

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

**Eighty-first Session
March 18, 2021**

The Senate Committee on Natural Resources was called to order by Chair Fabian Donate at 3:34 p.m. on Thursday, March 18, 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
Allan Amburn, Counsel
Christine Miner, Committee Secretary

OTHERS PRESENT:

Heidi Swank, Ph.D., Legislative Committee on Public Lands
Bradley Crowell, Director, State Department of Conservation and Natural Resources
Reed Cozens
Wade Poulsen, General Manager, Lincoln County Water District
Jay Dixon, P.E., Chief Hydrologist, Kinross Gold Corporation; Nevada Mining Association
Kyle Roerink, Executive Director, Great Basin Water Network
Robb Coache
Patrick Donnelly, Nevada State Director, Center for Biological Diversity
Warren Hardy, Virgin Valley Water District; Moapa Valley Water District
John Hadder, Director, Great Basin Resource Watch
Ashley Jeppson, Administrator, Division of Plant Industry, State Department of Agriculture

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CHAIR DONATE:

We will open the hearing on Senate Bill (S.B.) 155.

SENATE BILL 155: Revises provisions relating to the Division of Water Resources of the State Department of Conservation and Natural Resources. (BDR 48-471)

HEIDI SWANK, PH.D (Legislative Committee on Public Lands):

I served as Vice Chair for the Legislative Committee on Public Lands during the Legislative Interim. I will present S.B. 155. The idea of the bill was recommended to the Legislative Committee on Public Lands by the State Department of Conservation and Natural Resources (DCNR). The measure was approved at the September 22, 2020, meeting of the Legislative Committee on Public Lands.

Senate Bill 155 replaces the State Engineer as the administrative head of the Division of Water Resources and expands the qualifications of the position to include experience and competency in water resource management and conservation and the demonstrated ability to administer a major public agency.

Holding a license in professional engineering (P.E.) as the sole requirement to serve as State Engineer and Administrator of the Division of Water Resources has become outdated. While a P.E. is still a key professional qualification for the position, other technical expertise is equally important for this role.

The engineering aspect of water management has diminished whereas other science and technical specialties such as hydrology and geology are now the main technical challenges for responsible water management in Nevada.

The Division of Water Resources spends the majority of its time focused on how best to manage Nevada's limited water resources and resolving water use conflicts through regulatory processes in the courts. The engineering component as the Division Administrator is now just one of many potential professional qualifications needed to effectively manage Nevada's water resources. An effective Division of Water Resources Administrator must now also possess such abilities as management and knowledge of policy.

There is a precedent for redefining the qualifications of administrators of certain State agencies. The Legislature approved A.B. No. 41 of the 79th Session

which similarly changed and expanded the qualifications of several administrators including the Administrator of the State Public Works Division. The primary qualification of this position was expanded beyond having a professional engineering license to include an architectural license. To ensure the Public Works Division is served by a P.E. when the Administrator holds other qualifications, the Deputy Administrator, Professional Services must be a licensed P.E.

Section 5, subsection 2 of S.B. 155 similarly requires that if the Administrator of the Division of Water Resources is not a P.E., then the Deputy Administrator must hold a P.E. license. This is to ensure the experience known as part of the leadership of the Division is retained.

BRADLEY CROWELL (Director, State Department of Conservation and Natural Resources):

I will read from my written testimony ([Exhibit B](#)) and describe the content of S.B. 155 and share some context and background for why this legislation is necessary.

SENATOR GOICOECHEA:

There were a couple of members of the Legislative Committee on Public Lands who did not support this measure. There are at least a dozen engineers serving under the State Engineer. It would not be difficult for an administrator to find a deputy administrator with a P.E. license to meet the requirements. Why make the change now given the problems in front of Nevada? I have known many good former Nevada State Engineers who seem irreplaceable.

MR. CROWELL:

The challenges facing Nevada today are the reasons for making these changes. The primary duties of the State Engineer are beyond engineering. When technical challenges faced the State in the past, important skills were necessary. Today, the position is more about water planning, managing and responding to litigation. The breadth of management challenges for the Administrator of the Division of Water Resources is well beyond the field of engineering.

There are not many highly skilled engineers who are broadly skilled in other fields clamoring to be the State Engineer. Senate Bill 155 seeks to broaden the qualifications to provide for other technical expertise without making it a

slippery slope. It would be a shame if a qualified head of a division of water resources from another state willing to come to Nevada and serve as the State Engineer was disqualified for lack of a P.E. license. This bill provides some flexibility for the best person to manage Nevada's most precious resource.

CHAIR DONATE:

Will you explain the recruitment and compensation challenges to filling the role of State Engineer compared to other states and industries?

MR. CROWELL:

Historically, without exception, the State Engineer as head of the Division has come through the ranks within the Division. It has worked well in the past. It has become more challenging and will continue to be so in the future. Salary adequacy is one of the reasons. The job of State Engineer is one of the most difficult jobs in State government. The pay is not commensurate with public employees in city or county governments and not close to the pay in the private sector. It would be a challenge to find someone willing to serve in this position at the salary offered with the right skills and for the right reasons. Finding someone neutral and balanced with the right skills is a major concern. Although the State has been fortunate with its past State Engineers, it will not necessarily hold true going forward.

CHAIR DONATE:

What is the timeline for the position to be filled?

MR. CROWELL:

The position will be filled as soon as possible upon close of this Legislative Session.

SENATOR GOICOECHEA:

I am concerned with some of the language in S.B. 155 about the qualifications of the State Engineer. An attorney or an accountant could become an administrator and will tend to move toward their forte. The Office of the State Engineer is about one thing—water. It is the job as Director of the DCNR to cover some of those other duties. The language speaking of the "Administrator" and what it means does not convey good water science.

MR. CROWELL:

A lawyer or accountant would not qualify to serve in this position. It is geared toward a hydrologist or a geologist without a P.E. license for qualified eligibility. I will consider having the language tightened to ensure the clear intentions of the DCNR are in the bill.

SENATOR GOICOECHEA:

Thank you. I am not the only one who shares these concerns. More clarity is needed in the bill as to who qualifies for the position. The way the bill reads, a person could be a conservationist and be head of the Division of Water Resources, as long as a deputy administrator has a P.E. license.

MR. CROWELL:

I agree and am willing to tighten the language to achieve the goal for the prospective administrator to have the right skill sets and not be perverse in the administration of water law.

CHAIR DONATE:

Will you clarify some of the day-to-day responsibilities of the Office of the State Engineer? Is the State Engineer a final decision maker for robust engineering projects with a contextual knowledge on what is happening, or are the responsibilities more on the administrator side?

MR. CROWELL:

The primary responsibility of the Division Administrator is to administer the Division more than performing engineering duties. There is a wealth of knowledge in engineering expertise within the Division to support the head of the Division. The Administrator should be conversed in engineering terms and technology but would not do in-depth engineering work. The Administrator manages staff and budgets, works through complex dynamics in terms of administering the law, responds to courts and manages adjudication and hearings on water rights. An experienced manager is needed.

The Division of Environmental Protection no longer requires an engineer in the management position. The DCNR required the Director to be an engineer at one time, but that requirement was removed in 1977.

CHAIR DONATE:

If a water rights lawyer were to step into the State Engineer role, and there was a water engineering problem, would this person use the guidance of the Deputy Administrator to help craft what the response would be? Is that a fair assessment of a situation that could happen?

MR. CROWELL:

It is conceivable. The language related to the skill set and requirements for serving as the Administrator of the Division is intended to broaden the position for other technical areas of expertise, not to a lawyer, for example. If the Administrator has a Ph.D. in geology, but not a P.E., it would be required that one of the deputies be a P.E.

REED COZENS:

I am a professional engineer and licensed Nevada water rights surveyor. I oppose S.B. 155. It is tremendously important to keep our State's most precious resource under the guidance of a P.E.

Water is uniquely challenging to regulate. It takes many specialties working together to make our systems work. Hydrologists and hydrogeologists provide scientific insight for complex water systems. Attorneys litigate disputes, but a P.E. is called upon to work within the ever evolving frameworks while simultaneously balancing the unique operational needs of cities, counties, improvement districts, developers, public utilities, mining companies, individuals, ranchers, farmers and all other water users.

The head steward of our State's most precious resource through a combination of education, accreditation and expertise should be able to perform the following: measure the flow of water through open channels and enclosed pipes by comprehensive water use and water level analysis and reporting; estimate the capacity of reservoirs; have practical knowledge of irrigation crop water requirements; be able to interpret aerial photography and imagery; understand land parceling and water distribution infrastructure; and have applied knowledge of Nevada water law and well-drilling regulations. Professional Engineers are continuously trained to satisfy these criteria. These individuals are problem solvers, and this leadership is critical for Nevada and its future.

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

Lincoln County Water District opposes S.B. 155 due to not requiring the State Engineer hold a P.E. license. Technical and scientific review is important in the process of administrating water rights. Allowing science to be the guide when dealing with water resources is important. There are people who could be placed in the position of State Engineer and do the job effectively. However, given how politicized water can become, science tends to take a back seat to the politics of the day. By taking away the P.E. requirement, politics could take over the position and good solid sound science will be lost or pushed to the background as time passes. Having a P.E. working under the State Engineer does not mean the science will stay at the forefront of the decision-making process when appropriating water, reviewing applications and orders and making rulings. It is the State Engineer who will give direction and set agendas for the Office. The State Engineer should be more science-driven and less politically driven.

JAY DIXON, P.E. (Chief Hydrologist, Kinross Gold Corporation; Nevada Mining Association):

Kinross Gold Corporation and the Nevada Mining Association oppose S.B. 155. I will read from my submitted letter of opposition ([Exhibit C](#)).

KYLE ROERINK (Executive Director, Great Basin Water Network):

The Great Basin Water Network opposes S.B. 155. The Great Basin Water Network has long worked within the regulatory realm of the Division of Water Resources. State Engineers have always been fit to hold the office. The top water official comes to the office with high standards.

Section 5 of S.B. 155 vitiates that standard because it has open-ended terms and no real sideboard. It substitutes strong criteria for the weakest criteria in the western U.S. The top person in the Division must have a foundational basis for technically evaluating data based on the training and testing required to become P.E. Lawyers and hydrologists do not have that background for evaluation relating to testing and training. The bill language could put the deputy engineers and the Administrator in a precarious and uncomfortable power dynamic. Potential legal or ethical liabilities could be created.

Wyoming, New Mexico and Colorado require their top water official to be a P.E. Utah requires five years of experience as a practical engineer to qualify for this position. Idaho allows for engineers, geologists or hydrologists with strict

sideboards to qualify. Arizona and Utah require the administrator of water be confirmed by their state Senates. Some states require terms be associated with the positions of state engineer, which helps ensure decisions will not threaten their job security.

ROBB COACHE:

I am a registered P.E. in Nevada. I have 40 years of experience in Nevada water rights with 30 years at the Office of the State Engineer. I worked as an engineer, a hydrologist and first Deputy State Engineer assigned to the Las Vegas Office.

The requirements stated in section 6 of S.B. 155 lack knowledge of hydrology, hydrogeology or any requirements needed at the Office of the State Engineer. It is written as if the person would be in charge of a water authority.

There is an ethical conundrum with a deputy state engineer being the registered P.E. When the State Engineer is a registered P.E., the buck stops with that individual. Assignments to a deputy will ultimately be the responsibility of the State Engineer who signs the documents.

I do not agree that a P.E. is outdated for the State Engineer position. The multi-disciplinary and problem-solving education necessary to obtain a P.E. license coupled with ethics requirements have more relevance today. When the Office was created in 1903, the Legislature titled the position "State Engineer" for a reason; that reason remains valid today.

PATRICK DONNELLY (Nevada State Director, Center for Biological Diversity):

The Center for Biological Diversity is opposed to S.B. 155. The solution is described as a contemporary solution. There have been a number of contemporary solutions being pushed by the DCNR this Session with regards to water. They range from restricting who can appeal decisions of the State Engineer, to excluding district courts from judicial review to a proposal for new speculative schemes like water banking.

The DCNR appears to be taking measures to reduce public oversight and involvement and upend State water. It now seeks to redefine the leadership structure of the Division of Water Resources putting extraordinary powers into the hands of an individual who may or may not be adequate to the task. Science should guide water decision-making, not politics. There is a reason the

position is called State Engineer. There are many reasons not to support S.B. 155. To fix water problems in Nevada, we should start by properly funding the Division of Water Resources and ensuring its decision makers strictly adhere to the law. This bill will increase the likelihood that politics will guide water decision-making. Those affected by this legislation oppose it, and that indicates it is a bad bill. This bill is not necessary to State water law and should be rejected.

WARREN HARDY (Virgin Valley Water District; Moapa Valley Water District):
The Virgin Valley and Moapa Valley Water Districts have concerns with S.B. 155 and removing the P.E. requirement for the State Engineer. I am encouraged in conversing with Mr. Crowell and will continue to work with him to create satisfactory language.

JOHN HADDER (Director, Great Basin Resource Watch):
The Great Basin Resource Watch monitors and advocates for mining reform. Water is a primary aspect of mining, and there are important technical aspects and difficult issues to resolve. The use of water in mining has unique qualities. There is no reason for the change in statute, and the Great Basin Resource Watch opposes S.B. 155. A skilled, experienced and technically qualified person is necessary for the position of State Engineer.

DR. SWANK:
The salary of the State Engineer is set in the unclassified pay bill, not at the discretion of Director Crowell. The states are going through economic turmoil, and this is not a time salaries can be raised. The next Legislative Session is in two years, and the Interim is two years and are important for managing Nevada's water resources.

MR. CROWELL:
I am dismayed by the red herring conspiracy theories being touted rather than constructive feedback on how to reach a common goal or engage in constructive dialogue. Regarding other states using senate confirmations to appoint the positions, I would argue that makes the position more political. I would ask those in opposition and those who are professional engineers if they would be willing to step out of their jobs and serve as the State Engineer given the responsibilities, the pay and other requirements for the position. I welcome engagement on constructive solutions. I believe science should be the guiding light for the policies the DCNR implements. Good science has not aided Nevada

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in the over-appropriated and over-pumped water basins. How we have always done this is not a good answer going forward if we want to take a responsible approach.

CHAIR DONATE:

We will close the hearing on S.B. 155 and move to the work session on S.B. 63.

SENATE BILL 63: Revises provisions relating to hemp. (BDR 49-264)

JENNIFER RUEDY (Policy Analyst):

I will read the summary of the bill and the amendment from the work session document ([Exhibit D](#)).

SENATOR GOICOECHEA:

Can a grower have a test done on hemp by a third-party lab and submit it to the State Department of Agriculture and meet the requirements for the harvest period?

ASHLEY JEPPSON (Administrator, Division of Plant Industry, State Department of Agriculture):

No, a private third-party lab would need approval by the State Department of Agriculture. The State Department of Agriculture is doing all of the testing.

CHAIR DONATE:

I will entertain a motion on S.B. 63 to amend and do pass as amended.

SENATOR SCHEIBLE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 63.

SENATOR BROOKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR DONATE:

We will move to the work session on S.B. 65.

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SENATE BILL 65: Revises provisions relating to the State Department of Agriculture. (BDR 50-275)

Ms. RUEDY:

I will read the summary of the bill from the work session document ([Exhibit E](#)).

CHAIR DONATE:

I will entertain a motion to do pass S.B. 65.

SENATOR BROOKS MOVED TO DO PASS S.B. 65.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR DONATE:

Hearing no further business, we will close the hearing at 4:37 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. 155	B	1	Bradley Crowell / State Department of Conservation and Natural Resources	Written Testimony
S.B. 155	C	1	Jay Dixon / Kinross Gold Corporation / Nevada Mining Association	Letter in Opposition
S.B. 63	D	1	Jennifer Ruedy	Work Session Document
S.B. 65	E	1	Jennifer Ruedy	Work Session Document