

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON NATURAL RESOURCES**

**Eighty-Second Session  
May 8, 2023**

The Committee on Natural Resources was called to order by Chair Lesley E. Cohen at 4 p.m. on Monday, May 8, 2023, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and to Room 130, Greenhaw Technical Arts Building, Great Basin College, 1500 College Parkway, Elko, Nevada. 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/82nd2023](http://www.leg.state.nv.us/App/NELIS/REL/82nd2023).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Lesley E. Cohen, Chair  
Assemblywoman Shannon Bilbray-Axelrod  
Assemblywoman Tracy Brown-May  
Assemblywoman Venicia Considine  
Assemblyman Rich DeLong  
Assemblywoman Bea Duran  
Assemblyman Bert Gurr  
Assemblywoman Alexis Hansen  
Assemblywoman Selena La Rue Hatch  
Assemblyman Howard Watts  
Assemblyman Toby Yurek

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Natha C. Anderson, Vice Chair (excused)

**GUEST LEGISLATORS PRESENT:**

Senator Pete Goicoechea, Senate District No. 19



**STAFF MEMBERS PRESENT:**

Becky Peratt, Committee Policy Analyst  
Erin Sturdivant, Committee Counsel  
Connie Barlow, Committee Manager  
Nancy Davis, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation  
Davy Stix, Chair, Legislative Affairs Committee, Nevada Cattlemen's Association  
Andrew Belanger, Director, Public Services, Southern Nevada Water Authority; and  
Las Vegas Valley Water District  
Kyle Roerink, Executive Director, Great Basin Water Network  
Patrick Donnelly, Nevada State Director, Center for Biological Diversity  
Levi Shoda, Manager, Sadler Ranch, Diamond Valley, Nevada  
Jake Tibbitts, Manager, Natural Resources, Eureka County  
Adam Sullivan, P.E., State Engineer and Administrator, Division of Water Resources,  
State Department of Conservation and Natural Resources  
Melissa L. Flatley, Chief, Hearing Section, Division of Water Resources, State  
Department of Conservation and Natural Resources

**Chair Cohen:**

[Roll was taken. Rules and protocol of the Committee were reviewed.] We have one bill hearing today and then we will have public comment. With that, I will open the hearing on Senate Bill 113 (1st Reprint).

**Senate Bill 113 (1st Reprint): Revises provisions relating to groundwater management plans. (BDR 48-595)**

**Senator Pete Goicoechea, Senate District No. 19:**

I am bringing you Senate Bill 113 (1st Reprint), which is a request bill I brought on behalf of the Nevada Farm Bureau Federation. Mr. Busselman will be here testifying to the bill. We also have Mr. Tibbitts, who is neutral on the bill, but can provide a certain amount of expertise as he is the one who crafted the groundwater management plan (GMP) for Diamond Valley, the only critical management area in the state of Nevada.

First and foremost, S.B. 113 (R1) was brought in response to legislation that we passed, I believe in 2011, that created critical management areas. In that, like any legislation, we missed the point in a few spots. Ultimately, we did have a Supreme Court ruling that clarified what we had missed. I want to make one point—there seems to be some real misconception out there—that is the fact that S.B. 113 (R1) does nothing but reaffirm domestic water rights. If you look at section 2, it reaffirms what is in existing statute. If the

State Engineer completely curtailed a basin, it would revert back to the law, the statute. In that statute, it says you are entitled to a metered 0.5 acre-feet. If the whole world goes dry, a domestic well owner is entitled to 0.5 acre-feet.

As we look at this, truly what it is meant to be, there is only one critical management area in the state, and that is Diamond Valley. In the legislation that was passed in 2011, it allows for the State Engineer to declare a critical management area in a basin that is overappropriated and overpumped. That is the key piece of this. There is one critical management area in the state today. I know you are all familiar with Basin 162 in Pahrump, which was overappropriated but was never overpumped. We are trying to clarify with S.B. 113 (R1) what we intended when we originally crafted the bill: if you are in a declared critical management area, then the State Engineer will and can require you to take action within ten years. That action would be that you develop a GMP and show how you can recover the water table in the basin. Notice I used "water table" because there was a lot of wordsmithing on this bill after it was heard in the Senate. We went from perennial yield, static level, to what is a true appropriation. I will say, this is the first time in my career that we had so many stakeholders, we are not really playing defense. We are trying to bring forward a good quality bill.

That is the concept of the bill, it redefines "critical management area." You only have ten years. The State Engineer will come in and say, okay, you have ten years, start the clock. If you develop a GMP then, at the end of ten years, if the water table is not recovering, the State Engineer has no choice but to curtail by priority. That is Nevada's priority water law, and we are trying to maintain it. With that, I will quit talking and let Mr. Busselman take the floor.

**Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:**

Senate Bill 113 (1st Reprint) is intended to be a very straightforward proposal. It has the purpose of protecting the property rights of senior water rights owners in areas that have been designated as critical management areas and locally developed groundwater management plans are prepared and submitted to the State Engineer for consideration.

Section 1, subsection 1 deals with the responsibilities of the State Engineer in evaluating the basin as to whether it should be a critical management area. *Nevada Revised Statutes* (NRS) 534.110, subsection 7(a), relates to the ability of the State Engineer to designate a basin which consistently exceeds the perennial yield of the basin as a critical management area. *Nevada Revised Statutes* 534.110 subsection 7(b) involves a requirement for the State Engineer to designate a critical management area if there is a petition for such a designation which is filed by a majority of holders of certificates or permits to appropriate water in the basin.

Returning to S.B. 113 (R1), section 1, subsection 1, the State Engineer is directed to "affirm or modify the perennial yield of the designated basin." Section 1, subsection 2 allows, through an order, the ability to monitor the perennial yield of a basin, after consideration of the best available science. Section 1, subsection 3 refers to NRS 534.037, which deals with

an approval of a GMP. The groundwater management plan is to come before the State Engineer for evaluation after it has been signed by a majority of the holders of permits or certificates to appropriate water in the basin.

The reference in section 1, subsection 3, directs us to section 1.5, subsection 8 of the bill. This language is intended for the review of a GMP by the State Engineer after a ten-year period to determine whether the plan has been effective in making significant progress toward stabilizing the water level of the basin. In doing this evaluation, the State Engineer is allowed to possibly modify the perennial yield of the basin if there is a determination on whether the perennial yield has changed.

Section 1.5, subsection 1(a) amends the current provisions of NRS 534.037 and clarifies that a plan for a GMP needs to be signed by a majority of the owners of groundwater permits or certificates in the basin. In other words, we are saying those who hold the majority of the water, not the majority of how many water rights owners there are in the basin.

Section 1.5, subsection 6 deals with senior water rights owners in the basin and allows for these water rights owners to not have their water included in the GMP. If they wish to participate in the GMP, they may notify the State Engineer that they intend to include their water in the groundwater management plan.

Section 1.5, subsection 7 deals with the adjustments that might be necessary in the process of determining the perennial yield of the basin. Subsection 7(a) relates to what happens if the determined perennial yield is less, and (b) relates to a determined increase in a perennial yield. Less translates to the cut line for bringing the basin into balance as requiring more water to be reduced. If the perennial yield is increased, the cut line will be adjusted to require less of a reduction.

We have already covered section 1.5, subsection 8, but to repeat, the purpose of this language is a review after ten years on whether the GMP has been working and making significant progress toward stabilizing the water level. If the determination is that there has not been progress, subsection 8(a) requires the GMP to be dissolved, and (b) implements the curtailment process, including domestic wells to conform with the priority rights until the water level is stabilized.

In reference to domestic wells, I would like to repeat what Senator Goicoechea said, and refer the Committee's attention to NRS 534.110, subsection 9. This provision allows for domestic wells the ability to continue to withdraw 0.5 acre-feet of water per year, as long as that domestic well has a water meter to measure the amount of use.

To clearly emphasize the intention of this legislation, it mostly applies to groundwater management plans that may be developed in the future, following the bill becoming law. Section 3 of the bill does note that the ten-year clock for evaluating progress on the one existing groundwater management plan starts on October 1, 2023, with the evaluation taking place beginning October 1, 2033.

In closing, I would like to express our appreciation to Senator Goicoechea for his willingness to bring forward our request, protecting senior water rights owners in critical management areas, and not requiring their water rights to be diminished through a GMP if they do not wish to participate. While we believe that local water rights owners should be given the opportunity to work together in seeking strategic well water management plans to work toward aquifer stabilization and recovery, we still maintain that the doctrine of prior appropriations cannot be imperiled. Priority rights matter, and senior water rights owners should not have their water taken away from them without their willingness to be part of the GMP. I also want to thank a number of our fellow water stakeholders who have participated in our group effort in working through the ideas that have been evaluated to get us to this point. Thank you for hearing our bill.

**Chair Cohen:**

If you are ready, we will go to questions.

**Assemblywoman La Rue Hatch:**

Thank you both for being here and presenting on this really critical issue and making sure we are getting it just right. I have a couple of questions. My first one is on page 3, line 9, making that change to the majority of the total groundwater permitted. If you will allow a hypothetical, let us imagine this Committee is a basin, and I own 60 percent of the water rights. If every other person on this Committee wants a plan, but I say no, under this bill, would that plan fail?

**Senator Goicoechea:**

Yes. If you own 60 percent of the water in the basin, the plan will fail.

**Assemblywoman La Rue Hatch:**

My follow-up question is, If I am just obstinate—absolutely not, I will not agree—what happens if we cannot come to an agreement with this plan?

**Doug Busselman:**

I think there would still be a possibility for the junior water rights owners to work together in figuring out what they might be able to do collectively to share the shortage, so to speak. Under this bill, as a majority water rights owner and the senior water rights owner, you would not be included in that.

**Senator Goicoechea:**

I do not know how you could bring a plan forward if over half the basin does not want to participate. That is why I said the plan will fail. Clearly, if you want to, as junior water rights holders, you could try and figure out how the other 40 percent of the basin could reduce pumping, maybe to the extent where the water table would start coming back up.

**Assemblywoman La Rue Hatch:**

I always like to think of the worst-case scenario just so we are prepared. My next question is on page 4. I notice that if you do not sign off, then you do not have to participate in the plan.

What is my incentive as a water rights holder to sign off? If I do not, I get to keep pumping as much as I want. Whereas if I do sign off, I am part of this collective curtailment, or lowering, or underpumping.

**Doug Busselman:**

First of all, you do not get to pump as much as you want. You get to pump as much as you are entitled to pump. Having said that, there would not have to be any incentive. The incentive might be that you believe that for the good of the community and that together we are better off, but that is not something that is forced on you.

**Assemblyman DeLong:**

I am going to follow up on Assemblywoman La Rue Hatch's questioning with a slightly different approach. If we are looking at perennial yield of the basin, which in theory is the amount that you can pump and not lower the water table, and your cut point is those senior water rights holders who could pump at the perennial yield, if they do not participate, then you do not have anyone that is pumping that is going to get you back to a perennial yield pumping amount. There is no incentive for those senior water rights holders to participate. You are almost setting it up for failure unless you have an altruistic senior water rights holder. I think that is a bit of a limitation with this bill.

**Senator Goicoechea:**

It is an interesting point. Typically, in most of these basins, you end up with a mix of senior, junior, and midrange water rights. That is really what brings it together and makes it work. It is as these junior rights or rights that might be close to the cut line, in fact, they participate. The bill only says you do not have to. There are a number of those—for the basin, your own land—if you end up being the only guy left in the basin, it is probably not a very good place to be. You are saying why would they? In most cases, it is for the benefit of the community, the basin, and the economy. They would, they do, and they have.

**Doug Busselman:**

I would also say, that is what Nevada water law says, under the prior appropriation doctrine, those who are senior are able to maintain their pumping. What we are really doing with the bill is reestablishing that concept.

**Assemblyman DeLong:**

I think what you are proposing in the bill is a good thing. I think we need it, particularly based on the recent court decision. I think clarifying the prior appropriation is good. All I am saying is that the structure that is set up for the ten-year evaluation, unless there is an incentive for those senior water rights holders that are above the cut line, without getting them to participate, you are going to go for ten years and then have the State Engineer do curtailment, unless you get a bunch of altruistic senior water rights holders.

**Doug Busselman:**

You may not even be able to develop a groundwater management plan to take to the State Engineer on the basis that there is not an outcome that can be possible.

**Assemblyman DeLong:**

I agree.

**Senator Goicoechea:**

Ultimately, that is what the bill really does. This is a companion bill to Senate Bill 176, which talks about water rights retirement. The bottom line is you still have to have something in place, a place for these people to go. We are overappropriated. Half our basins are overappropriated, and half of those are overpumped. We have to do something. We are just trying to shore this up. It does give those communities ten years to try and work it out. The other piece is, we want to clarify that you only have ten years. It was never intended, as with the GMP in Diamond Valley, that you would have 35 years to decide if it was going to level the water table. That is where we are at, but this allows an opportunity. We wish them well; we hope it happens, but the bottom line is, in the end, we are going to have to deal with this. We are overappropriated, we are overpumped, and once that mandate comes down, maybe some of the other legislation kicks in. Thank you.

**Chair Cohen:**

Let us go back to Assemblywoman La Rue Hatch's scenario and let us say she is the 60 percent holder of rights. She holds 60 percent of the rights, but she wants to be part of the plan and she signs off on the plan. Then, within the ten years, she sells her rights that are attached to the plan, so that whomever she sells the rights to ends up part of the plan, or can the buyer just say, No, I am not continuing on with the plan?

**Senator Goicoechea:**

In that scenario, I think at the time she signed up and was part of the plan, whatever she did with her water rights at that point, I think would be immaterial. Once the groundwater plan was established, hopefully the buyer would run the ten years. But ultimately, I am sure the reason he bought the rights is because he recognized the face value of having 60 percent of the water in that basin and it was probably worthwhile.

**Chair Cohen:**

The plan basically attaches to the rights for the ten years if the owner signs off on it, is that correct?

**Senator Goicoechea:**

I think once you signed off to put the plan in place, you would have to let it run its course, but I would defer to Legal Counsel.

**Erin Sturdivant, Committee Counsel:**

The bill is silent as to what happens in that situation. If you want to clarify, it will probably need additional language.

**Doug Busselman:**

I would think that in the paperwork that goes with the signing, you would need to include your participation in the agreement, and you could cover it in that fashion.

**Assemblywoman Hansen:**

On this idea of water rights as a real property, I am certainly not an attorney nor water attorney. Perhaps we can get some clarity at some point from the Office of the State Engineer. However, in regular real estate transactions, if you are selling a tangible piece of land, and there is some sort of attachment to it, which I see this critical management plan as it is almost considered an assessment or some sort of attachment to it. I would think it would impact a future water rights holder. If we could, at some point, get some clarity, since the statute seems to be silent on how the State Engineer might perceive that. I think that is an important thing for us to understand in this.

**Senator Goicoechea:**

But you know we love litigation in water laws. I hear you, but in my mind, at the point you signed on, you entered into the plan. We want to state on the record if that would be adequate, or we can amend the bill. Clearly in my mind, I think that would be legislative intent. If you sign the water up and you participate in the plan, then down the road you sell it, that would have no impact on the ten-year clock.

**Assemblywoman Hansen:**

Just to be clear, I am confusing myself; it is not you confusing me. In my understanding, if I sold those water rights, and I am the majority water rights holder, but I sell those rights and it was part of this plan, that will impact the buyer, and that is going to attach. The buyer is going to have to say, Well if I buy these water rights, I am going to have to comply. That is what I am trying to clarify and get an answer to.

**Senator Goicoechea:**

I completely concur that is what I was trying to say, sideways. Thank you.

**Assemblyman Watts:**

I am somewhat familiar with the issues, and I appreciate some of the thinking and approach around this. Essentially, curtailment is the hammer; it is the stick. It has not been used. I think if it was, that might help foster some increased collaboration. I appreciate some of the things that are trying to tighten this up because, in my mind, this was always kind of the carrot approach. There is you declaring that this is an area where there is an emergency going on, and the idea is once that is designated, you need to have a clear clock, and you need to have the hammer waiting to come down if people do not figure it out and come up with a plan to get things stabilized. I think there are a lot of aspects to this bill that speak to that. Obviously, there are a lot of differences of opinion about what are the options or tools to try and avoid that.

I share some concerns echoed by my colleagues, particularly Assemblyman DeLong. I am concerned about this potentially undermining some of the effectiveness of groundwater management plans developed in these areas. Some of the senior water rights holders are essentially cut out. I know there has been a lot of debate around the majority and you can see equity issues on both sides. I generally agree with the approach here, that when we are talking about majority in the context of water law, we need to have some recognition of

priority rights. The previous statute was kind of a step in the other direction, where you could have a majority of rights holders, but folks who are not senior are now imposing something on senior rights holders.

I definitely get where you are coming from and really respect that. I think particularly section 1.5, subsection 6 is one of the things that concerns me. The holder of a priority permit, even if you get enough support to come up with a plan, they are not subject to it and that could impact the ability to get something done. I share those concerns that if there is not enough to get some of those folks in the mix, essentially, we are either not going to be able to get a decent plan approved, one that somehow tries to balance that respect for authority, but also gets everyone together to stabilize the basin. Also, if people can opt out of participating, we are essentially going to get into a situation where we end up back where we started and having to do curtailment at the end of this whole saga.

This is less of a question; it is just an expression of my concern and recognizing that these are tricky issues to navigate. I know there are many opinions about what is going on in Diamond Valley. You have to find some way to get everybody to have some skin in the game and participate to make this alternative work. My concern is the folks with priority rights who have the most personally to gain with their rights by curtailment, it is just fine for them if they are getting 100 percent; that is going to be an impediment to finding solutions outside of strict curtailment.

**Senator Goicoechea:**

There are a couple of segments as I look at this and truly, I would hope that we start taking action in these basins before we end up in the scenario where 60 percent and 70 percent were junior permits, that is really the downfall with the system. I also believe, once a critical management area is declared, and I think to a certain extent, the State Engineer is hesitant to declare a critical management area because it can be so harsh. The bottom line is, it is time we face reality, and we are that badly overappropriated in a number of these basins. I am saying, start the clock; it gives you ten years. If you cannot come up with a GMP in ten years, the answer is curtailment.

Once you recognize and look at what it truly is, you have two options: either come up with a plan or go to curtailment. As I expressed to Assemblyman DeLong, if half of your basin or the agriculture in that basin is going to go away, which could happen, or even a third of it, that has huge impacts in that basin. I have more faith in people and in communities than that. I think they will try to come together and work it out. Yes, there will be some senior rights holders who say, No, I do not want to play. There is always that mix and then the other side. In the end, if the groundwater plan does not work, then at least we are addressing the issue.

**Assemblyman Yurek:**

I will tell you that learning water law is like learning a foreign language. I apologize right now for my ignorance, and I do not even know how to ask my question. In section 1.5, subsection 6, we look at bringing a plan together. I am learning, obviously, the doctrine of prior appropriation applies. You have senior rights holders; you have junior rights holders.

I also know that there is a part of the law—and I am hoping that maybe just to clear this for me, because I do not know that it is even necessarily part of this—if we are just dealing with permit or certificate holders who have not been putting the water to any beneficial use. Is there any calculus at all for folks who are actually using the water, as opposed to just on paper, when these plans are being put together? Is this all prior appropriation, whether you have been using the water and putting it to beneficial use, or is it just the date of your permit?

**Doug Busselman:**

I would say that if they have not been putting their water to beneficial use, depending on the time frame, they ought to be subject to forfeiture, following the law. I think the one thing that is not mentioned in this section deals with vested water rights. Those are not included in this section whatsoever; vested water rights are above and beyond the certificated rights. Again, if you are not using your water, you should be subject to forfeiture.

**Senator Goicoechea:**

Clearly, this has to be permitted, certificated water, hopefully in good standing. As Mr. Busselman spoke to, if you have not used it in the last five years, if it is not valid, shame on the State Engineer because you should not be in an overpumped basin where you have water rights that are subject to forfeiture. There is a forfeiture letter that is required to notify the water rights holder.

**Chair Cohen:**

Mr. Busselman, will you tell us a little bit about the vested water rights, which is before we started water law, and why those are so sacrosanct?

**Doug Busselman:**

Vested water rights are water rights that were put in use prior to Nevada developing either water law for surface water or groundwater. Those are superior to either of those that are certificated. That is determined when the vested water rights owner makes a claim and then through an adjudication process, the State Engineer determines whether those water rights are existing or not.

**Assemblyman DeLong:**

I want to follow up on my colleague's comment. I agree we need to recognize and hold true to prior appropriation. Again, echoing my previous comments about how we are going to get people to the table to address the issue. Section 1.5, subsection 6, talks about "equal to the perennial yield." Should we be looking at something that is a fraction of the perennial yield to bring some of those senior water rights holders who are pumping within what the perennial yield is to the table? Just throwing that out as a suggestion of a way to get people to the table to make these plans work

**Doug Busselman:**

We did not envision that sort of thing because our interest was protecting the senior water rights owners. Now, what senior water rights owners do with their property is their business, and that is why we took the position that we did. If they do not want to participate, they

ought not have to participate and have their water put in jeopardy without their being willing to do so. Our contention is that under Nevada water law, senior water rights owners have a right to their property based on their seniority.

**Senator Goicoechea:**

I think in the neutral testimony that is coming forward from Mr. Tibbitts and the Diamond Valley groundwater management plan, you will see that it somewhat worked that way. I will let Mr. Tibbitts testify to that. It is first in time, first in right. Also, not knowing where that perennial yield cut line is going to land, it makes strange players.

**Assemblywoman La Rue Hatch:**

I also share my colleague's concerns about seniority and getting people to the table. I know in this hearing, there have been a couple of times where it seems like we have mixed up senior water rights and majority. I have heard a couple of times where they have been interchanged, and we know they are very different. My question is, if 60 percent of the water in the basin belongs to junior water rights holders, then the 40 percent of senior water rights holders, even if the plan is approved, they could choose not to participate. Is that correct?

**Senator Goicoechea:**

Yes, that is exactly where we are. That was the big bone of contention in Diamond Valley with that groundwater management plan. Truly, it was just the majority of the water right holders, not of the water. They actually came in there, and 60 percent of them were subject somewhere to that cut line, not knowing exactly where they were going to fall, and they put the groundwater management plan in. In that scenario, this bill is saying if you are a senior water rights holder, you do not have to participate with the groundwater management plan. We are just trying to give them that out.

**Doug Busselman:**

I think part of our concern has been there are two ways to get a critical management area. You can have a critical management area because of a designation by the State Engineer, but there is also the ability to get a critical management area by a petition. Part of our concern is that if you had the majority being junior water rights owners, there would be incentive for them to actually press the envelope and if the senior water rights owners have no protection for their water rights, they basically have the juniors run over top of them. That has been part of our concern and the reason for our interest in trying to protect those senior water rights owners in the first place.

**Assemblywoman La Rue Hatch:**

Once you sign on to the plan, are you allowed to back out of the plan, or are you committed until it is reassessed for the next ten years?

**Senator Goicoechea:**

That would depend on what the plan said. The groundwater management plan is not governed by statute.

**Assemblywoman La Rue Hatch:**

Under this bill, would I be allowed to back out or not once I signed on?

**Senator Goicoechea:**

Again, it would not be up to the statute at that point. The State Engineer is the one who actually accepts the groundwater management plan.

**Erin Sturdivant:**

I read the language in section 1.5, subsection 6 to allow a senior water rights holder to comply or not comply at their discretion. Again, as Senator Goicoechea said, it would depend on what is in the actual plan and what they agreed to at the time they are signing.

**Assemblywoman La Rue Hatch:**

Concerns aside, I do think the point of this bill is we want people to get together, talk about things, and try to head this off before it gets to all of those. If that does not work, if people do not participate, if people pull out, then we have the backstop that in ten years we now have the hammer of curtailment. Is that correct?

**Senator Goicoechea:**

I wish the State Engineer never had to declare a critical management area. But in fact, we probably need some more declared today. Until you actually declare the critical management area and bring these people to the table, let us be honest, everyone would just as soon keep pumping and the water table keeps declining. In the end, it gets to where there are only three people in the basin who have any water left, because they are senior rights holders. This bill is intended to clarify. It is just another tool.

In 2011, then-State Engineer Jason King and I brought it as just another tool in the toolbox. We thought it was going to be beneficial. Unfortunately, we only got one critical management area actually designated and ran into some snags. We are just working through it and trying to clean up some language. We never intended for it to impact the priority water rights. The other key piece of it is you have only got ten years, because we cannot do what we have done in Diamond Valley. Those water rights were reissued in 1974 and here we are now in 2023 talking about a groundwater plan that is going to run out 35 years. Again, we just set the clock. You have ten years until 2033. You have to make some recovery before it is too late for any recovery, and it is harsh; it is going to be hard on some people. That is why we brought another companion bill with it. Hopefully, we can soften the landing, as Mr. Tibbitts said.

**Chair Cohen:**

Seeing no further questions, I will move on to support. I do not see anyone in Elko or Las Vegas, so we will start with those in support in Carson City.

**Davy Stix, Chair, Legislative Affairs Committee, Nevada Cattlemen's Association:**

Nevada Cattlemen's Association supports S.B. 113 (R1). The bill is a good bill and unfortunate at the same time: unfortunate that a recent decision has brought us here,

and good because the bill reaffirms the principle established by the original framers of the Nevada water law that maintains the rule of law is not for sale. Maintaining seniority to water rights through and by Nevada water law is a hallmark and basically says that if your senior water rights are that important, then please make me an offer. Please imagine if you are a senior water rights holder and the agency that is in charge of giving out these water rights gives out too many junior water rights. Please think about that for a moment. This is why the Nevada Cattlemen's Association supports S.B. 113 (R1) and asks that this body send it on.

**Andrew Belanger, Director, Public Services, Southern Nevada Water Authority; and  
Las Vegas Valley Water District:**

We are here in support of S.B. 113 (R1). We appreciate the work that Senator Goicoechea and Mr. Busselman did on the Senate side to make sure that all of the concerns that were raised were addressed. We appreciate the language changes that were made in the bill, and we appreciate the purpose of the bill to really address these basins that are significantly overappropriated and overpumped. These basins have to be addressed. We have a drier future in front of us and our water law is not necessarily prepared, at this point, to face that future. It still provides too much latitude for overpumping. We can choose to address that at our own pace, or we can let Mother Nature do it for us.

My wish and my hope, and what we have seen out of this Legislature over the last ten years in particular, is a real attempt to try to grapple with the problem of overappropriation and overpumping, including Senator Goicoechea's ten years ago with the critical management areas, including the reservation of water rights that we saw in basins that are not overappropriated. Those efforts will make sure that our water future looks better than it would otherwise.

I said this on the Senate side, and I will say it over here on the Assembly side: In 1997, the Legislature created the Las Vegas Valley groundwater management program and gave us the tools in the Las Vegas Basin to address groundwater issues. They also gave us a funding source. The Legislature authorized a fee that could be imposed at the local level to help solve some of these problems. Problems get solved better when there is money involved, when you have a pot of money that you can use to do that. In the Las Vegas Basin, that has included a well conversion grant program where we will pay people who want to get off of their wells, helping to reduce the demand on an overappropriated basin. It included a recharge program that a citizen's committee established. It has included greater water conservation efforts for well owners. All of those things were developed at the local level with local control and a local funding source. This bill does not have all of those things in there. It is a good first step to address this issue of overpumping. I hope the Legislature in the future will do those things for basins like this, so that there are tools available, and so that you do not just have that zero-sum game of it is the seniors who get protected and nobody else gets any water. That is the law; I understand it, but if you have resources, you can then help fund some of the innovative solutions that you might need.

**Kyle Roerink, Executive Director, Great Basin Water Network:**

We support S.B. 113 (R1). I want to echo many of the comments from Mr. Belanger. I think it is important that when I first read the Supreme Court's decision on the Diamond Valley case, I said to myself, Well if I were a junior rights owner in an overpumped basin right now, I would be thinking about doing a run on the basin, getting everybody together and saying, we will get a GMP that will benefit us rather than the senior rights owners. That is just not the way that water law was intended. I think that is why folks came together and put together this bill. I think the intentions are sound, and I also think the majority of water rights holders in basins are not stupid. If you have a serious, critical overpumping problem, they know that they are going to be harmed eventually, too. I think the question of whether entities are going to want to get into the game, senior water rights holders can see the writing on the wall. Lastly, our safeguard is in section 1.5, subsection 8, where you do lay down the hammer of curtailment and we have a ticking clock.

**Patrick Donnelly, Nevada State Director, Center for Biological Diversity:**

The Center for Biological Diversity strongly supports the prior appropriation doctrine. Senior water rights are almost always associated with important environmental values like springs, wetlands, or meadows. Our groundwater-dependent ecosystems in Nevada are dependent on the integrity of prior appropriation. Protecting senior water rights is paramount to protecting the environment. Groundwater management plans may or may not be a useful tool, I would say from a strictly environmental perspective. Whether we use a GMP or a curtailment by strict priority, the environmentally superior outcome is less water coming out of the ground. But if a GMP is the route chosen, the question of how that GMP is rolled out really does have very significant environmental consequences. Without this bill, if senior water rights are not protected, you could have the negative environmental outcome of senior water rights being impacted in favor of pumping by junior pumpers, even if those junior pumpers are causing conflict with the senior water rights or environmental values. Surely that is not the intent of the Legislature.

It was observed by some members in questioning that this may impede the ability of critical management areas to be enacted and may in fact encourage the hammer of curtailment. I would say that a little good old-fashioned curtailment by priority might be just what this state needs. When we call curtailment a hammer, while the hammer is incredibly effective at doing one thing and that is pounding in nails, curtailment is very effective at having less water come out of the ground. I would not say that curtailment is necessarily a negative outcome, but the bottom line is one way or another, we are pumping too much, and we need to reduce the amount of pumping by hook or by crook. In bringing that amount down, we need to protect senior water rights. To protect the integrity of prior appropriation, to protect senior water rights and the environmental values that they foster, we urge you to support this bill.

**Chair Cohen:**

Seeing no one else in support in Carson City, Las Vegas, or Elko, is there anyone on the phone?

**Levi Shoda, Manager, Sadler Ranch, Diamond Valley, Nevada:**

We are in strong support of the S.B. 113 (R1), being a ranch that has gone through the first GMP, having both vested water rights and junior groundwater rights. The courts need direction in what the intent of the legislation of the GMP meant. There was not enough good verbiage in that legislation and in the law to help support that. We are strongly in support of this. I just want to add, we did have one concern with it because, whether it be political or whatever the case might be, when the State Engineer signs off on a plan or whatnot, at the end of the day, the resource that we need to protect, whether it is a vested water right or whatever, it comes down to protecting the resource. When you protect the resource, it is protecting the prior appropriation doctrine as well as it is protecting our environmental issues that we also face. We feel the term "significant progress" is a little bit loose because there is a goal, and the goal is to be sustainable. With all that said, we are strongly in support of S.B. 113 (R1).

**Chair Cohen:**

Hearing no further callers, I will go to opposition. Is there anyone in Carson City, Las Vegas, or Elko wishing to provide testimony in opposition? Seeing no one, is there anyone on the phone? Hearing no one, I will move to neutral in Carson City.

**Jake Tibbitts, Manager, Natural Resources, Eureka County:**

Eureka County is neutral to the bill. I just want to point out that when the water rights holders in Diamond Valley got together to start developing a plan, they never intended the Diamond Valley plan to apply anywhere other than Diamond Valley. To borrow from the "Visit Las Vegas" slogan, we are hoping what happens in Diamond Valley stays in Diamond Valley. Apparently, that that did not happen. I just want to address some concerns of things that could happen in a GMP, not what did happen in Diamond Valley. Senator Goicoechea said that I crafted the plan. I just want to clarify that I put the words on paper for the water rights holders who were developing the plan. It was the water rights holders themselves who crafted the plan, and I helped in that process.

There have been some who have miscast what the Diamond Valley plan does. I want to note that the majority was met, including a majority of the seniors by water volume in Diamond Valley, did actually sign onto the plan. A large bulk of the senior water rights holders in Diamond Valley are junior water rights holders, they own both senior and junior; there is not a clear separation of that. The Diamond Valley plan does not include vested water rights nor groundwater rights that were mitigation rights to replace any impacted vested rights. The Diamond Valley plan does have an ultimate goal of stabilizing the water table. That is the goal of the plan. While it allows up to 35 years, the plan could be as short as 22 years based on the way it is crafted. Its ultimate goal is the water table response. The Diamond Valley plan has a mandated check-in at year six, where the bill in front of you would have ten years. That mandated check-in is to do just what is intended, to have that check-in to see if it is making progress.

The last thing I want to point is about sales and the real estate transactions. There was a big chilling effect in Diamond Valley before this plan went into effect because there was no certainty of what was happening, whether there was curtailment coming or what that was. Getting a plan in place and approved by order of the State Engineer provides certainty for people to take to the bank, literally. They can now take that knowing they can show that plan to a lender or for a sales transaction and say, This is the water I have now and according to this plan, this is the water I will have at year five, year ten, or whatever. It actually provides some level of certainty. We think that was a positive thing about the Diamond Valley plan.

**Adam Sullivan, P.E., State Engineer and Administrator, Division of Water Resources,  
State Department of Conservation and Natural Resources:**

I am testifying in neutral on this bill. My observations are, just to add to your thought process, regarding the use of perennial yield and the relative senior versus junior question, and the idea of a cut line. I want to make a couple of observations. One is that this statute for the critical management areas is the first time that perennial yield was written into statute. There is one other place that has since been added, but it is not the statutory standard for issuing water rights or considering changes to existing water rights. Perennial yield represents the natural water budget over a defined area of how much water over a long period of time could be withdrawn from that source, and you would not have continuing water level drawdown. It is a pretty broad general number that represents a basin's water budget. When we look at water rights, they have an exact date and their priority is relative to each other. All water rights are issued subject to existing rights, not subject to the perennial yield. My concern is that we are blending a little bit, and I see the utility for conceptualizing how to do this. I get it, but I have some concerns about a couple of things.

When it comes to curtailment and you are thinking about how we cut back because there is not enough to go around, a groundwater management plan could be considering a lot of different things besides just the basin scale perennial yield: things like the location of pumping, the proximity to other rights or to surface water features that are at risk, how much storage is in an aquifer, or what the time to conflict might be. These are things I think that a groundwater management plan needs to consider and would consider. By tying too much to the perennial yield as the standard, it brings up concerns.

A couple of points that were mentioned here: We are not considering adjudicated claims in vested rights in our balance of who can do what, who is senior and who is junior. We are trying to define a line of who needs to participate and who has the option to participate. That line could change. Adjudication is one example, the other mentioned was water rights that are in good standing but are not being used; that is another variable. My points are that the recognition that we have a lot of basins that are overpumped and something needs to be done is good. Having reliance on perennial yield as a statutory line above which people can do something or cannot do something gives me a little bit of pause. As a division, I think we can go forward and carry this out as the Legislature directs, but I think it might reduce the accessibility or the utility of groundwater management plans in some cases.

**Chair Cohen:**

I do have a question from Assemblywoman La Rue Hatch before you leave the table.

**Assemblywoman La Rue Hatch:**

My question is, If perennial yield is not the measure we should be using for this, what other measures should we be including in this bill?

**Adam Sullivan:**

One of the things that Mr. Tibbitts mentioned is that the objective of the Diamond Valley groundwater management plan is to stabilize water level drawdown. That is mentioned in this bill too, and to me that is a more meaningful metric of what really is trying to be accomplished. Diamond Valley is also a good example of a relatively homogeneous basin where just the reality of it is that most of the wells are drawing from a common pool source and there are a lot of geographic settings and other administrative basins where it is not that homogeneous. It might be something that would be worked through in a groundwater management plan that is specific to that area.

**Melissa L. Flatley, Chief, Hearings Section, Division of Water Resources, State Department of Conservation and Natural Resources:**

I wanted to add some additional insight on the question about forfeiting unused water and how that process would play out in these basins. I have only been with the Division of Water Resources three years, but I am not aware of a situation where the State Engineer's decision to forfeit unused water has been upheld by a court. They are remanded for further proceedings or they are reversed for equity and fairness. We go through the process of utilizing these statutory tools to clean up the water, the paper water that is not being used, and those efforts are unwound through the judicial process. It is a frustration on our side, too, as we are looking to do that forfeiture, we take these actions, and then it is all thrown back.

**Assemblyman Watts:**

Thank you to the State Engineer for those comments, keep trying. We need a combination of incentives for people to work together and be as proactive as possible in addressing some of these challenges. We also need there to be those consequences, and to take those clear actions to protect the water rights and the uses that are in place currently. The only other thing I just want to say is, now that neutral testimony is over, congratulations to you, Senator Goicoechea, on getting the "best available science" put into a piece of legislation with no definition and no comments.

**Chair Cohen:**

Seeing no one else in Carson City, Las Vegas, or Elko, is there anyone on the phone in neutral? Hearing no one, Senator Goicoechea, would you and Mr. Busselman like to come back up for closing remarks?

**Senator Goicoechea:**

I would just offer a few closing comments. We spent three weeks trying to get "best available science" and a number of other terms in here. Where we finally landed, we were not really talking perennial yield or static water level. It is in layman's terms, "until the water table of the basin is stabilized." I realize that you can have pockets, as the State Engineer said, to show significantly more with downside and withdrawal in other areas in the basin. The bottom line is, you take a look at it in layman's terms, and if the water table is stabilized and you are starting to gain, that is what we are looking for. In regard to the ability to forfeit water rights, another bill we changed since Assemblyman Watts has been here as well, is it requires a four-year forfeiture letter. I really wonder how many of those go out. I think we should be issuing a lot more of those, saying it is year four, you have not used water, you are subject to forfeiture, and you have one year to cure it. That has to be done before action can be taken. We need to be sending those forfeiture letters out en masse. There are a lot of people in the state I know, you know, who have not pumped water for four years or more. They are not putting it to beneficial use. We need to address that first and foremost as we bring this forward. Then maybe we would see some more forfeitures.

The bottom line is, there was a lot of work that went into this bill, a lot of stakeholders. We spent a lot of time wordsmithing it. I appreciate the fact that we got some stuff in and we got some we did not. I think it is a simple bill that says, we are going to have to address these overpumped basins and the language is as clean as we can get it. I know there are some issues about majority, minority, who, or what water rights, and who should play. I would hope everybody in a basin would play, but that is not a fact. Some of these people are senior, and some of them have a combination of groundwater and surface water. They have been significantly impacted in many of these basins. When you actually see groundwater pumping take that surface water away from you, it is a real issue, and we are dealing with it. With that, I hope you can support the bill. There are probably a lot of places we can make it better, but we have 29 days. I hope you get it out. Thank you.

**Doug Busselman:**

I want to express our appreciation to Senator Goicoechea for his willingness to bring forward our proposal. I would also like to thank the people we have been working with in collaboration to come up with the language that is there. I think it has been a very rewarding experience to have as many water stakeholders as we have had contributing to the ideas that you have before you. I would like to say thank you to the Committee for having a hearing. We support the protection of senior water rights, and we urge you to support S.B. 113 (R1).

**Chair Cohen:**

With that, I will bring the hearing on S.B. 113 (R1) to an end and I will open up for public comment. Do we have anyone for public comment in Carson City, Las Vegas, or Elko? Seeing no one, is there anyone on the phone? Hearing no one, Committee, we are waiting for bills to come over from the Senate, so we do not have a hearing scheduled for Wednesday. Hopefully, we will have one for Monday, but just keep an eye out. Stay tuned and for now we are adjourned [at 5:08 p.m.].

RESPECTFULLY SUBMITTED:

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Nancy Davis  
Committee Secretary

APPROVED BY:

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Assemblywoman Lesley E. Cohen, Chair

DATE: \_\_\_\_\_

**EXHIBITS**

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.