.B. 149 will empower conversations about water supplies by bringing parties to the table in a formal fashion and enable investigations about the benefits or dangers about a given proposal.

CHAUNSEY CHAU-DUONG (Southern Nevada Water Authority):

The Southern Nevada Water Authority (SNWA) is the largest water purveyor in Nevada and provides water to over 2.2 million residents. Why is the bill needed and why is there a rush to pass it during a time when there has been no chance to gather and discuss the details more thoroughly? Based on statements in this hearing, it seems the last time any county petitioned to establish a groundwater board was in the 1990s. There does not seem to be a pressing need to change the law. It is hard to understand the argument of how it is cumbersome for the Governor to appoint members to a groundwater board when it has been stated no one has approached the Office of the State Engineer recently requesting the formation of a groundwater board.

If an entire section of law is to change, especially any law pertaining to water, thorough discussions are needed. There seem to be additional obligations imposed on the State Engineer's Office at a time when budget shortfalls and staffing shortages continue to contribute to a backlog of reviewing applications for permits.

Some alternatives to be considered would be the Legislature to pass legislation addressing specific water issues in specific hydrographic basins and counties. This was done in Lincoln, Nye and Clark Counties. The Legislature could also pass enabling language which could provide tools for local governments to manage their own resources. In 1997, Clark County allowed the SNWA to create the Las Vegas Valley Groundwater Management Program. It allowed the groundwater committee to collect annual fees from well owners to create a well-plugging program to plug abandoned and sometimes hazardous wells; it created the sub-meter assistance program to provide rebates to customers who purchase a sub-meter and a Well Conversion Grant Program which subsidizes 85 percent of the costs for most well owners to abandon their wells and hook up to a municipal system. These successful programs resulted from the Legislature providing tools for local governments to solve local problems.

The SNWA does not support the S.B. 149 or the proposed amendment, [Exhibit B](#), at this Legislative Session. The intent is understandable, and SNWA is willing to work with CNRWA to address its concerns.

DAVID DAZLICH (Vegas Chamber):

The Vegas Chamber opposes S.B. 149. This bill would represent a significant change to water policy, especially in Clark County. The concern is the timing of introducing this legislation, and this change deserves additional robust discussions.

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

Virgin Valley and Moapa Valley Water Districts are in opposition to S.B. 149 and the proposed amendment, [Exhibit B](#). It is unclear how this would work where shared basins between counties exist. These Districts share basins with Lincoln County and other states. The Districts do not object to the intent but have logistical concerns and are willing to work with interested parties to clarify these issues.

MR. SULLIVAN:

When an application to appropriate public waters in Nevada is presented before the State Engineer, it is published within 30 days for a period of 4 weeks. It allows anyone the opportunity to protest the application prior to any action taken by the State Engineer. Any applicant or protestant is afforded the same standard of review Statewide in accordance with statutory criteria. This is regardless of who the applicant is, the amount of water in the application or the

protestants. Groundwater basins and river systems often cross county lines. The State Engineer is obligated to use consistent scientific methods to evaluate the effects of water rights across boundaries.

I appreciate the stated intent of S.B. 149 and the proposed amendment, [Exhibit B](#), to reduce litigation in water cases. I am concerned the bill would increase rather than decrease litigation.

CHAIR DONATE:

Would the proponents of S.B. 149 be willing to work with those with opposition testimony and look at alternative legislation that addresses specific water issues in specific basins or counties?

MR. FONTAINE:

The CNRWA is willing to work with stakeholders and interested parties and will reach out to them to discuss the issues. There are approximately 125 designated basins in Nevada, and the State Engineer is proposing 58 additional basins. It is difficult for legislation to target a specific basin when there are dozens of designated basins. The point is to avoid designated basins becoming critical basins.

The bill does not change water law; it changes the procedures in a process to appoint a committee in statute. Clark County opened the door to groundwater boards in 1961, allowing more authority than what is being proposed in S.B. 149. It resulted in positive outcomes for the Las Vegas Valley groundwater basin in a well-run process. The intent is not to have tools to manage basins but a voice for rural Nevada so everyone has a fair and equal opportunity to provide comment on applications for water rights, proposed orders and regulations. Not everyone has the same opportunity because there are rural areas without broadband internet services or local newspapers to publish notices. The bill seeks to ensure rural counties have the opportunity to provide input and a voice for water issues affecting their ways of life.

Shared basin issues can be worked out and clarified. A groundwater board established in a county sharing a basin with another county would have authority on its portion of the basin. Groundwater boards could have joint meetings to manage a shared basin.

Senate Committee on Natural Resources
March 11, 2021
Page 14

SENATOR GOICOECHEA:

It has to be a designated basin, and there can only be one basin in a county to create a groundwater board.

CHAIR DONATE:

I will close the hearing on S.B. 149.

Remainder of page intentionally left blank; signature page to follow.

Senate Committee on Natural Resources
March 11, 2021
Page 15

CHAIR DONATE:

With no more business to conduct, we will adjourn this meeting at 4:44 p.m.

RESPECTFULLY SUBMITTED:

Christine Miner,
Committee Secretary

APPROVED BY:

Senator Fabian Donate, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 149	B	1	Jeff Fontaine / Central Nevada Regional Water Authority	Proposed Amendment
S.B. 149	C	1	Doug Busselman / Nevada Farm Bureau	Written Testimony